

Key considerations for dealing with FOI requests

This checklist sets out the key steps that you need to take when dealing with an FOI request. This will usually be initiated through correspondence received through the Ministerial Correspondence and Public Enquiries Unit, but FOI requests can and do come directly to individuals or mailboxes, in which case you should alert the FOI team as soon as possible.

You should be aware that **the legal deadline for replying to FOI requests is 20 working days from receipt of the request by the Department**. You will be asked for an initial response within 5 working days and we generally expect to see a draft response within 10 working days. This gives plenty of time before the legal deadline to work on the draft and, where appropriate, involve Press Office, Private Offices and any third parties.

If at any stage you need any help, advice or assistance then do get in contact with the FOI case officer who will be able to guide you through this process. There is also extensive advice and guidance [available on the DH intranet](#).

- 1) **IS THE INFORMATION HELD - determine whether the requested information is held** and undertake a preliminary search for all relevant documents/correspondence. If information is likely to be held by other areas of the Department or someone else would be better placed to lead on the request, inform the FOI case officer as soon as possible.
- 2) **NOT HELD - if no information is held** - let the FOI case officer know as soon as possible so they can draft a “not held” reply for the applicant. If you know that another public authority holds the information then the applicant should be advised of this. Please remember to obtain Branch Head clearance for your not held response.
- 3) **S12 - Cost limit** – if the information is held, determine whether it can be found, located, retrieved and extracted within the **cost limit** (for central Government this is £600, the equivalent of one person working for 3 and half days or 24 hours). If it cannot then section 12 of the FOI Act applies and you should discuss with the FOI case officer so a reply can be agreed and sent to the applicant. In using section 12 we have a duty to provide advice and assistance by suggesting the applicant re-defines or narrows their original request so we can try and answer it within the “cost” limitations. Multiple requests for similar information from the same applicant, received within a period of sixty consecutive days, can also be aggregated for the purposes of determining the cost limit under section 12.
- 4) **S21 - information in the public domain** - is the information already publicly available through our own Publication Scheme, from our website or from somewhere else that is accessible to the public? If so, section 21 of the FOI Act allows us to direct the applicant to the published source.

5) S14 - is the request vexatious or repeated? - from the same applicant or persons who are working together, then section 14 of the FOI Act may apply. Please discuss this with the FOI case officer.

6) Next Steps

a) Consider what **exemption(s)** are relevant and apply the public interest test (PIT), where appropriate.

PIT arguments are required for most exemptions in the FOI Act. You need to show that the public interest in withholding the information is greater than the public interest in disclosure. In considering this decide if the release of the information would cause any harm or prejudice and use specific arguments to show what harm would occur by release.

For particularly complex cases, we are able to extend the FOI deadline by a further 20 days in order to fully consider the public interest. You should discuss this at the earliest opportunity with the FOI case officer.

b) **If you are considering using a section 36 exemption** (prejudice to the effective conduct of public affairs), you will need to draft a submission to the relevant Minister as the reply will need Ministerial clearance. You should factor in the time this takes in order to meet the reply deadline.

c) We should always consult with third parties if we are releasing information that they have submitted to the Department.

d) Consider and undertake any **redactions** required e.g. material that is out of scope of the request, personal data (s40) or information that is captured by any further exemption(s) you are using.

7) Prepare a draft response which you should share with the FOI case officer. They will be able to advise on which exemptions may be suitable and share with you standard wording that can be used on certain exemptions.

8) Final responses should be cleared by a Branch Head, and you should also consider whether others should be aware of the FOI – Press Office and in some cases Private Office for sensitive or controversial issues.

9) Publishing your reply - please consider if the reply/release should be made more widely available by **publishing on the DH website**, or in the case of regularly published material, adding to the DH Publication Scheme. If so, please discuss with FOI case officer.

10) Keep copies - it is essential that you **keep copies of all documents and records of all communications** relating to the FOI case as the applicant may appeal your original decision through an internal review (undertaken by the FOI team) and ultimately by taking their case to the Information Commissioner's Office (ICO).