



Durham County Council

Freedom of Information/Environmental Information Regulations

Procedures

2013/2014

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Durham County Council - Freedom of Information/Environmental Information Regulations - Guidance for responding to Information requests - draft

1. Introduction

The Freedom of Information Act 2000 ('the FOI Act') was introduced to provide public access to information held by public authorities. The two duties under the act are as follows:

- Right to request information under 1(1) of the act and to be told whether it is held and if held a right to have that information communicated unless otherwise exempt
- To provide advice and assistance

The Environmental Information Regulations (2004) (EIR) derive from European Directive 2003/4/EC. They too came into effect on 1 January 2005 and grant a general right of access to environmental information in any form. Under regulation 4, a public authority must:

- Progressively make environmental information available
- Publish information on the internet, in most cases; and
- Take reasonable steps to organise its environmental information to make it easier to access and publish

2. Purpose

The purpose of this document is to provide guidance on Durham County Council's approach to responding to information requests under the Freedom of Information Act (2000) (FOI) and Environmental Information Regulations 2004 (EIR). It aims to ensure that the council complies with the ICO Code of Practice and that all council employees understand their roles and responsibilities when handling requests under both FOI and EIR statutory regimes. This document also aims to promote transparency and a culture of openness throughout the authority.

A detailed checklist is provided at Appendix F to assist Link officers with the process.

3. Scope

This document relates to all information requests received under FOI and EIR. It does not cover requests for access to information under other statutory regimes such as Data Protection Act 1998 (personal information), Access to Health Records Act 1990 and access to Education Records.

The council's Data Protection Policy 2011 can be found at

<http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=826>

This document applies to all recorded information held by Durham County Council apart from the information the council routinely releases as a part of usual business. Further details can be found in Section 5 'What is a request'. The list of regularly published documents can be found in the council's publication scheme. Recorded information means printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is aimed at all employees, whether full time, part time on a substantive or fixed term contract and to associated individuals who work for the Council including agency staff, contractors and others employed under a contract of service. Elected members are also covered by this policy. This guidance does not cover information requested from schools. Schools are their own data controllers and handle FOI/EIR requests separately.

4. Roles and responsibilities

Heads of Service

The Head of Service has responsibility for ensuring that their service complies with these procedures, in particular to ensure a single Head of service sign off for potentially sensitive requests to contribute to the timeliness of responding to Information requests. They will have a network of support including specialist

advice from IMT, support from Link officers and policy implementation measures through IGG.

Head of Planning & Performance (HOPP)

The HOPP is responsible for ensuring overall compliance with this guidance and the implementation and effectiveness of the overall procedures for responding to Information requests. The HOPP (in conjunction with the HOPC) is responsible for identifying, which requests should be identified as 'sensitive' under the criteria and for approving the final responses to such requests.

Head of Policy & Communications (HOPC)

The HOPC is responsible (in conjunction with the HOPP) for identifying which requests should be classed as 'sensitive' under the criteria. The HOPC is also responsible for providing advice on media implications for responses to Information requests.

Principal Information Management Officer (PIMO)

The PIMO is responsible for overseeing the day to day implementation of the procedures in particular to include the following:

- The maintenance and accuracy of the publication scheme
- The co-ordination of responses to Information requests within the deadline
- The provision of advice, training and guidance for all staff
- The monitoring and reporting of the performance of responding to information requests within deadline
- The effective implementation of the ICT system to support the FOI/EIR procedures
- Maintain and update FOI/EIR disclosure log

Information Management Team

The Information Management Team are responsible for

- Providing advice and guidance on the FOI procedures and relevant legislation
- Ensuring all responses to Information requests are sent out by the deadline and are high quality in accordance with 'the Definition of a Quality response' (appendix ?)
- Liaising with service link officers and heads of service, where appropriate, to ensure a quality response is achieved.
- Monitoring and review the effectiveness of the FOI/EIR procedures
- Promoting FOI principles throughout the council
- Updating the Daily Log established to support the policy and procedures
- Liaising with requestor in accordance with the 'Protocol for Liaising with Requestor', when necessary
- Undertaking training on relevant issues, where necessary
- Updating the website, intranet and sharepoint page with relevant information
- Updating the disclosure log on a monthly basis

Service Link Officers

The service link officer is the nominated officer within a service grouping or a service team who is responsible for receiving and co-ordinating responses to FOI/EIR requests within their service. They are responsible for submitting the response to the IMT within 15 days to enable them to send out to the requestor by the statutory deadline. The specific duties are highlighted in the role description attached as Appendix A.

Individual employees

Individual employees should:

- Be aware of the FOI Act and EIR regulations and what it means to the council

- Be aware of these procedures
- Ensure that all Information requests received are forwarded to IMT immediately
- Provide advice and assistance with any requests for information, where necessary
- Ensure that they effectively manage, complete, reliable, accurate, up to date records in order to respond to Information requests within the tight timescale
- Ensure records are disposed of appropriately, as outlined in the council's Records Management Policy which can be found at <http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=7812>

4. Duty to answer requests for information

What bodies are covered by right of access?

The Freedom of Information Act applies to information that is held by a 'public authority'.

What information is covered by the right of access?

All recorded information held by a public authority is covered by the right of access. Information includes holding a copy of a record produced or supplied by someone else.

Transfer the request to the second authority. If the council only holds information on behalf of someone else, then that public authority may not have to provide the information in response to an Information request, depending on the circumstances. Please contact IMT for advice.

Information that has been deleted or amended

The right of access to information under the Act applies to information held by the authority at the time that the request is received. Where data has been deleted or it is the intention that data should be permanently deleted from a computer,

(and this is not achieved only because the technology will not permit it), this information is no longer considered to be "held" by the authority. Where the information has only been temporarily deleted and is stored in such a way that it could easily be recovered, (eg Deleted Items folder) this is still considered to be "held" by the Department and may have to be provided if a request is received.

Information held by an authority must not be deleted or amended in order to avoid complying with a FOI request. Altering, defacing, blocking, erasing, destroying or concealing information in order to avoid providing it in response to an FOI request may constitute a criminal offence under section 77 of the FOI Act for which the person convicted will be held personally responsible. If requested information is deleted from any computer, hard copy records management system or electronic filing system in line with the authority's standard records management practices after a request is received, the information is not considered to be held by the council.

5. What is a request?

Any request for recorded information is a request. However, the council does not follow this procedure when dealing business as usual information requests.

Business as usual requests

- A request from individuals for their own personal data
- A request for information or services that a service area would expect to receive in its normal day to day operation such as planning applications
- A request to ask an opinion about the council, programme, or event in other words does not ask for recorded information such as an opinion about future council's actions.
- A request to the Durham County Record Office.

A valid request

Under the FOI regime a written request must contain the name of the applicant and a return address. Requests can be made by an individual or an organisation.

Applicants can send their requests by email, letter, fax or online form. In addition, applicants **do not need to mention 'the FOI ACT'** nor 'Freedom of Information' to make the request.

A request for information must describe the information requested. In some circumstances, it may not be apparent what information is being requested. In such cases, the authority would need to seek clarification. Until clarification is received from the applicant, the authority is not obliged to comply.

Who can make a request ?

Anyone can make a request for information. Requests do not have to be made from people who are residents of the county. There is no distinction between requests from people who are citizens of, or who are currently in the UK, Europe or any country in the world.

Duty to provide advice and assistance under FOI/EIR

Under FOI/EIR there is a duty to provide advice and assistance, so far as it would be reasonable be expected to people who have made or who propose to make requests for information.

6. Assessing Requests for information

Under the council's internal procedure, there are two types of requests, namely 'potentially sensitive' and 'non-sensitive'. Non-sensitive requests are routine and potentially sensitive requests are requests that are complex or contentious. These requests require particular care in handling.

The assessment as to whether a request is potentially sensitive is agreed at a weekly meeting in ACE using a predetermined criteria and professional

judgement. Examples of potentially sensitive requests include those under the data protection act regarding personal information and those relating to procurement for example, contract details.

Link Officers should discuss any issues regarding sensitive requests with their Head of Service, if necessary and arrange for them to sign off the response, prior to submitting to the IMT.

Hybrid Requests

A hybrid request is a case in which an applicant requests information, which needs to be considered under more than one access to information regime. An example of this would be where a request is received and needs to be considered under FOI/EIR and under DPA - Subject Access Request (SAR) or alternatively under EIR and SAR.

The response should be split and the response under FOI dealt with as soon as possible and in any case, within 20 calendar days of receipt and the response under SAR within 40 calendar days.

Multi-service requests

Where a request requires a multi-service response the services should work together to provide the response to the IMT, if there are only 2 services involved. It is recommended that the relevant officers meet in person to discuss how to answer the request, if possible. If there are more than two services involved, the IMT will lead on co-ordinating the response.

7. Timescale for responding to FOI Requests

Under FOI/EIR a response should be sent to the requestor:

- **Promptly**; and
- in any event **not later than 20 working days** following the date on which the request was received.

Under EIR a response should also be dealt with within 20 working days, however, this timescale may be permitted for up to a further 20 days in the case of particularly Public Interest Test. More information on the Public Interest Test is available from the [ICO website](#). The service area dealing would need to contact the IMT to inform them if they needed to implement the extension, and if so, the IMT would write to the applicant to inform them as such.

The request is considered as being received by the Council when it first comes into the authority. If a request is received it must be forwarded to the IMT immediately in order that it can be processed as soon as possible. The Link Officers must return their response within 15 days in order that the IMT can process and send out within the 20 day timescale. There is also an option of services working towards a 10 day deadline to try and improve the timeliness of the responses sent out to the requestor. This will be decided by the relevant Management Team.

8. Quality of responses

It is important that all responses prepared by services and ultimately sent out to the requestor are of a high quality to provide good customer service, prevent internal reviews and ensure good media relations.

To that end a quality response definition has been produced (attached as Appendix B and will assist Officers when responding to a request. It includes key points such as the data should answer all the questions asked by the requestor and must have the minimum context to understand the answers provided.

Monitoring of the quality of responses will be undertaken as outlined in Appendix C. This includes quality check of each response, satisfaction surveys with requestors and analysis of internal reviews and complaints.

9. Access to environmental information under the Environmental Information Regulations 2004

Revised and strengthened Environmental Information Regulations (EIR) come into effect on 1 January 2005. Like FOI the EIR give access rights to any person, anywhere in the world, but they deal specifically with information relating to any decisions, activities and policy formulation that may have an impact on the environment. The definition of environmental information is broad and includes such things as water pollution statistics, information about the built environment, the food chain, details of the public authority's health and safety policies, cost benefit analysis, details of discharges and emissions, and any information relating to policies, plans and programmes that affect, or are likely to affect, the environment.

The main features of the Environmental Information Regulations are:

- Requests may be made orally or in writing (but must have contact details). If made verbally the request should be written down and confirmed as a valid and true request by the applicant before proceeding.
- The public authority must reply as with FOI, within 20 working days. However, as outlined in 7 it can be extended to 40 days for complex requests.
- There are exceptions, all of which are subject to a public interest test(except for personal information)
- There is no upper limit for the cost of meeting a request beyond which the request may be refused
- Holding environmental information under EIR includes holding a copy of a record produced or supplied by another person or body.
- There is a duty to proactively make information available via electronic means and to publish information frequently requested.

Environmental information is exempt information under section 39 of the FOI Act. Once again, any request for environmental information must be dealt with under the EIRs regime.

Main Differences between requirements under the FOI and EIR

- the range of bodies covered by the EIR is wider to allow for consistency with the EC Directive, and includes public utilities and certain public private partnerships and private companies.
- Requests for environmental information need not be in writing
- the information held by a public authority includes holding information held on behalf of any other person;
- the duty to provide advice and assistance requires a public authority to respond within 20 working days when requesting more particulars from the applicant;
- the time limits for responding to a request apply to ALL requests including those involving consideration of the public interest. However, under FOI the timeframe can be extended further, only for consideration of the public interest test but this is a discretionary measure which should be made in agreement with the IMT.
- Regulation 7 allows for an extension from 20 to 40 working days for complex and high volume requests.
- Under EIR and unlike FOI there is no scope to apply a fees limit ;
- Under EIR there are exceptions; under FOI there are exemptions;
- the requirement for public authorities to have in place a complaints and reconsideration procedure to deal with representations alleging non-compliance with the EIR is mandatory.

10. Fees and charging

Currently, the cost limit for complying with an FOI request or a linked series of requests from the same person or group is set at £450 (18 hours work). The council can refuse a request if the estimate that the cost of compliance would

exceed this limit. The requester should be given the option of refining their request so that it does not exceed the fees limit. There is no cost limit for an EIR.

Appropriate fees will be charged for FOI requests in accordance with the ICO's fees regulations. Where applicable, the council sends a fees notice to the applicant. Any outstanding fees must be paid by the applicant before the council release the information.

If Link officers feel that the work to be done to obtain and prepare the information will exceed the 18 hours limit they must provide an estimated breakdown to the IMT and they must provide advice and assistance under S16 of the FOI as to how the scope of the request can be reduced or not as the case may be.

11. Exemptions to the Act

There are 23 exemptions provided under the Act that are either absolute or conditional in their effect, which are as follows:

Please note that IMT are responsible for making the decision regarding applying exemptions, this is not the responsibility of the service link officers.

The main most frequently used exemptions and exceptions are as follows:

Absolute exemptions

- Information accessible to the applicant by other means (s21)
- Information relating to Court records (s32)
- Information provided in confidence (s41)
- Information that would prejudice the effective conduct of public affairs (s36)
- Personal information

Conditional Exemptions

- Information intended for future publication
- Investigations and proceedings conducted by public authorities
- Health and Safety

- Environmental Information
- Legal professional privilege

Exemptions requiring the application of a public interest test and/or a prejudice test:

- Law enforcement
- Commercial Interests

Because the Act strikes a balance between different, and important, interests, a decision to withhold or release information will itself require a careful balancing act. Access to information legislation is about providing the framework within which decisions can be made on where the balance of public interest lies on the release or withholding of information on a case by case basis.

The Act therefore contains a number of exemptions to the general right of access. The exemptions ensure that decisions to release or withhold information are taken with the interest of the public as a whole firmly to the fore.

A list of exemptions under FOI and exceptions under EIR is attached as Appendix E

Redaction

An important distinction to make with freedom of information legislation is that applicants making a request are entitled to *information* rather than *documents* themselves. **A Redaction is where exempt information is deleted from documents.** This can be undertaken either by the service link officer or a member of IMT. For smaller documents, this is usually done manually by the service link officer by 'blinking' out the relevant text with a black pen or for larger documents, these can be forwarded to the IMT as a pdf document, for them to electronically redact. It is however recommended that advice is sought from the IMT on this issue.

Where documents contain a mixture of information that can and cannot be released, the exempt information may be deleted from any document which is released, known as 'redacting'.

If the information sought falls within the terms of a qualified exemption and the council requires additional time in order to properly conduct a public interest evaluation the timescale for complying with the request is extended by a 'reasonable period'.

The applicant must however be told within the 20 day period:

- which exemption or exemptions you believe apply to the information requested; and
- give an estimate of the date by which the decision will have been made. You must comply with this estimate.

12. Clarification and Liaising with the Requestor

Written clarification can be sought from the requestor at any time during the process regarding their request but it is preferable at the start of the process. The clock stops in terms of the 20 day statutory deadline at this point and restarts once clarification is received from the requestor. The days prior to clarification being received are not included in the number of days taken to respond. The revised dates are updated on the daily log to enable a revised deadline date to be allocated.

It is also possible for a member of the IMT or service link officer or other officer to telephone the requestor for clarification on a specific issue. A protocol for liaising with the requestor has been produced and is attached as Appendix D.

13. Disclosure Log

The disclosure logs are our public record of information requests the council has received and responded to. This includes requests made under FOI/EIR and

Environmental Information Regulations, as well as Internal Reviews of previously completed requests. These are available on the Council's Freedom of Information website page and are updated monthly.

14. Publication Scheme

The council has introduced a publication scheme which sets out the classes of information it currently holds and how to access them, negating the need for an FOI/EIR request to be made for this information. The structure follows the ICO's model and the council is committed to updating and maintaining it to keep it current and to encourage the proactive publishing of information.

Transparency page:

<http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=8040>

Publication Scheme:

<http://www.durham.gov.uk/Pages/Service.aspx?ServiceId=5938>

Link officers are encouraged to proactively publish any items of frequently requested information and include links into the publication scheme. This will hopefully reduce the number of Information requests received.

15. Internal Reviews and ICO appeals procedure

The ICO requires the council to have an Internal Review Procedure for dealing with applicants who are dissatisfied with their response. Any person who is unhappy with the way in which the council has handled their request for information may use this procedure.

The timescale for responding to an internal review is as follows:

FOI - no set timescale but code suggests promptly - 20 working days

EIR- must be submitted within 40 days/responded to within 40 days

If the decision to refuse disclosure is upheld under internal review the applicant has a right to appeal to Information Commissioner's Officer (ICO) for a review.

The ICO exists to promote good practice, advice on legislation and to hear under section 50, applicant's right of appeal.

16. Training and Awareness

The Council will ensure that its staff and members are familiar with the requirements of the Act and the procedures through training and promotion via the intranet, internal magazines and face to face sessions.

Tailored training will be provided to all service link officers on the policy and procedures and the requirements of the legislation.

A 6 monthly Link officers meeting has been established to facilitate this and any other issues that need to be discussed.

17. IT system to support the process

The ultimate aim is to adopt a corporate IT system for use throughout the council with a view to reducing duplication with all services using one system, improving records management and facilitating a standardised process. This system would be used for workflow, storage of records and producing reports and performance statistics.

Another system has been established in the interim, (daily log) which provides a starting point for a corporate system and consists of a corporate spreadsheet on sharepoint including all information relating to all requests received and a facility for producing performance reports and graphs. All service link officers and members of the IMT will have access to the daily log and should use this to run extracts relating to the status of information requests relating to each link officer or Head of Service. A dashboard of graphs and charts will also be available for each service to use to as part of their own performance management framework and internally.

Performance of responses sent within the 20 day deadline will be reported quarterly through the corporate performance management report and to Improvement & Planning Group (IPG). The daily log also allows monitoring of the following stages to feed into service improvement:

- Stage 1 - IMT to service
- Stage 2 - Initial (complete) service response to IMT
- Stage 3 - Complete service response to IMT
- Stage 4 - Complete response received by IMT to sending to Head of Planning & Performance
- Stage 5 - Response sent out to requestor

A sharepoint site has also been established, which is accessible to all link officers and contains the final responses/original requests, daily log, guidance, link officer meeting dates.

18. Corporate Performance Management

The PIMO will monitor performance with regard to the % of requests responded to within the 20 day deadline. The target for this is 85% and this will be calculated using the closed date.

The performance information will be reported as part of the quarterly corporate performance report to Cabinet.

19. Monitoring and review of the guidance

The Policy and Guidelines will be reviewed annually by the Information Governance Group (IGG) to take into account changes in legislation and to ensure that they remain timely and relevant. Any changes will be publicised through the group and internal communication channels.

20. Procedures

To meet the requirements of the legislation the council has produced these procedures in relation to processing any written requests for information, whoever they are made to.

Durham County Council has a process which is coordinated by the Information Management Team, ACE, and each service grouping has an appropriate FOI Link officer(s), whose tasks are defined in the job description (Appendix A) and who are responsible for receiving and co-coordinating the responses to FOI/FIR requests within their service. They are also responsible for submitting a quality responses defined by Appendix B to Corporate Information Management team (IMT) to enable them to send out to the requestor by the corporate deadline of 20 days.

The ultimate aim is to automate as much of the process as is possible via the introduction of a new software system or improvements to the current system. The current ICT support system is an excel spreadsheet which includes information regarding all requests and allows performance monitoring against all of the stages identified below, in particular the 20 day deadline. The procedure below is based on the current (interim system)

Procedures

Stage 1.1 Request received by Council

- Request received by Council
- Logged onto the daily log by IMT and response stored on sharepoint
- 20 day statutory deadline for responding commences the day after the response is received.
- An acknowledgement letter sent out to the requestor within 1-2 days
- Any requests without a name and address are sent a refusal letter.

Stage 1.2 Gatekeeping

- An assessment of the request to determine whether it should be treated as an EIR, FOI or Data Protection or business as usual
- Preparation of request by extracting questions and removing personal information prior to e-mailing to service
- Adding value to request - eg pointing services in right direction where the information can be obtained
- Determining which service grouping(s) would be responsible for answering the request

Stage 1.3 Request sent to service

- An e-mail is sent to the relevant Link Officer from the IMT attaching the request and stating the deadline for return to the IMT (15 working days)
- Service Link officers are required to inform the IMT by e-mail whether they accept the responsibility of answering the request within 3 working days. This will ensure that it does not remain with the incorrect service for a long period of time, causing delays in the process.
- The daily log will then be updated with the relevant details

Stage 1.4 Classification of requests as sensitive/non-sensitive

- Classification of sensitive or non-sensitive agreed at weekly meeting in ACE using new criteria and professional judgement
- IMT informed of the decision and the daily log updated
- An automated e-mail from the daily log would alert the Link officer to whether the requests were sensitive
- In addition, services can highlight to IMT if they feel a request is sensitive

Stage 2.1 Service deals with requests

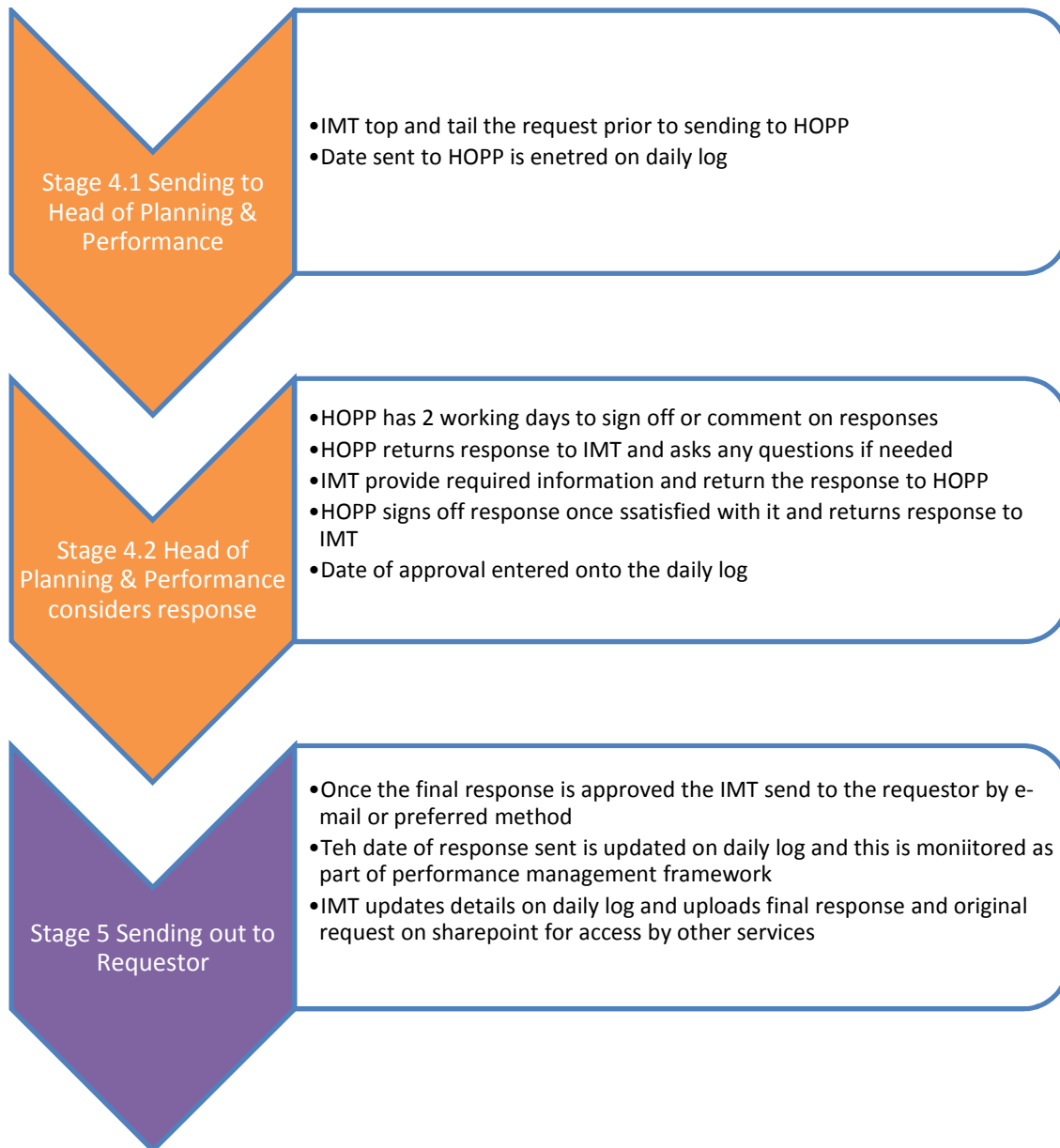
- Link Officer co-ordinates and gathers information to prepare the response ensuring quality
- Link officer determines whether a 3rd party should be involved and contacts IMT to facilitate
- Link officer liaises with IMT if they feel an exemption may apply and this is applied if agreed
- Final response signed off by relevant Head of Service, if sensitive
- Only 1 HOS must sign off request to prevent delays
- Final draft response sent to IMT by e-mail within 15 days

Stage 2.2 - Initial response received by IMT

- IMT undertake a further quality check of the response
- The daily log will be updated with a Yes or No option and appropriate notes.
- If the option is No the response is returned to the service for further work
- A response will only be recorded as being returned to the IMT once a Yes option has been agreed by IMT
- Monitoring of this will be undertaken and included on the daily log dashboard

Stage 2.3 Complete response to IMT

- Once the response is classed as a quality response it should be prepared, relevant exceptions and exemptions applied, context included where applicable then sent to HOPP for sign off if sensitive



Appendix A - FOI link officer role description

(also applies to any Officer nominated to cover in the Link officer's absence)

DESCRIPTION OF ROLE:

The Service FOI Link officer is the nominated person within a service grouping or a service team who is responsible for receiving and co-ordinating responses to FOI/EIR requests within their service. They are responsible for obtaining and collating the information from the relevant Officer and submitting the response to the Corporate Information Management team (IMT) to enable them to send out to the requestor by the statutory deadline of 20 days, under the Freedom of Information Act 2000. The role of the Link officer is twofold as follows:

Firstly;

- ✓ To undertake joint working with the IMT to shape the approach to responses
- ✓ To agree an early view (with the IMT and other key officers) on the line to take where possible
- ✓ To ensure early provision of draft information to IMT and undertake initial discussions
- ✓ To lead on arranging meetings between key officers to discuss the approach to complex FOI requests, when necessary

and secondly,

- ✓ To ensure a quality response is provided to the IMT within 15 days

SPECIFIC DUTIES AND RESPONSIBILITIES:

- To act as the main point of contact for receiving FOI requests relevant to their service
- To act as the main point of contact to answer queries relating to FOI requests for their service
- To co-ordinate and collate response information, liaising with key Officers within the service and submitting the response to the IMT within 15 working days
- To highlight to the Head of service, Director or key officer any particularly sensitive elements of the request which may require discussion with the Corporate Communications team
- To undertake a quality check of the response, prior to sending it to IMT to ensure it meets the requirements set out in the definition. In particular it must be ensured that all questions are fully answered or if they are not, ensuring an explanation as to why we cannot provide the information, making references to appropriate exemptions under the above Act, is included

- To ensure that all completed responses are in the correct 'You requested' 'our response' format.
- To have a reasonable understanding of the regulations under the Act with regard to providing information and to ensure timely liaison with the IMT on possible exemptions
- The Link officer is not responsible for making the decision as to whether to apply exemptions, this decision sits with the IMT.
- To assist with providing evidence and information for investigations as a result of Internal reviews or Information Commissioner office (ICO) complaints received regarding responses to FOI/EIR Requests.
- To produce reports/statistics from the daily log in order maintain robust performance management of their services FOI responses
- To work with the IMT to help identify and explore any key areas where information could be proactively published to prevent future FOI/EIR requests and co-ordinate this within their service area.
- To comply with the Environmental Information regulations, which state that the local authority has a duty to make information available to the public and if it does not do so it is in breach of the act.
- To promote a culture of openness and transparency within their service with regard to providing information.

Appendix B - FOI quality response definition

- **It must provide data to fully answer all the questions asked by the requestor**

A quality response is more than a response to each question. It has to answer the question. A response cannot be finalised until information to answer all questions is provided or if we are not answering them, a clear reason for not answering.
- **It must have the minimum context to understand the answers provided.**

In some cases, the applicant will not know what the answer means and it requires more contextual information. In most cases, services provide context where it is needed. In other cases, the answers are clear enough without it. However, we have to be clear that an answer without context is not a quality response.
- **All exemptions need to be identified or all material that may need to be exempted needs to be identified.**

In this context, the services need to tell the IMT what is sensitive and why so that the exemption can be applied. A quality response has to identify the material, and ideally, the exemption so that the IMT can engage it and consider it. If supported by early discussions at the start of the process to build quality in.
- **All the material or background needs to be identified for the response.**

In some cases, the IMT have only become aware of information or the background of a request after it is ready for a response. Some information (e.g. if a service is conducting a criminal investigation) may mean that the Council could have refused the request initially if the IMT had this information at the start.
- **A quality response has to be agreed in terms of its approach.**

If the service wants the information withheld, this needs to be raised at the start of the process and has to be agreed and discussed with the Information Management Team to ensure we are working within the regulations and being open and transparent.
- **A quality response has to indicate whether the information, or context, is already in the public domain.**

We cannot refuse to disclose information that is already in the public domain. Draft responses should direct the requestor to where the information is located (i.e. specific link to the webpage)

➤ **Any figures included in a quality response must be calculated on a consistent basis**

For example, requests asking for information regarding the cost or numbers of ER/VR applications/approvals or the number of staff currently employed must be calculated in the same way for all responses to requests; and be consistent with information already issued. *The only exception to this would be if an improved method of collecting data was discovered or a better quality data source became available. In such situations a corporate decision will need to be made and will be communicated to everyone.*

➤ **Quality responses must be consistent with the council's overall message**

Whilst it is important that factual information is provided and the question is answered it is important that the overall message is in line with the Council's overall communications approach, if relevant

➤ **Quality responses must be provided in the agreed format**

The format of the response should be 'you requested' and 'our response'

➤ **Quality responses must have all acronyms explained**

Procedure for monitoring quality in the FOI process

As we now have a definition for quality that is understood and embraced by everyone, it is important that regular monitoring is undertaken to ensure the quality of responses remain high and to address any frequently recurring problem or issues.

It is suggested that the following monitoring be undertaken:

- The completion of a 'quality check' for every response including the following categories:
 - Is the response in the correct format?
 - Are all of the questions fully answered?
 - Is there appropriate context to explain the answer?
- Percentage of quality responses received from services on their initial response (from daily log) to identify trends and any areas for improvement (quarterly)
- A quality check of all responses that were 20 working days overdue to identify any frequently recurring problem or issues.(quarterly)
- Undertake satisfaction survey of a sample of requestors (members of the public) (annually)
- A satisfaction check to be sent out with every electronic FOI response asking for feedback (short survey monkey questionnaire)
- Analysis of the number and reasons for internal reviews received (quarterly)
- Analysis of the number and reasons for ICO complaints (quarterly)
- the number of compliments/complaints received (quarterly)

It may be useful to provide further training sessions/one to ones to address any issues arising from random quality checks. Performance report will be reported to IGG on a quarterly basis.

RESPONDING TO FOI/EIR REQUESTS

PROTOCOL FOR LIAISING WITH REQUESTOR

Under normal circumstances, if clarification is required from the requestor regarding their request a letter is sent out to the requestor asking for this and the clock stops in terms of statutory timescale for responding until clarification is received.

However there are certain situations where it may be useful to contact the requestor by telephone and enter into dialogue to assist with preparing the response

When would it be helpful to contact the requestor by telephone?

- If a request is complex and it is not clear what information the requestor is asking for;
- If the time taken to collate the information requested will exceed the fees limit it may be worth discussing with the requestor whether he wishes to narrow the request;
- If we are refusing information under one of the exemptions of the act it may be useful need to explain the reasoning behind the refusal, particularly if it is a contentious issue
- If we do not hold the information requested but do hold something similar, it may be useful to ask the requestor whether this will meet their requirements

Who is the most appropriate person to contact the requestor?

- If the conversation is likely to be regarding exemptions or decisions regarding why the information is not available under the legislation then it would probably be appropriate for a member of the corporate information management team to telephone
- If the conversation is likely to be about the nature of the request, what they want they think the Council holds, then it is for the service as they know the topic, the service and the general context for these issues

What information do I need to find out from the requestor?

The following information should be recorded and provided to the IMT

- Date and Time of conversation
- The specific documents and information required
- The time period the data/correspondence should cover
- Whether the requestor wishes to narrow, modify or submit a new request
- Any other information requested by the applicant not previously included
- The preferred format of the information
- Whether the customer accepted that the case was closed
- Any other relevant information

If the requestor wants to change or add to their request then they must be informed to put their request in writing to the Information Management Team and it must be recorded as a new request. (FOI requests).

LIST OF EXEMPTIONS UNDER FOI ACT AND EXCEPTIONS UNDER EIR

OUTLINE LIST OF EXEMPTIONS UNDER FREEDOM OF INFORMATION ACT

Exemptions provide discretionary exceptions to the public's right of access to information held by the University under the terms of the Freedom of Information Act 2000. There are 23 exemptions provided under the Act that are either absolute or conditional in their effect. They are listed below but further detailed information is available from the [ICO website](#).

Absolute Exemptions

Exemptions that are wholly exempt in their application include:

- Information accessible to the applicant by other means (s21)
- Information supplied by, or relating to, bodies dealing with security matters (s23)
- Information relating to Court records (s32)
- Parliamentary privilege (s34)
- Information provided in confidence (s41)
- Information prohibited from disclosure by any other piece of legislation or enactment (s44)

Exemptions that are absolute only in part include:

- Information that would prejudice the effective conduct of public affairs (s36),
- Personal information (s40)

Conditional Exemptions

Exemptions requiring the application of a public interest test include:

- Information intended for future publication (s22)
- National Security (s24)
- Investigations and proceedings conducted by public authorities (s30)
- Formulation of Government Policy (s35)
- Communications with Her Majesty and honours (s37)
- Health and Safety (s38)

- Environmental information (s39)
- Legal professional privilege (s42)

Exemptions requiring the application of a public interest test and/or a prejudice test include:

- Defence (s26)
- International relations (s27)
- Relations within the United Kingdom (s28)
- The economy (s29)
- Law enforcement (s31)
- Audit Functions (s33)
- Commercial Interests (s43)

Exceptions for EIR.

Regulation 12(3): personal information

As under the Freedom of Information Act, rights of access to the applicant's own personal data are provided by the Data Protection Act. Requests for third party data can be made under the EIR but, in accordance with Regulation 13, disclosure will only be made if this does not involve a breach of the Data Protection Act. For more information on this exception see our guidance on [The exemption for personal information](#).

Regulation 12(4): exceptions based on the type of information

Regulation 12(4) provides a number of exceptions from the duty to provide information on request based upon the **type** of information held or the **nature of the request** rather than upon the **content** of the information.

The exceptions in question are as follows:

- **Regulation 12(4)(a) The public authority does not hold the information when an applicant's request is received.** It is obviously only possible to provide information which the public authority holds.

- **Regulation 12(4)(b) The request for information is manifestly unreasonable.**

There is no definition of the term "manifestly unreasonable". However, the word "manifestly" implies that a request should be obviously or clearly unreasonable. There should not be any reason to doubt whether the request was in fact unreasonable.

We consider that a request that would be considered vexatious or repeated under the Freedom of Information Act is likely to be manifestly unreasonable. For more information on the issues to consider, see our guidance on [Vexatious and repeated requests](#) and [Vexatious requests – a short guide](#).

There is no separate cost limit for responses to requests for environmental information, and it may therefore be possible for some exceptionally costly requests to be considered manifestly unreasonable. However, this is a high standard, as we consider that volume and complexity alone should not be sufficient to make a request manifestly unreasonable. In such cases public authorities must first offer advice and assistance to help refine the request, and should remember that under regulation 7 the time for responding can be extended if the complexity and volume of the information justifies it.

Even if the request is manifestly unreasonable, public authorities can only refuse to disclose the information if the public interest in maintaining the exception outweighs the wider public interest in disclosing the information.

- **Regulation 12(4)(c) The request is too general.** It is not necessary to respond to a request which has been formulated in such a general manner so as to make it difficult to determine what information the applicant actually wants.

- **Regulation 12(4)(d) The request relates to information which is unfinished or in the course of being completed.** Potentially the scope of this exception is quite wide. It will cover all sorts of work in progress, whether in the area of policy formulation or ongoing scientific research. The important consideration is likely to be the public interest test. When faced with a request for information which is as yet incomplete, public authorities must consider whether the disclosure of the information would be misleading because incomplete or whether disclosure would make it difficult or impossible to complete the work.

When refusing a request on this ground, a public authority must inform the applicant the date upon which the information is expected to be completed.

- **Regulation 12(4)(e) The request involves the disclosure of internal communications.** The term “internal communications” includes communications between government departments. Although there is some doubt as to the scope of this exception, the general intention appears to provide an exemption from disclosure for information which may not yet represent the settled view of the authority. The effect is therefore both to provide some protection for the “private thinking space” of senior officials or elected members and also to guard against the risk of the disclosure of advice or other information provided by more junior officials which might, wrongly, be taken to represent an official view.

Regulation 12(5): exceptions based on the content of the information requested

Regulation 12(5) lists the exceptions relevant to where disclosure **would adversely affect...** This test of harm is stronger than that in the Freedom of Information Act 2000, in which some exemptions apply if the information ‘would, or would be likely to, prejudice’. Therefore, to engage a 12(5) exception in the EIR the authority must be able to show with certainty the

The exceptions in question are as follows:

- **Regulation 12(5)(a) International relations, defence, national security & public safety.** Subject to the public interest test, if the disclosure of information would adversely affect any of these matters, it is exempt from disclosure.

The terms “international relations”, referring to relationships between the UK and other governments or international bodies such as the UN, EU or an international court, and

“defence”, referring to the defence of the UK and the security, capability and effectiveness of UK forces, are unlikely to give rise to interpretative difficulty. (The exception reflects exemptions in the Freedom of Information Act. For more information, see our FOI guidance: [The defence exemption: Awareness guidance 10](#) and [International relations: Awareness guidance 14](#).)

• **Regulation 12(5)(b) The course of justice, the ability of a person to obtain a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.** The purpose of this exception is reasonably clear. In effect it exists to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. The exception is also designed to ensure that disclosures do not prevent public authorities from conducting criminal and disciplinary investigations. The exception will cover information which is covered by legal professional privilege, particularly where a public authority is or is likely to be involved in litigation.

• **Regulation 12(5)(c) Intellectual property rights.** Whereas the exception discussed below relating to the confidentiality of commercial or industrial information provides protection to information whose disclosure would adversely affect the commercial interests of a third party, the exception relating to intellectual property will also protect the interests of the public authority itself. In broad terms, the exception will protect information that forms the basis of registered rights such as patents, trademarks and designs, unregistered rights, such as copyright, and unregistered design rights. It does not cover confidential information that does not benefit from such legal protection. The exception should only be applied where there is a real risk that the disclosure (or further dissemination after disclosure) would seriously undermine the rights concerned. If the information would enjoy protection, even after disclosure, from the Copyright Designs and Patents Act, for instance, the case against disclosure would be considerably weaker.

• **Regulation 12(5)(d) The confidentiality of the proceedings of a public authority where such confidentiality is provided by law.** The proceedings in question may be those of the public authority receiving the request or any other public authority. The meaning of the term “proceedings” is not entirely clear but will include a range of investigative, regulatory and other activities carried out according to a statutory scheme. Confidentiality may be provided either by explicit statutory restrictions on disclosure, by rights to a fair trial etc guaranteed by the Human Rights Act or by the common law. The effect of the public interest test is that on receipt of a request a public authority must

consider whether, despite a prohibition or restriction, there is a stronger public interest in disclosure.

• **Regulation 12(5)(e) The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.** Again confidentiality may be provided either by explicit statutory restrictions on disclosure or by the common law. The information covered by the exception will include a range of commercially sensitive information such as trade secrets, information supplied by contractors, information supplied as part of a tendering or procurement process and information held by regulators. The Commissioner has published Commercial interests: Awareness guidance 5 on the exemption in the Freedom of Information Act relating to commercial interests. Although the focus of the EIR is upon information relating to the commercial interests of parties other than the public authorities, this guidance is likely to be of assistance. (The commercial interests of the public authority itself may be covered by the exception relating to intellectual property rights – see above.)

• **Regulation (12)(5)(f) The interests of the supplier of the information.** The cases envisaged are those where the information was supplied on a voluntary basis in the expectation that it would not be disclosed to a third party and where the supplier has not consented to disclosure. In effect information which is protected by the common law duty of confidence. An example of the information potentially covered by this exception is privately owned information which has been deposited in a public record office or archive.

• **Regulation 12(5)(g) Protection of the Environment.** The ultimate aim of the EIR, and the EU Directive and Aarhus Convention upon which it is based, is to increase the protection of the environment by ensuring greater access to environmental information. It would clearly be contradictory if disclosure of information would lead to damage to the environment. An example of a disclosure which would have this effect might be information relating to the nesting sites of rare birds.

Regulation 12(6) and (7): Neither confirm nor deny

This provision enables an authority to decline to confirm or deny whether the information requested exists, or is in their possession, if that confirmation or denial would involve releasing information which would adversely affect the interests listed in 12(5)(a) international relations, defence, national security or public safety. This **only** applies in respect of regulation 12(5)(a). This implies that in every other case, the authority will have to confirm whether the information requested exists or is in their possession. Regulation 12(7) confirms that in relation to 12(6), whether information

exists or in the possession of the authority, is itself classified as the disclosure of information.

Regulation 12(9) Emissions

This provides that the following exceptions **do not apply** where the information in question **relates** to emissions:

- 12(5)(d) confidentiality of proceedings
- 12(5)(e) confidentiality of commercial/industrial information
- 12(5)(f) information voluntarily supplied
- 12(5)(g) protection of the environment

Emissions are not explicitly defined in the EIR, nor in the European Directive on access to environmental information (2003/4/EC). However, a commonly cited definition is found within the European Directive on Integrated Pollution Prevention and Control. An emission is defined here as the 'direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources (...) into the air, water or land'. This very broad definition captures a great deal of information. In addition, the regulations say '...relates to information on emissions...' this is again very broad terminology and suggests that information will not necessarily need to be directly concerning emissions to fall within this provision. It will be important to ensure, when considering the application of one of these four exceptions, that the information cannot be categorised as an emission.

DETAILED CHECKLIST FOR LINK OFFICERS

You may find it helpful to print off this before starting work on a request, or for a final check of your handling.

1. Ensure the request has been received via the Corporate IMT and has therefore undergone the 'gatekeeping' process.
2. Does the request need clarification or does it cite the Act but not request information? Please liaise with the IMT and the protocol for 'liaising with the requestor'.
3. Are you completely clear about the scope of the request? A close reading is often required.
4. Are there precedents for the request? These may help with consistency, though parallels are often not exact and judgments will change with time. Please check the sharepoint site for previous final responses.
5. Is the request Vexatious - Obsessive? Harassing? Disproportionately burdensome or disruptive? Gratuitous? Discuss early with IMT.
6. Is the information already available? Section 21 exemption if the match is good enough. Need to help requester find it and provide context if necessary.
7. Otherwise, is the information held? In any form, in any repository, including held by others on our behalf, if electronic searches are required, IMT may help. Sometimes folder structure for the relevant team is sufficient guide. Only a reasonable search is obligated.
8. Do initial searches indicate it would take more than 18 hours work to identify and extract the material? Costs exemption available. Reply needs to justify why. Please contact IMT.
9. Are third parties implicated? Make early contact to understand their sensitivities.
10. Are other exemptions engaged? The reply needs to explain why, if not obvious. Please discuss with IMT
11. Are the exemptions absolute, or qualified ones that require us to balance the public interest between disclosure and protection? Please discuss with IMT.
12. Are you clear about precisely what information you would disclose? Redact information out of scope, and exempt information.
13. Is the audit trail good enough, in case the outcome is challenged?