



## **Things to consider when answering a Freedom of Information request**

### **Meet the statutory 20 working day deadline**

Freedom of Information (FOI) requests need to be responded to **within 20 working days** from receipt by the Department. This is not a target – this is a legal obligation placed on all public authorities by the FOI Act.

However, please try to respond to FOI requests as quickly as possible. Guidance from the Information Commissioner makes it clear that the primary obligation on the Department is to respond **promptly**, with the legal limit of 20 working days being the latest possible date by which we should issue a response. The obligation to respond promptly should be regarded as an additional requirement under the Act.

### **Is this for your team to lead on?**

The FOI team will contact any policy lead/s they think may hold information relevant to the request. When you receive a FOI contribution request, you should consider the request and decide whether yours is the correct team to lead on the response. If it is not, let the FOI team know immediately and, if you can, suggest who might be in a position to answer. If it is for you to respond and more than one team may hold information, you should liaise with them on who should lead and stay in contact to ensure that all relevant information held by DH has been considered.

### **Is the information held by the Department?**

The first line of any FOI response will confirm whether the requested information is held, and this should always be your first consideration. Does the Department hold the information requested? If not, we have no obligation to gather or create it.

If information is not held, think about where else the applicant could go to get the information. Would this information be held by the HSCIC or NHS England? The FOI Act obliges us to assist the applicant in finding information when it is not held by the Department.

### **Can the information be gathered?**

If the information is held, can it be obtained? There may be circumstances where the wording of the request makes it impossible or difficult to answer in its current form. If so, consider how best to approach the difficulties in getting the information.

There are two common exemptions to consider:

- Section 12 (Disproportionate Cost): Where the request is too broad and encompasses too much information.
- Section 1(3) (Clarification): Where it is not clear precisely what information is being requested

If you think either of these apply, the FOI case officer will be able to advise on how to respond.

### **Can all of the information be released or do exemptions apply?**

The starting point for all FOI requests is that information should be made public unless there is a good reason to withhold it. Clearly there are occasions where information should not be released, and it is for this reason that there are exemptions within the Act to withhold requested information.

Always weigh up the pros and cons of releasing all information and think carefully about whether any exemptions might apply. For instance does it include papers of a previous administration? Do we plan to publish the information at a later date? Does it include personal or commercially sensitive information? Is it policy under development or would release prejudice the conduct of public affairs? Guidance on all of the possible exemptions can be found on Delphi here:

<http://www.delphi.dh.gsi.gov.uk/delphi/WorkingwithMinistersandPublic/Freedomofinformation/index.htm>

Or let your FOI case officer know the nature of your concerns and they will advise on which exemptions may apply but the final decision will rest with you.

### **Should information be withheld completely or can it be redacted?**

Where possible, it is preferable to release documents with sensitive information redacted rather than a blanket refusal. Do the exemptions apply to all the information, or only parts or paragraphs of it? If you need to redact sensitive information, guidance on this process can be found on the FOI page of Delphi above.

### **Do you need a comms handling strategy?**

When releasing information, you need to consider whether the information may attract media interest and if so inform the media centre. This is especially true where information is going to journalists, campaign groups or websites (such as WhatDoTheyKnow), but all information released under FOI should be considered public information. Think about what lines you may need in case of press queries, correspondence or PQs relating to information of particular public interest.

### **Does release of the information affect any third parties?**

The release of information may have an impact on individuals or bodies outside of DH. When considering information, think about who should be consulted before release. This is particularly important for other NHS organisations (such as NHS England and CQC), and commercial companies (such as contractors or suppliers). Although there is no legal obligation to sight parties on information being released, it is critical to do so to ensure that all considerations have been made and consistency across public bodies.

### **Papers of a previous administration**

There are set protocols to be followed in relation to the release of papers of a previous administration (PPA) in response to a FOI request. The PPA convention applies to any information originating from or relating to policy deliberations or discussions from any former administration i.e. Ministers or SPADs or Private Offices. If no exemption applies (typically s. 35, formulation of Government policy or s. 36, prejudice to effective conduct of public affairs) and the papers are being considered for release then the relevant former Minister/s should be consulted. Full guidance on PPA can be found on the FOI page on Delphi above.