



# **Freedom of Information Act 2000 Policy & Procedures**

**Northern Ireland Housing Executive**

**May 2015**

A guide for Housing Executive staff processing Requests for Information under the Freedom of Information Act 2000 and Environmental Information Regulations 2004

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## 1.0 Introduction

This manual provides detailed guidance to staff responsible for dealing with Requests for Information (RFI) under the Freedom of Information Act 2000.

The aim of the manual is to ensure that staff are able to deal effectively with requests and to encourage consistency and best practice in the operation of the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIRs).

The manual follows the Ministry of Justice generic approach to managing FOI requests. It should be read in conjunction with any additional guidance issued by the Access to Information Unit.

The manual does not deal with the [Disposal Schedule](#) management of requests for personal information under the Data Protection Act – guidance on Subject Access Requests can be found [here](#)

Note: This manual is a ‘living’ document and will be updated as necessary, in order to reflect changing circumstances, e.g. new case law or guidance issued by the Information Commissioner’s Office. Staff must bear this in mind, and be sure to refer to the most recent version of the guidance available.

If there is any doubt about the practice to be followed, staff should consult the Access to Information Unit which is located within the Communications Department, 6th Floor the Housing Centre.

### 1.1 Additional Advice and Guidance

Additional advice and guidance on administrating RFIs can be obtained from the Access to Information Unit. Contact details are listed on the next page.

### 1.2 FOI Unit, Headquarters

Jim Johnston                      Extension 2970

Margaret Gibson                Extension 2710

## 1.3 Divisional FOI Co-ordinators

Each Division within the Housing Executive is responsible for processing its own FOI requests. Within each Division an officer or officers has been designated to take lead responsibility for this task. [Click here](#) for a list of Divisional FOI Co-ordinators

## 2.0 Information Access Regimes

The information access legislation which provides the general right to request information from 1st January 2005 is:

[The Freedom of Information Act \(FOIA\) 2000](#) and  
[The Environmental Information Regulations \(EIRs\) 2004](#).

The FOIA covers all the policy and administrative information the Housing Executive holds. EIRs expand the legal right of access to environmental information i.e. the state of the elements of the environment (such as air, water, landscape, substances, energy, noise, radiation, waste emissions, discharges and other releases into the environment) and the interactions between them.

### 2.1 What do these Information Access regimes do?

These Information Access regimes, which are retrospective, establish new statutory rights:

To be told whether the information requested is held by the Housing Executive, and  
The right of access to that information (and where possible in the manner requested e.g. photocopy).

Requests for Information (RFIs) under the FOIA and the EIRs are subject to certain exemptions.

The FOIA also establishes arrangements for enforcement and appeal through the Information Commissioner's Office and the First Tier Tribunal.

All RFIs dealt with under FOI must be responded to promptly or in any event within 20 working days of receipt. The 20 working day deadline is the maximum, not the minimum, time allowed. EIR requests have a 40 day deadline.

### 2.2 Who can make a request for information?

Anyone can make a request for information under the FOIA and EIRs. The Act makes no distinction between requests from people who are citizens of, or who are currently in the UK, Europe or any country in the world. All requests must be treated the same, irrespective of the country of origin. However, we are not required to provide answers in any other language than English.

## 2.3 What information is covered by the right of access?

All recorded information held by the Housing Executive is covered by the right of access. 'Holding' information includes holding a copy of a record produced or supplied by someone else. The following are some factors that may need to be considered before deciding whether the information that has been requested falls within this category.

### **Some or all of the information is held by another Public Authority**

If some or all of the requested information is not held by the Housing Executive but it appears that it might be held by another Public Authority, then it may be necessary to transfer the request. Further information can be found in paragraph [4.6](#) of this manual dealing with transferring requests.

### **Information that is held on behalf of someone else**

If the Housing Executive only holds information on behalf of someone else, for example, holding Trade Union information on their computer system, then the Housing Executive may not have to provide the information in response to a request. Whether information is held on behalf of someone else is a difficult question and will depend on the precise circumstances involved. If you are dealing with a request and you think that the relevant information may only be held on behalf of someone else then it is important to seek advice from the Access to Information Unit.

### **Information, not documents**

The FOIA/EIRs entitles individuals to have access to 'information' and not to 'documents'. It may often be the case that the easiest way to provide the information is to supply a copy of the relevant document, since a document may contain the information that has been requested. However, it may also contain a great deal of other information. Special provisions apply where the request asks for information to be provided in a particular form, for example, by sending the applicant a copy of the information.

### **Recorded information**

The right of access applies to information recorded in any form. This includes:

- information that is held electronically (such as on a laptop computer or personal and shared electronic networks);
- information that is recorded on paper (such as a letter, memorandum or papers in a file); and
- Sound and video recordings (such as a CD or video tape).

It will even include notes that have been written in the margins of a document, note pad or post-it note.

## 2.4 Stored information

The right of access also applies to information that is in storage, for example if it is in the Housing Executive's local office filing system or one of the archive storage sites. There are special provisions concerning information that has been transferred to the Public Record Office of Northern Ireland (PRONI) or a similar place of deposit.

## 2.5 Do we 'hold' the information?

In some cases it may not be clear whether information which is physically present on the premises or systems is properly to be regarded as 'held' by the Housing Executive.

Examples include:

- private material brought into the office by officials or Board members
- material belonging to other people or bodies
- Trade Union material

If there is any doubt about whether the Housing Executive 'holds' material which is on the premises or systems, seek advice from the Access to Information Unit.

## 3.0 Duties and Responsibilities

### 3.1 All Staff

All staff should be fully aware of their responsibilities and obligations under the Freedom of Information (FOI) Act, the Environmental Information Regulations (EIRs), and their interface with the Data Protection Act (DPA), and be able to recognise and handle requests for information under these regimes.

All staff, particularly those in front line or post opening duties, have to recognise the importance of being vigilant when dealing with correspondence or verbal enquiries, so that requests for information which are not part of normal business processes are filtered out and passed immediately to the appropriate Divisional FOI Co-ordinator. If any doubt exists, staff should immediately pass the correspondence or enquiry to their line manager or consult the Access to Information Unit.

### 3.2 FOI Co-ordinator

The FOI Co-ordinator will play a key role in the information access process. This officer will be responsible for managing a request from receipt to sign-off by the appropriate Level 9 officer (or higher), including the following key activities;

- Registration and acknowledgement of new requests
- Co-ordinating the identification and retrieval of requested information
- Issuing fees notices, where appropriate
- Application of exemptions in appropriate cases
- Preparation of final response for signature by appropriate Level 9 officer (or higher).
- Act as a focal point to cascade emerging guidance and training to colleagues
- Perform a logging and monitoring role within their Division/business area.

FOI Co-ordinators should ensure that all decision letters are signed off by the appropriate Level 9 officer (or higher), and copied to the Access to Information Unit prior to issue.

### 3.3 The Access to Information Unit

The Access to Information Unit will provide detailed advice and guidance to FOI Co-ordinators and other senior management staff on the application of exemptions, fees notices and the public interest test.

The Unit will also monitor all requests and intervene, if necessary, to ensure consistency of approach across the Housing Executive in releasing or withholding information.

The Access to Information Unit will provide support to the functional director in managing appeals which will be referred to as requests for an Internal Review ([see 7.0](#)).

### 3.4 Senior Management and Directors

Senior Management and Directors have an important role to play in the internal review/appeal process. Following a formal decision to withhold information, the applicant must be given the right to seek an internal review/appeal.

The person carrying out the internal review must always be different from the person who made the original decision. The internal review will be undertaken by the appropriate functional director, with appropriate support from the Access to Information Unit and advice from the Legal Department, where necessary.

The Director of Corporate Services, who has overall responsibility for Freedom of Information matters, will ensure a consistent approach is adopted across the Housing Executive in handling internal reviews and any subsequent appeals to the Information Commissioner.

## 4.0 Processing a Request for Information (RFI)

### 4.1 Validating an RFI

A Request for Information (RFI) is deemed valid and must be processed where it meets the criteria under Section 8 of the FOIA, namely:

- It has been received in writing (including email);
- States the name of the applicant and an address (or email address) for correspondence; and
- Describes the information requested.
- Requests for environmental information under the Environmental Information Regulations (EIRs) may also be made orally.
- The applicant does not have to quote either the FOI Act or the EIRs to have their request treated as such.

The main steps involved in processing a request are set out in [Section 5](#) below.

### 4.2 Recognising an RFI

Housing Executive staff provide information as part of their day to day business activities; for example, requests for leaflets, general benefit information, and information relating to housing or grants or our standard complaints procedures. It is not intended that RFI handling processes replace existing business processes that are functioning well.

Therefore, where the information requested would be provided within 20 days as part of normal business processes (and the requestor hasn't made reference to the FOIA), it should be processed as normal and not recorded as an RFI. However staff should take into account the 20 working day turnaround requirement of FOI and 40 days for EIR when answering all information requests.

Requests which are not for recorded information, but instead ask questions, such as "please explain your policy on x" or "please explain your decision to do y" are not requests for recorded information and therefore should be treated as routine requests and directed to the appropriate business manager for response.

The FOIA and EIRs means that the Housing Executive will have to deal with more complex requests for information. These will be requests for information which go beyond the day-to-day correspondence that are normally dealt with. Requests may be complex for a variety of reasons. For example:

- requests may involve consultation with other public bodies or with third parties;
- it may be unclear as to whether or not the information sought is exempt;
- requests on issues which have a high public profile;
- requests which may relate to financial interests; or
- requests that may be part of an orchestrated campaign.

In a case of this nature, it is important that the Divisional/Area FOI Co-ordinator and Access to Information Unit are involved. A particularly important kind of complex request is a 'mixed' or 'hybrid' request. A 'mixed or hybrid' request is a case in which an applicant requests information which needs to be considered under more than one access to information regime i.e. consideration under FOI and EIRs and/or the Data Protection Act 1998.

These are complex requests to handle. For instance, a request may ask for "all the information about my case" and in, for example, a grant application, this may well give rise to the need to consider the request and different parts of it, under all three regimes. Again, it is important that the FOI Co-ordinator, local management team and Access to Information Unit are consulted.

A mixed request should also be processed within the appropriate timescale. For instance, a request which contains information which is both personal information under the DPA and information to be considered under the FOIA should be processed within 20 working days. If this is not possible, the FOI Act information should be provided within 20 working days, with an acknowledgement that the release of other information under the Data Protection Act is being considered.

### **4.3 Processing RFIs**

An RFI may be received in any business area within the Housing Executive. It is therefore important that all staff are familiar with the handling processes required for dealing with an RFI.

All staff, particularly administrative and supervisory staff in front line or post opening duties, need to be vigilant when dealing with correspondence or verbal enquiries, so

that RFIs which are clearly outside normal business processes are filtered out and passed immediately to the FOI Co-ordinator. A list of Divisional/Area FOI Co-ordinators is to be found [here](#).

As the time clock for processing an RFI within the 20 working day turnaround time starts immediately on the day of receipt, it is essential that the RFI is either handed, faxed or emailed to the FOI Co-ordinator on the same day of receipt, or as soon as possible thereafter. The preferred method of transmission is electronic, therefore, if the RFI is in paper form it should be scanned and emailed to the FOI Co-ordinator and the paper copy sent on by post. In the event of the FOI Co-ordinator being absent, the RFI must be passed to a nominated Deputy or a member of the FOI Co-ordinator's line management team.

In the event of no-one being available to deal with the RFI, a copy of the request should be passed immediately to the Access to Information Unit HQ:

Email the FOI Unit at: [records@nihe.gov.uk](mailto:records@nihe.gov.uk)

## 4.4 Registering an RFI

It is important that a record is kept of all FOI requests that are received. The FOI Co-ordinator should record details of the RFI in a locally held FOI register. The minimum information that should be recorded is as follows:

- Name of applicant
- Summary of request
- Date received
- Target completion date
- Actual completion date
- Pass or fail 20 working day target
- Fees Notice issued (if applicable)
- Any exemption(s) that were applied

The FOI Co-ordinator should issue an [acknowledgement letter](#) to the requestor and send a copy of the RFI to the Access to Information Unit. The acknowledgement letter should be issued to the applicant no later than the day following receipt of the request. If the RFI is in paper form, it should be scanned and sent by email attachment. The Access to Information Unit will log all RFI's received centrally and open a case folder in Meridio for each request.

The central recording of FOI requests serves two main purposes:

- Monitoring progress and reporting performance
- Shared access and use of case folders by Divisional FOI Co-ordinators

## 4.5 Clarifying an RFI

The Housing Executive is under a duty to provide advice and assistance, so far as it would be reasonable, to people who have made or who propose to make requests for information.

If the request is unclear or is very broad, the FOI Co-ordinator should contact the applicant to seek clarification or a narrowing of the request. It may be quicker to e-mail or, as a matter of good customer service, telephone the applicant. If these methods are not suitable, issue the appropriate [Standard Letter](#).

It is important that a detailed record is kept of any letters, e-mails and telephone conversations with applicants in the course of providing advice and assistance.

The statutory 20 working day time limit is suspended pending receipt of clarification.

## 4.6 Transferring an RFI

The FOI Co-ordinator should determine whether the RFI is appropriate to their business area or indeed the Housing Executive. If it is not appropriate, the FOI Co-ordinator should immediately transfer it to the relevant contact point. Where the RFI is being transferred outside the Housing Executive, the applicant should, if possible, be asked if they are agreeable to the transfer. The request should then be physically forwarded to that contact point. Seek guidance from the Access to Information Unit, if necessary. Responsibility for registering and acknowledging an RFI should lie with the Division holding the information. Since the 20 day time limit commences from the date of receipt of a request, it is important that the transfer of RFI's should take place as a matter of urgency to avoid any delays.

## 4.7 Information available by other means

The FOI Co-ordinator should determine if the information requested is accessible by other means (e.g. already published and included in the Housing Executive's Publication Scheme and Online Website Publications).

If the information is available by other means, the FOI Co-ordinator should record details of the RFI and acknowledge receipt of the request using the appropriate [Standard Letter](#) informing the applicant where the information is available.

This should, ideally be issued to the applicant the day following receipt of the request. A copy of the letter should be held in the RFI file. In this type of case, the RFI process is now complete.

If the information is inaccessible to the applicant in a particular format, then the FOI Co-ordinator should consider providing the information in an alternative format.

## 4.8 Retrieving Records

The FOI Co-ordinator should, as soon as possible, arrange for the search and retrieval of the relevant records. This search should cover all information storage e.g. local paper files, electronic records held in Meridio, and Network drives, and will be undertaken by the business area within which the information is most likely to be held. The first step is to identify the business area where the information is most likely to be held and to issue the [Information Request Memo](#) to the appropriate business manager. In normal circumstances no more than one week should be allowed for the return of requested information, though this may have to be shortened if it is necessary to meet the 20 day rule.

## 4.9 Information has been destroyed or cannot be located

If the requested information has been destroyed in accordance with the Housing Executive's [Disposal Schedule](#), the applicant should be notified using the appropriate Standard Letter. In any other circumstances (e.g. the requested information cannot be found), the relevant manager should provide full written details of the circumstances. If necessary, consult the Access to Information Unit.

## 4.10 Charging a Fee (if appropriate)

The FOI Act provides that public authorities have the following options to comply with expensive requests where it costs more than £450 for staff to respond to a request. If a request is estimated to cost more than £450, the FOI Co-ordinator can turn the request down; answer the request and charge the fee; or answer the request and waive the fee. A decision on charging or waiving a fee is decided on a case-by-case basis. Detailed guidance on fees is available from the [Ministry of Justice](#).

The £450 covers the time taken to find, sort, edit or redact material. It does not cover the time taken to consider the decision i.e. whether an exemption applies and application of the public interest test. The £450 is based on the time of a member of staff being assessed at £25 per hour, irrespective of grade. It therefore allows for 18 hours of free time before the exemption threshold is reached.

For requests which cost less than the ceiling, no fee may be charged.

If a fee is to be charged, the FOI Co-ordinator, in consultation with the relevant business area, must calculate the amount and advise the applicant immediately using the appropriate [Standard Letter](#). The 20 working day time limit is suspended pending receipt of the fee. A copy of the letter should be held in the RFI file.

Once the fee has been received, issue the appropriate Standard Letter and proceed to deal with the request. The time clock commences again once the fee has been received.

If the fee has not been paid within 3 months, cancel the request and issue the appropriate Standard Letter. A copy of the letter should be held in the RFI file.

## 4.11 Reviewing information

When the information is received from the business unit, the FOI Co-ordinator should examine it carefully to determine whether it can be disclosed in full or whether any items have been identified by the business manager as being exempt from disclosure. If any exempt items have been identified these should be carefully reviewed to evaluate whether any of the FOI and/or EIR exemptions apply.

Sections [7](#) and [9](#) of this manual provide a general description of each of the exemptions with hyperlinks to more detailed Ministry of Justice guidance on each specific exemption. [Section 8](#) deals with the public interest test.

If none of the exemptions apply, the item of information is considered disclosable.

If an exemption and application of the public interest test is being actively considered and it is likely that this could exceed the 20 working day time limit, the applicant should be informed using the appropriate [Standard Letter](#) and given a target date for receipt of a full response. It should be noted that this will only apply in exceptional cases where every effort has been made to deal with the request promptly.

## 4.12 Protective Markings

If a request is received that relates to information which is subject to protective markings; the Access to Information Team should be consulted. Protective markings are not in themselves a reason to withhold information, but they may be an indication that the information might be covered by an exemption.

## 4.13 Consulting Third Parties

When considering the information to be released, staff should check whether any third party may have sent or supplied the information or have a close and direct interest in it.

If necessary, other public authorities or other third parties affected by disclosure of the information should be consulted.

N.B. Where consultation is required but no exemption applies the request must still be responded to within 20 working days.

The Housing Executive may hold third party information concerning:

- Contracts;
- Tendering for contracts;
- Other commercial information;
- Information provided by other public authorities; or
- Personal information about individuals.

Consultation with third parties may play an important part in considering whether exemptions apply, particularly those relating to confidence, commercial sensitivity and personal data. But even where this information is not exempt, you may need to think about informing third parties or obtaining their views on the release of the information.

It is important to remember, though, that any views expressed by third parties concerning release of information provided by them to the Housing Executive are not binding. The Housing Executive 'holds' the information, and as such, the Housing Executive is under the statutory duty to provide access to the information, not the third party. The only real exception to this is when the third party considers that the release of the information would be an actionable breach of confidence. The

Housing Executive has to take the final decision as to whether information should be released and a refusal by a third party to consent to the release of information is not binding. Staff may wish to consult the Access to Information Unit in such cases.

## 4.14 Formal Consultation

Formal consultation should be carried out when the release of records covered by the following exemptions is being considered on public interest grounds i.e. under:

- [Section 40](#): Third party personal information, or
- [Section 43](#): Commercial interests.

When dealing with such requests, FOI Co-coordinators should bear the following points in mind:

- The consideration of these exemption provisions is important. They require that a decision maker shall only disclose information in response to a request of a personal, commercially sensitive or confidential nature after having carefully considered whether disclosure of the information sought would be in the public interest.
- Consideration must be given to relevant public interest factors for and against release. Therefore, public interest factors in favour of both protection and disclosure must be clearly set out and documented in the RFI file.

Release in the public interest should occur unless the public interest factors in support of protection of the information (including the privacy rights of the person) are of such significance that they outweigh the public interest factors in favour of disclosure.

Where such release is contemplated in the public interest, formal consultation must take place prior to any decision to release being taken.

If, following such consultation, the consultee remains opposed to the disclosure of the information then the final decision rests with the Housing Executive.

In all cases where formal consultation is being initiated the appropriate [Standard Letter](#) should be used.

Formal consultation must be initiated as soon as possible following receipt of the request.

## 4.15 Informal Consultation

FOI Co-ordinators should consult, informally, with applicants and/or 3rd parties where dialogue may improve understanding the issues of a particular case.

Informal consultation can be very helpful in terms of:

- obtaining supporting views on the application of an exemption;
- supporting the basis for a decision;
- identifying the context of records which may be helpful in terms of establishing the sensitivity or otherwise of the records;
- assisting in a decision regarding the possible need for formal consultation;
- refining the exact nature of a request for information; or
- discussing potential disclosure of 3rd party information.

## 4.16 Releasing Information

If the business manager or consulted groups are content to disclose the requested information, the information should be issued to the applicant using the appropriate [Standard Letter](#) . Details of all items being released should be listed in the schedule (see below) and photocopied in preparation for release.

### The Schedule

The use of a schedule to list and describe the records, identified as being within the ambit of the access application, is required by the Housing Executive. A schedule should be used both for the initial decision and at internal review. Its purpose is to assist decision makers to discharge their duties under the FOI Act by:

- providing a means of ordering the records under consideration;
- setting out clearly the considerations attaching to each; and
- providing an essential reference source for an internal reviewer or the Information Commissioner.

A version of the schedule – minus any information that is considered exempt and where there is no duty to confirm or deny the existence of this exempt information (exemptions 22-24 and 26-44) - should be attached to the decision letter issuing to the applicant. It will assist him/her by giving a clear overview of the records considered and the decision made in relation to each one.

## What a schedule should contain

The level of detail contained in a schedule will depend to a large extent on the nature of the FOI request under consideration. It is recommended however, that every schedule lists each record sequentially by number and contains the following information:

- (a) The date of the record;
- (b) The author of the record and either the person or persons to whom it is addressed or the title of the record if it is a report or a submission of some kind;
- (c) Brief but sufficient description of the record or its contents;
- (d) The specific exemption claimed;

There may be rare occasions when records can be grouped rather than listed individually. This should only be used as a last resort where the number of records is particularly voluminous. This approach must not deprive the applicant of any specific information that he/she might need to make an informed decision about seeking a review.

## When a schedule is not required

The FOI Act allows public bodies to respond to requests on the basis of refusing to confirm or deny the existence of such records. These provisions are necessary because in some instances merely confirming the existence of information will directly or implicitly disclose withheld information.

The use of the refusal to confirm or deny provision will be justified only in certain situations. The relevant section of this manual contains further guidance on this.

### 4.17 Considering possible exemptions

A requester may ask for any information that is held by the Housing Executive. However, this does not mean you are always obliged to provide the information. In some cases, there will be a good reason why you should not make public some or all of the information requested.

You can refuse an entire request under the following circumstances:

- It would cost too much or take too much staff time to deal with the request.
- The request is vexatious.
- The request repeats a previous request from the same person.

In addition, the Freedom of Information Act contains a number of [exemptions](#) that allow you to withhold information from a requester. In some cases it will allow you to refuse to confirm or deny whether you hold information.

Some exemptions relate to a particular type of information, for instance, information relating to government policy. Other exemptions are based on the harm that would arise or would be likely arise from disclosure, for example, if disclosure would be likely to prejudice a criminal investigation or prejudice someone's commercial interests.

There is also an exemption for personal data if releasing it would be contrary to the Data Protection Act.

You can automatically withhold information because an exemption applies only if the exemption is 'absolute'. This may be, for example, information you receive from the security services, which is covered by an absolute exemption. However, most exemptions are not absolute but require you to apply a public interest test. This means you must consider the public interest arguments before deciding whether to disclose the information. So you may have to disclose information in spite of an exemption, where it is in the public interest to do so.

If you are refusing all or any part of a request, you must send the requester a written refusal notice. You will need to issue a refusal notice if you are either refusing to say whether you hold information at all, or confirming that information is held but refusing to release it.

## Procedures

If the business manager holding the information considers that some or the entire request should be withheld, he or she will clearly state this on the '[Information Return Memo](#)', giving detailed reasons for withholding the information. Information can only be withheld where a specific FOIA exemption can be applied to the circumstances of the request. The FOI Co-ordinator will consider the circumstances of the individual request and decide whether a relevant exemption can be applied.

Detailed guidance on use of specific exemptions and application of the Public Interest Test can be found [here](#);

### [Exemptions Guidance](#)

The Access to Information Unit can also provide advice in this area.

## 4.18 Withholding All Information

If the decision is to withhold all of the information, the appropriate Standard Letter should be issued setting out the range of information being withheld, which exemptions apply and explaining why it is in the public interest to withhold the information (qualified exemptions only).

## 4.19 Withholding Some Information

If the decision is to withhold some of the information, the appropriate [Standard Letter](#) should be issued to the applicant. The letter should set out the range of information being disclosed, information being withheld, which exemptions apply and explain why it is in the public interest to withhold some of the information.

The original records containing the full information and a copy of the redacted version of any record which is partially disclosed must be marked for retention for at least 3 years after the last action on the request or 3 years after the time of the entire internal review or appeal process, if appropriate.

## 4.20 Redacting or Blanking Out Information

[The Lord Chancellor's Code of Practice on Records Management](#), created under Section 46 of the FOI Act, states that where a complete document cannot be made available 'Authorities should consider whether parts of records might be released, if the sensitive information were blanked out'.

Redaction is the separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs or the removal of whole pages prior to the release of the document.

Information which should not be released can be deleted from any document, for instance by 'black-penning' the information to be protected, and leaving the other contents which will be released. If an applicant has requested all the information in a particular document but it is necessary to redact some of that information because it is exempt, you should make it clear that redactions have taken place, and cite the relevant exemption as to why the information has been redacted.

It is important to bear in mind however, that the FOIA and EIRs apply to information, and not documents. Whilst the information requested is likely to be contained in a document, this does not mean that the document has to be released with exempt material redacted from it. It may be more appropriate to release solely the

information that can be released by creating a new document with only that information contained. This is particularly relevant where the majority of the information contained in the document does not fall within the scope of the applicant's request.

If you are making redactions from electronic documents you need to be aware that technological advances may allow redactions to be reversed. If you have to make redactions to documents which will be released in electronic format, you should consider copying the information to a new document, and making an indication where a redaction has taken place and citing the exemption and sending this new document to the applicant.

More detailed guidance on how to carry out redaction can be found [here](#).

## **4.21 RFI File Retention**

The RFI File and associated papers (both paper and electronic) should be marked for retention for at least 3 years after the last action on the request, or 3 years after the time of the entire internal review or appeal process, if appropriate.

## 5.0 Roles and Responsibilities

Role	Responsibilities
Access to Information Unit HQ	<p>Policies and procedures</p> <p>Training and advice</p> <p>Internal Review Support</p> <p>Performance monitoring</p>
FOI Co-ordinator	<p>Collate information</p> <p>Prepare draft response</p> <p>Issue final response</p>
Regional Manager / Assistant Director	<p>Sign-off final response</p>
NIHE Staff	<p>Provide advice and assistance to individuals wishing to make a request for information</p> <p>Recognise a request for information</p> <p>Pass to appropriate FOI Co-ordinator for processing</p>

### 5.1 Points of Receipt

Location	Format
HQ	Paper
Regional Office	Email
Local Office	FAX

### 5.2 Action by Receiving Office

- Date stamp
- Record in post book (if one is operated in office)
- Scan and email to FOI Co-ordinator within 1 day of receipt
- Forward original by post to FOI Co-ordinator within 2 days of receipt

## 5.3 Action by FOI Co-ordinator

Stage	Action
Is it a valid Request for Information?	<p>Is the request in writing? Email and FAX are valid</p> <p>Does it state the name of the applicant and give an address for correspondence? (email is valid)</p> <p>Does it describe the information requested?</p>
FOI or DPA	<p>You may need to consider;</p> <p>Transfer to other 'Business Area'</p> <p>Transfer to other Division</p> <p>Transfer to other public body</p>
Registration	<p>Date stamp the request on day of receipt</p> <p>Scan and email copy of request to Access to Information Unit</p> <p>Record details in local RFI Register. Minimum information to be recorded in register;</p> <ul style="list-style-type: none"> <li>· Name of requestor</li> <li>· Date of receipt of request</li> <li>· Date response due</li> <li>· Date completed</li> <li>· Completed within 20 working days Yes or No</li> <li>· Comments (e.g. Fees Notice, time extension, clarification sought, lapsed)</li> </ul> <p>If request incomplete issue clarification letter (see standard Letter), do not start 20 working day clock. B/F 2 weeks, if no reply cancel RFI</p> <p>If request complete, issue acknowledgement letter (see standard letter) to requestor and set 20 working day target date</p> <p>Decide Business Unit(s) holding information and issue 'information request memo' (see standard memo)</p> <p>If RFI includes 'line of business' questions, advise Business Unit to reply to these separately</p> <p>Set b/f date 5 days for response from Business Unit (if feasible)</p>

## 6.0 Summary of RFI Processing Procedures

### 6.1 Freedom of Information – Administration

Source	Action
Press / MLA	If RFI from press or public representative, copy to Communications Department HQ (at same time of sending to Business Area)
Equality	If equality issues involved (Section 75, religious, ethnic, disability) copy to Equality Unit (at same time of sending to Business Area)
Fees Notice	If Business Unit indicates Appropriate Limit will be exceeded, prepare and issue Fees Notice (see standard letter) B/F 3 months for payment of fee, then cancel RFI
3rd Party Information	Business Manager should identify records containing 3rd party personal data. FOI co-ordinator should also carryout check to ensure no other 3 <sup>rd</sup> party personal data contained in information for disclosure
Business Unit claims some / all information exempt	Consider relevant exemption and consult FOI Unit if necessary Edit / withhold relevant documents that attract an exemption, including 3 <sup>rd</sup> party personal data
Business Unit does not identify any exempt information Prepare Response	Prepare draft response letter Prepare Schedule of Records for inclusion with response letter and retain a copy on file (see template in list of standard letters) Email a copy of draft response to Access to Information Unit; <a href="mailto:records@nihe.gov.uk">records@nihe.gov.uk</a> for checking and approval When clearance received, pass response letter to Regional Manager / Asst Director for signature
Issue response	Issue FOI response letter to requestor together with documents for disclosure Update FOI Register and file copy of response letter in Meridio case file

## 7.0 The Internal Review Process

### 7.1 Overview

- Under the FOI Act a public authority is not legally obliged to have an Internal Review procedure, but in order to comply with the Section 45 Code of Practice the Housing Executive has a Review process in place.
- The FOI decision letter will inform an applicant about the Internal Review procedure as well as the right of appeal to the Information Commissioner.
- A request for Review may involve a request for review of a decision to withhold information or a complaint about the handling of a request for information.
- A review should normally comprise a thorough reconsideration of the decision and handling of the request. In certain circumstances the original request may require consideration depending on the basis and timing of the review.
- A review must be impartial, thorough and swift and the outcome must be notified promptly to the complainant.
- A review should be completed in 20 working days. In exceptional cases it may be appropriate to take longer but even in those cases it should not exceed 40 working days.

### 7.2 Conducting the Internal Review

Part VI of the section 45 Code sets out the procedure for public authorities to follow when an applicant complains about the authority's response to his or her request.

The section 45 Code provides detailed guidance; in particular:

- The review procedure should provide “a fair and thorough review of handling issues and of decisions taken pursuant to the Act...”
- The review should be impartial and undertaken by someone senior to the person who took the original decision where practicable, or if not, by someone different to the original decision maker but who is trained and understands freedom of information;
- It should enable a fresh decision to be taken on a reconsideration of all factors relevant to the issue;
- The review should be as prompt, thorough, clear and simple as possible.

- Authorities should keep records of all complaints and their outcome and monitor their own performance in handling complaints;
- Any action required as a result of the review should be carried out promptly.
- For example, if procedures have not been properly followed, the authority should give an apology and explanation to the applicant and take appropriate steps to prevent a recurrence. If the outcome of the review is that the information must be disclosed, that should be done as soon as possible. If the original decision is upheld, the authority must inform the applicant of his or her right of appeal to the Information Commissioner.

### **7.3 Procedures to be followed on receipt of a review application**

A request for an Internal Review must be received within 2 calendar months of the date of issue of the FOI decision notice. However, consideration should be given to requests received outside this time to establish if there are any extenuating circumstances [e.g. requestor has been ill].

The FOI decision letter will advise the applicant to contact the Access to Information Manager to request an Internal Review if they are not satisfied with the decision in relation to their request. The request for review must be in writing and an email link and postal address are provided for this purpose.

When a request for Internal Review is received by the Access to Information Unit the following action will be taken:

- date stamp the request
- record in FOI register
- issue an acknowledgement letter to the applicant on behalf of the functional director
- The Internal Review will be conducted by the relevant functional Director. A senior officer nominated by the Director will prepare all the relevant papers to enable to Director to conduct the review. Support will be provided by the Access to Information Officer and, if required, Legal Dept.
- When the review is completed a decision letter will be issued and the applicant advised of their right of appeal to the Information Commissioner should they remain dissatisfied. The applicant should be advised that such an appeal must be made in writing, should include copies of all relevant correspondence and should be sent to:

The Information Commissioner, Wycliffe House,  
Water Lane, Wilmslow,  
CHESHIRE, SK9 5AF.

## **7.4 On which circumstances should the review be based?**

The circumstances relating to a request might change between the time the Housing Executive made its decision about a request and the time it undertakes an internal review. The question may arise should the reviewing officer reconsider the decision based on factors at the time the original decision was made, or at the time of the review?

The Information Commissioner's view is that a public authority should reconsider the exemptions and the public interest test on the basis of the circumstances as they existed at the time of the request.

However, if the circumstances at the time of review are such that the Housing Executive can now release the information, it should consider doing so.

## 8.0 Review by the Information Commissioner

### 8.1 The Information Commissioner

An independent appeal may be made to the Information Commissioner if an applicant is not satisfied with the decision of the internal reviewer.

The Information Commissioner's Office is the independent statutory body which polices the operation of the Freedom of Information Act and the Environmental Information Regulations, as well as the Data Protection Act.

Under the FOI Act, the Information Commissioner performs the following roles:

The Commissioner may issue general guidance on good practice, or "practice recommendations" directed at particular authorities.

If the Commissioner has received a request for a decision or considers certain information is relevant to determine whether a public authority has complied with Part I of the Act or the Codes of Practice he may serve an information notice on any public authority requiring it to supply that information to him.

Where the Information Commissioner considers a complaint, he will issue a decision notice setting out his view on whether the Act has been complied with. Where a breach of the Act is identified, the notice will specify the steps which must be taken by the authority in order to comply with that requirement and the timescale for compliance.

If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act, he may serve on the authority an enforcement notice requiring the authority to take particular steps within a specified time to comply with those requirements.

Failure to comply with an Information, Decision or Enforcement Notice may be dealt with as though the public authority had committed contempt of court.

### Procedures to be followed by the Access to Information Unit on receipt of a request for papers by the Information Commissioner

The Access to Information Unit should request all the papers from the FOI Co-ordinator and set up a further RFI sub file. The Access to Information Unit should send all relevant papers to the Information Commissioner without delay. The following details should be recorded on the RFI sub file:

- date request received from Information Commissioner; and
- date papers forwarded to Information Commissioner.

It should be noted that the Information Commissioner has the statutory authority to access all documents including those where an exemption has been claimed. Therefore the complete set of records coming within the scope of the request should be sent to the Information Commissioner, showing what information has been withheld and grounds for non-disclosure specifying the exemption(s) that apply and detailing the public interest test carried out.

The following details should also be recorded once the Information Commissioner's decision has been made:

- Date of Commissioner's decision;
- Date information sent to applicant; [If appropriate] and
- Records now sent to applicant from the Commissioner. [If appropriate]

## 8.2 The First Tier Tribunal

The First Tier Tribunal (FTT) will hear appeals against notices issued by the Commissioner.

An applicant or a public authority may appeal to the FTT against a decision notice. A public authority may also appeal to the FTT against an information notice or an enforcement notice served on it. On hearing the appeal the FTT may uphold the notice in its entirety, substitute an alternative notice or dismiss the notice.

The decision of the FTT may in turn be appealed on a point of law to the High Court of Justice in Northern Ireland.

Appeals from these notices can be heard by the Information Tribunal (a tribunal which is specifically for matters concerning enforcement notices or decision notices issued by the Information Commissioner).

## 9.0 The FOI Exemptions

### 9.1 Introduction

The Freedom of Information Act 2000 creates two important rights of access for any person making a request for information to a public authority:

- “to be informed in writing by the authority whether it holds the information of the description specified in the request”, and
- “if that is the case, to have that information communicated to him/her”.

These rights are fundamental to the Act and they are legally enforceable. But they are subject to important exemptions. Those exemptions are enshrined in the Act, in acknowledgement of the large range of considerations of law and policy which need to be taken into account to achieve a proper balance – the balance intended by Parliament - between the right to know and, where it is in tension with that right, the delivery of effective governance. The Act therefore includes a number of exemptions designed to enable that balance to be achieved.

Because the rights of access, and the public interests protected by the exemptions, are so important, any decision to refuse a request for disclosure has to be made with great care. That may be especially so in the case of requests made to central government, which is tasked with serving the public interest in very many interrelating ways, not all of which are compatible with public access to information.

The FOI Exemptions are listed from [Sections 21 to 44](#) of the FOI Act. A description of each exemption, and a summary of their effects, is listed on the following pages. They are categorised into ‘Absolute’ and ‘Qualified’ Exemptions. Hyperlinks to detailed Ministry of Justice guidance on the application of each exemption are also available under each description. More general Ministry of Justice guidance on the application of exemptions is also contained in the Ministry of Justice [Exemption guidance for Freedom of Information](#).

The guidance is for decision-makers to use in deciding whether and why any particular exemption may be relevant and, if so, to make sound decisions about the disclosure and withholding of information.

It considers each of the exemptions in turn, looking at both the meaning of the exemption and the nature of the decision-making process to which that exemption may be relevant.

The guidance is aimed in the first place at FOI Co-ordinators handling requests for information, but is also intended to guide and support to officers handling appeals under the Internal Review procedures.

The guidance cannot comprehensively address all the types of information that might fall within the scope of the exemptions and the circumstances in which they might be engaged. It is not therefore intended to, and cannot, substitute for the need to consult the Access to Information Unit who can give additional advice on the areas in which the exemptions may be engaged.

## 9.2 The Absolute Exemptions

There are 6 absolute exemptions, and 2 exemptions ([36](#) and [40](#)) which are part absolute and part 'qualified'.

If an absolute exemption applies it is not necessary to go on to consider the public interest test.

These are listed individually on the following pages.

## **Section 21: Information is accessible by other means (even if only by payment).**

### **Summary of this exemption:**

Section 21 applies to information that is already reasonably accessible to the applicant. It recognises that the right of access under the Freedom of Information Act 2000 is supplementary to the very many ways in which public authorities already provide information to members of the public. For example, section 21 will apply if information is included on a public authority's publication scheme or if the public authority is under a statutory obligation to give out the information to members of the public on request.

### **Key points:**

- The question is whether the information is reasonably accessible to the applicant: public authorities need to be alert to any attributes of an individual applicant which may mean that information is more or less accessible to him than it is to the public at large;
- Section 21 may apply even if a fee is charged for supplying the information;
- There is no exclusion in section 21 of the duty to confirm or deny whether information is held. Even if information is exempt under section 21, public authorities may still have to tell the applicant whether or not they hold the information requested.
- Section 21 is not subject to any public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance under Section 21](#)

## **Section 23: Information supplied by or relating to bodies dealing with security matters, e.g. the Security Service or National Criminal Intelligence Service.**

### **Summary of this exemption:**

Section 23 applies to two categories of information:

- information supplied directly or indirectly by the Security Bodies that are listed in section 23(3) (this includes the Security Service, the Secret Intelligence Service and GCHQ). Whether this aspect of section 23 applies in a particular case will turn on the source of the information; and
- information that relates to one of the Security Bodies. The application of this part of section 23 will turn on the content of the information.

### **Key points:**

- The fact that a public authority does not hold information supplied by one of the Security Bodies can itself be information relating to those bodies. If information falls within the exemption in section 23, it will very often be important to consider whether it is necessary to rely on the exclusion of the duty to confirm or deny whether the information is held.
- The interaction between section 23 and section 24 (national security) is quite complex and needs to be considered carefully in order to ensure that the relevant public interests are protected;
- It may be necessary to consult the Security Body concerned if it is anticipated that section 23 might apply
- Section 23 is not subject to any public interest balance
- A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance under Section 23](#)

## **Section 32: Court records (including tribunals).**

### **Summary of this exemption:**

Section 32 exempts information contained in certain litigation documents and court, tribunal and inquiry records and will apply regardless of the content of the information. There are separate and specific regimes for gaining access to court and tribunal records and section 32 ensures that those regimes are not superseded by the FOI Act.

### **Key points:**

- Section 32 will apply only if the public authority concerned holds the information solely because it was contained in one of the specified documents.
- Section 32 applies regardless of the content of the information
- The application of section 32 is not subject to any public interest balance.
- Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 32.](#)

## **Section 34: Parliamentary privilege.**

### **Summary of this exemption:**

Section 34 applies to information whose exemption is required in order to avoid an infringement of the privileges of either House of Parliament. The purpose of section 34 is to preserve Parliamentary privilege and protect the position of Parliament.

### **Key points:**

- Section 34 will need to be considered where a public authority is required to lay information before Parliament before disclosing it to anyone else.
- If privileged information has been published by Parliament then section 34 will not apply: exemption is not required in order to avoid an infringement of Parliamentary privilege.
- Section 34(3) enables the Parliamentary authorities to conclusively certify that section 34 applies. Decision makers are strongly advised to consult officials from the relevant House before relying on section 34 and to obtain a certificate where necessary.
- Section 34 is not subject to any public interest test balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 34.](#)

### **Section 36: Prejudice to the effective conduct of public affairs.**

Information held by the House of Commons or the House of Lords. (See also paragraph 7.28)

#### **Summary of this exemption:**

Section 36 exempts information whose disclosure would be likely to have any the following effects:

- prejudice collective Cabinet responsibility;
- inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation; or
- prejudice the effective conduct of public affairs.

#### **Key points:**

- Section 36 can only be used if, in the reasonable view of a "qualified person", disclosure of the requested information would have one of the specified prejudicial effects. Within the Housing Executive the relevant officer will be the Chief Executive who must decide that the exemption applies before it can be relied on to refuse a request for information;
- Section 36 can only be used if section 35 does not apply to the information;
- Information held by the House of Commons or the House of Lords is not subject to a Public Interest Test.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 36](#)

## **Section 40: Personal Information.**

Part of this exemption is 'absolute' while part of it is 'qualified'. The 'absolute' part of the exemption is summarised below.

### **Summary of this exemption:**

Information which is exempt under Section 40 concerns personal data within the meaning of the Data Protection Act 1998. Section 40 applies to two distinct types of requests for information:

- if a request asks for the personal data of the applicant himself, the information is exempt; and
- If a request asks for the personal data of someone else then that information will be exempt if its disclosure would contravene any of the data protection principles in the Data Protection Act 1998.

### **Key points:**

- If information is exempt under section 40 because it is the personal data of the applicant then its disclosure must be considered under the subject access provisions in the Data Protection Act 1998; the Act may require the disclosure of information which would otherwise have been exempt under the FOI Act.
- Business Areas should consult with the FOI Unit where the application of section 40 is difficult or unclear: getting a decision wrong may result in breach of the Data Protection Act 1998.
- The majority of section 40 is not subject to a public interest balance.

If any other exemption would apply to the personal information that has been requested, decision makers should usually cite that exemption rather than Section 40

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 40.](#)

## **Section 41: Information provided in confidence.**

### **Summary of this exemption:**

Section 41 applies to information that has been obtained from another person and whose disclosure to the public would constitute an actionable breach of confidence.

### **Key points:**

- Section 41 will only apply where a person would be able to bring a successful action for breach of confidence as a result of disclosure to the public;
- Section 41 is not subject to a public interest balance imposed by the FOI Act. But, the courts have recognised that a person will not be successful in an action for breach of confidence if the public interest in disclosure outweighs the public interest in keeping the confidence;
- The application of section 41 may require detailed consideration of the law of breach of confidence: expert advice will often be necessary.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 41](#)

## **Section 44: Prohibitions on Disclosure.**

Disclosure is already prohibited under another Statute, is incompatible with community obligations, or could result in contempt of court proceedings.

### **Summary of this exemption:**

Section 44 applies to three distinct categories of information:

- If there is an existing statutory bar to the disclosure of information by a public authority then that information will be exempt;
- If disclosure would be incompatible with a European Community obligation then the information will be exempt; and
- If disclosure would constitute or be punishable as a contempt of court at common law (for example because it would breach a court order) then it will be exempt.

### **Key points:**

- The Human Rights Act 1998 can be a statutory bar to the disclosure of information if to do so would breach one of the Convention rights that have been incorporated into domestic law;
- Section 44 is not subject to any public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 44](#)

### 9.3 The Qualified Exemptions

There are 15 qualified exemptions and 2 exemptions ([36](#) and [40](#)) which are part absolute and part 'qualified'.

The public interest test applies to these exemptions. These exemptions do not justify withholding information unless; following a proper assessment, the balance of the public interest test comes down against disclosure. I.e. if the exemption applies would the public interest in withholding outweigh the public interest in disclosing?

## **Section 22: Information intended for future publication.**

### **Summary of this exemption:**

Section 22 may apply if there is an intention to publish the requested information at some future date. This ensures that the FOI Act does not force public authorities into premature publication of information.

### **Key points:**

- Section 22 may apply even if the specific date for publication has not yet been determined but the proposed publication timetable must be reasonable in all the circumstances;
- Section 22 will only apply if a public authority has decided, before the request is received, to publish the information concerned.
- Section 22 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 22.](#)

## **Section 24: Safeguarding national security.**

### **Summary of this exemption:**

Section 24 applies to information whose exemption from the right of access is required for the purpose of safeguarding national security: in order to apply section 24, it will be necessary to decide whether any harm to national security might result from its disclosure.

### **Key points:**

- In some circumstances it may be necessary to rely on both section 23 and section 24 in order to refuse to confirm or deny whether information is held in order to fully protect the important public interests concerned;
- When considering section 24, decision makers should be alive to the need to consult the National Security Liaison Group or other interested parties.
- Section 24 is subject to a public interest balance.
- A ministerial certification procedure exists where it becomes necessary to rely on this exemption.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 24.](#)

## **Section 26: It would prejudice defence.**

### **Summary of this exemption:**

Section 26 applies to information whose disclosure would be likely to prejudice:

- the defence of the British Islands or any colony; or
- the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with them.

In order to determine whether section 23 applies it will be necessary to establish how exactly these defence matters would be prejudiced by disclosure of the information.

### **Key points:**

- It will often be necessary to consult the Ministry of Defence in order to evaluate how and to what extent defence matters would be prejudiced by disclosure;
- Section 26 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 26.](#)

## **Section 27: It would prejudice international relations.**

### **Summary of this exemption:**

Section 27 applies to the following two categories of information:

- information whose disclosure would be likely to prejudice international relations. (The term "international relations" means relations between the UK and any other state, international organisation or court, or the interests of the UK abroad or the promotion or protection of those interests.)
- confidential information obtained from another state, an international organisation or an international court.

### **Key points:**

- Decision makers should be alive to the need to consult the Foreign and Commonwealth Office in connection with the application of section 27
- Section 27 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 27.](#)

## **Section 28: It would prejudice relations within the UK, e.g. between NI Assembly and Westminster Parliament.**

### **Summary of this exemption:**

Section 28 applies to information whose disclosure would be likely to prejudice relations between two or more administrations in the United Kingdom. The relevant administrations are: the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly and the National Assembly for Wales.

### **Key points:**

- Where necessary, regard should be had to the Memorandum of Understanding which has been agreed with the four administrations and which includes safeguards to ensure that information shared between administrations is appropriately protected;
- Decision makers should be alive to the need to consult the other administration(s) concerned when determining whether section 28 applies, and in particular to be aware that separate freedom of information legislation applies in Scotland;
- Section 28 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 28.](#)

## **Section 29: It would prejudice the economy.**

### **Summary of this exemption:**

Section 29 applies to information whose disclosure would be likely to prejudice the economic or financial interests of the United Kingdom or of any administration in the United Kingdom.

### **Key points:**

- Decision makers should be alive to the need to consult with HM Treasury when considering this exemption
- Section 29 is subject to a public interest balance;

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 29.](#)

## **Section 30: Investigations and proceedings conducted by public bodies.**

### **Summary of this exemption:**

Section 30 is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the power or duty to conduct. There are two ways in which the application of section 30 may be triggered:

- where information has at any time been held for the purpose of specified criminal and other investigations or proceedings; and
- where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings.

### **Key points:**

- Section 30 can only be relied on by an authority which itself exercises one of the investigation or litigation functions that are specified in the exemption.
- Section 30 is quite a complex exemption and decision makers will need to be alert to the precise terms in which its two elements are expressed.
- Section 30 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 30.](#)

## **Section 31: It would prejudice law enforcement.**

### **Summary of this exemption:**

Section 31 is concerned with protecting a wide range of law enforcement interests and its application turns on whether disclosure would be likely to prejudice those interests.

Some interests that are protected by section 31 are drawn quite widely, for example: the administration of justice, the prevention or detection of crime and the operation of immigration controls. But section 31 also applies where the exercise by any public authority of certain specified functions would be prejudiced by disclosure. Those functions include: ascertaining whether a person is responsible for improper conduct, determining the cause of an accident and ascertaining a person's fitness to carry on a profession.

### **Key points:**

- Section 31 only applies in cases where the information does not fall within section 30;
- The structure of section 31 is quite complex and it will be necessary to have careful regard to the important differences between the way in which the various categories of information are framed
- The categories within section 31 may overlap and consideration should be given to all categories that may apply.
- Section 31 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 31.](#)

## Section 33: Audits of accounts

### Summary of this exemption:

Section 33 can only be used by public authorities which have financial audit functions in relation to other public authorities or whose functions include examining the efficiency, effectiveness and economy with which other public authorities discharge their functions. Section 33 applies to information whose disclosure would be likely to prejudice the exercise of these functions.

### Key points:

- Section 33 only applies where one public authority has audit or monitoring functions in relation to another public authority. It does not apply where a public authority has such functions in relation to private sector bodies, nor does it cover internal audit and monitoring;
- Section 33 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 33.](#)

## Section 35: Formulation of government policy

### Summary of this exemption:

Section 35 is aimed at protecting the government policy-making process and its proper use is essential to ensuring the delivery of effective government. Section 35 applies to information which relates to:

- the formulation and development of government policy;
- communications between Ministers (including Cabinet proceedings);
- the provision of advice by the Law Officers (or any request for advice); and
- the operation of any Ministerial private office.

### Key points:

- Section 35 can only be used by government s or the National Assembly for Wales;
- Section 35 is closely related to section 36 which protects the effective conduct of public affairs but the two exemptions are alternatives and cannot be used cumulatively;
- Section 35 is subject to a public interest balance. Section 35(4) indicates that there is a particular public interest in the disclosure of factual information which is used to inform policy decisions.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 35.](#)

### **Section 36: It would prejudice the effective conduct of public affairs.**

(Except for information held by the House of Commons or the House of Lords-see Para 7.13).

#### **Summary of this exemption:**

Section 36 exempts information whose disclosure would be likely to have any of the following effects:

- prejudice collective Cabinet responsibility;
- inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation; or
- prejudice the effective conduct of public affairs.

#### **Key points:**

- Section 36 can only be used if, in the reasonable view of a "qualified person", disclosure of the requested information would have one of the specified prejudicial effects. For the Housing Executive, this means that the Chief Executive must decide that the exemption applies before it can be relied on to refuse a request for information;
- Section 36 can only be used if section 35 does not apply to the information;
- The application of section 36 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 36.](#)

## **Section 37: Communications with HM / honours details.**

### **Summary of this exemption:**

Section 37 applies to two categories of information:

- Information relating to communications with Her Majesty, other members of the Royal Family or the Royal Household; and
- Information relating to the conferring by the Crown of any honour or dignity.

### **Key points:**

- It is a fundamental constitutional principle that communications between the Queen and her Ministers are essentially confidential in nature: in most situations, the public interest in disclosure is likely only exceptionally to outweigh the public interest in maintaining this aspect of the exemption;
- In respect of both parts of this exemption, public authorities should be alive to the need to consult relevant public bodies or private offices;
- Section 37 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 37.](#)

## **Section 38: Disclosure would endanger the physical or mental health or safety of an individual.**

### **Summary of this exemption:**

Section 38 applies to information whose disclosure would be likely to endanger the physical or mental health or the safety of any individual.

### **Key points:**

- The individual concerned does not have to be identifiable: section 36 can apply where there is a group or class of persons, any or all of whom are likely to have their health or safety endangered by disclosure;
- Section 38 is subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 38.](#)

## **Section 39: Environmental information.**

### **Summary of this exemption:**

Section 39 exempts environmental information whose disclosure is governed by the Environmental Information Regulations 2004. The Environmental Information Regulations 2004 implement a European Directive and establish a specific regime to enable individuals to access environmental information, including exemptions from that right of access. The disclosure of environmental information must be considered under the Environmental Information Regulations: section 39 therefore exempts this from the rights of access under the FOI Act.

### **Key points:**

- If information is environmental information and is exempt under section 39, public authorities must consider its disclosure under the Environmental Information Regulations 2004; the Regulations may require the disclosure of information which would otherwise have been exempt under the FOI Act.
- Section 39 is subject to a public interest balance, but this should not be considered independently of the operation of the provisions in the Regulations.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 39.](#)

## **Section 40: Personal information.**

Part of this exemption is 'absolute' while part of it is 'qualified'. The 'qualified' part of the exemption is summarised below.

### **Summary of this exemption:**

Section 40 concerns personal data within the meaning of the Data Protection Act 1998.

If a request asks for the personal data of someone else then that information will be exempt if its disclosure would contravene certain provisions of the Data Protection Act 1998 other than the data protection principles (see paragraph 7.14).

If the information

- breaches Section 10 of the DPA, or
- is exempt from Section 7(1)(c) of the DPA
- that information will be exempt.

### **Key points:**

- If information is exempt under section 40 because it is the personal data of the applicant then its disclosure must be considered under the subject access provisions in the Data Protection Act 1998; the Act may require the disclosure of information which would otherwise have been exempt under the FOI Act.
- For most public authorities that receive requests for personal data of someone other than the applicant, the application of section 40 will in most circumstances turn on whether disclosure of the information to a member of the public would be 'unfair'.
- FOI Co-coordinators should consult the FOI Unit where the application of section 40 is difficult or unclear: getting a decision wrong may result in breach of the Data Protection Act 1998.
- The majority of section 40 is not subject to a public interest balance.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 40.](#)

## Section 42: Legal professional privilege.

### Summary of this exemption:

Section 42 applies to information that would be subject to legal professional. Legal professional privilege covers confidential communications between lawyers and clients and certain other information that is created for the purposes of litigation. Section 42 ensures that the confidential relationship between lawyer and client is protected.

### Key points:

- There are 2 types of Legal Professional Privilege, Advice privilege and Litigation privilege
- Whether information is subject to legal professional privilege is a question of law and it will very often be necessary to consult legal advisers in connection with this;
- Advice from the Law Officers is also governed by section 35 and the Law Officers should be consulted where their advice is the subject of a request;
- Section 42 is subject to a public interest balance. But, given the very substantial public interest in maintaining the confidentiality of legally professionally privileged material, it is likely to only be in exceptional circumstances that this will be outweighed by the public interest in disclosure.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 42.](#)

## **Section 43: Commercial interests.**

### **Summary of this exemption:**

Section 43 exempts information whose disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets.

### **Key points:**

- Section 43 protects not only the commercial interests of third parties but also the commercial interests of the public authority that holds the information;
- Public authorities will need to bear in mind that the commercial sensitivity (particularly the market sensitivity) of information will usually decrease with time;
- Section 43 is subject to the public interest test.

Click on the link below to view the full MoJ exemptions guidance:

[Exemptions Guidance on Section 43.](#)

## 10.0 Applying the Public Interest Test

Where the public interest test applies to exemptions, the circumstances of each particular case and the exemption that covers the information will require careful consideration.

Where more time is required to reach a decision as to the balance of the public interest test the time for the FOI Co-ordinator to respond to the applicant can be extended.

N.B. Where the FOI Co-ordinator and/or business manager cannot reach a decision within 20 working days it must be reached within a reasonable period.

In this circumstance, the appropriate [Standard Letter](#) must be issued as soon as possible. The applicant should be given a revised date as to when a decision can be expected. The FOI Register should be updated along with the RFI file.

The Freedom of Information Act does not define 'the public interest' and the following information is merely indicative. Some examples of the kinds of public interest considerations that might be taken into account include:

### **In favour of disclosure:**

- The right of the public to have access to information;
- Disclosure will reveal reasons for decisions;
- The accountability of administrators and scrutiny of decision-making processes;
- The need for the public to be better informed and more conversant on public affairs;
- The information will make a valuable contribution to the public debate on an issue; and
- Accountability for the use of public funds.

### **In favour of non-disclosure:**

- The need to preserve confidentiality having regard to the subject matter and the circumstances of the information;
- Where release of the records could impair a future decision;

- Where premature release could contaminate the decision making process;
- Where release of the records could impair the integrity and viability of the decision making process to a significant or substantial degree without a compensating benefit to the public;
- When broader community interests must be considered, as distinct from those of the applicant and the subject of the information; and
- The need to avoid serious damage to the proper working of government at the highest level.

Please also see the [Matrix of Considerations](#) when applying the Public Interest Test.

FOI Co-ordinators should try and adapt the above arguments for and against disclosure to specifically suit the particular request.

If invoking any grounds for non-disclosure, the decision maker must set out a reasoned argument as to why they apply and what precisely the effect of disclosure would be.

When considering the public interest, appropriate weighting should be given to the arguments both for and against release. If the arguments are equally balanced then disclosure must be favoured over retention. Such an approach is consistent with the Act and more likely to withstand any subsequent internal review or appeal to the Information Commissioner.

## 10.1 EIR Exemptions

Revised and strengthened Environmental Information Regulations (EIRs) also come into force on 1 January 2005. Like the FOIA they 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 EIRs cover not only public authorities covered by FOI, but also other organisations carrying out functions of public administration towards the

environment or under the control of public authorities and performing environmental functions.

The main features of the EIRs are:

- Requests may be made orally or in writing.
- The public authority must reply within 20 working days.
- There are a range of qualified exemptions, all of which are subject to a public interest test.
- There is no upper limit for the cost of meeting a request beyond which the request may be refused.

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

Similar to the FOI Act, there are certain exemptions under the EIRs; however the decision maker should exercise a presumption in favour of disclosure. All EIR exemptions are subject to the public interest test. Information relating to emissions is subject to only a limited set of exemptions. There is no blanket exception for security bodies.

In all cases, the public interest in maintaining the exemption must outweigh the public interest in disclosing it.

A Code of Practice and detailed guidance on the EIRs are available from the [Department for Environment, Food and Rural Affairs' website](#).

Under the EIRs, the Housing Executive may refuse to disclose the information requested if:

- It does not hold that information when the applicant's request is received;
- The request is manifestly unreasonable;
- The request is formulated in too general a manner and the Housing Executive has complied with its duty under regulation 9 by giving assistance;
- The request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; (see refusal to disclose information in paragraph 9.10);
- The request involves the disclosure of internal communications within the Housing Executive; or

- The information requested includes personal data where the applicant is not the data subject. (see Personal Data in paragraph 9.12)

The Housing Executive may also refuse to disclose the information requested if the disclosure would adversely affect:

- International relations, defence, national security or public safety;
- the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- intellectual property rights e.g. copyright or trademark;
- the confidentiality of the proceedings of that or any other public authority, unless the information relates to information on emissions;
- the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest unless the information relates to information on emissions;
- the interests of a person who voluntarily supplied information to the Housing Executive
- The protection of the environment to which the information relates, unless it relates to information on emissions

The Housing Executive may respond to a request by neither confirming nor denying that such information exists and is held by the Housing Executive, where such confirmation or denial would adversely affect any of the above and would not be in the public interest.

There are also circumstances when the Housing Executive should not disclose personal data. This is:

1. in a case where the information falls within paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene:
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it, and

2. in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded;
3. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

## 11.0 List of Divisional Co-ordinators

<b>DIVISION</b>	<b>DEPARTMENT</b>	<b>FOI CO ORDINATOR</b>
<b>Landlord Services</b>	Housing Services Headquarters	<b>Gerry Duffy</b>
	Belfast Region	<b>Noel Barr</b> <b>Roberta Holden</b> <b>Ann Heaney</b>
	South Region	<b>Maria Adair</b> <b>Linda Kelly</b> <b>John Nelson</b> <b>Julie Savage</b>
	North Region	<b>Andrew Barlow</b> <b>Julie Dooley</b> <b>Nuala McEldowney</b> <b>Sonia McKessick</b> <b>Eamonn McGlinchey</b>
	Asset Management	<b>Relevant Assistant Director</b>
<b>Corporate Services</b>	Procurement	<b>Jennifer Elliott</b>
	Human Resources	<b>Priscilla Anderson</b>
	Headquarters Access to Information Team	<b>Margaret Gibson</b> <b>Jim Johnston</b>
	Other Departments	<b>Relevant Assistant Director</b>
<b>Finance</b>	Corporate Accounting	<b>David Lamb</b>
	Financial Support Services	<b>Helena Carty</b>
	Housing Benefit	<b>Lorraine McKenna</b> <b>Colette Quinn</b>
	Counter Fraud & Security	<b>Ffiona Boyd</b>
<b>Regional Services</b>	All Departments	<b>Tommy Ferguson</b>

	Private Sector Improvement Services	<b>Ann Blease</b> <b>Marie Convill</b> <b>Lawrence Fisher</b> <b>Gareth Green</b>
	Strategic Planning & Research	<b>Ivor Robinson</b>
	Development Programme Group	<b>Kelly Devlin</b> <b>Graeme Staples</b>
	Supporting People & Homelessness	<b>Keely McKenna</b>
	Land & Strategic Regeneration	<b>Martin Shevlin</b>
<b>Other Departments</b>		<b>Relevant Assistant Director</b>

## 12.0 Standard Letters

Standard Letters will be amended as further guidance emerges.

<a href="#"><u>Letter 1</u></a>	Acknowledgement of receipt of request
<a href="#"><u>Letter 2</u></a>	Acknowledgement and pointer to information in published form
<a href="#"><u>Letter 3</u></a>	Clarification of request
<a href="#"><u>Letter 4</u></a>	Fee request
<a href="#"><u>Letter 5</u></a>	Fees receipt
<a href="#"><u>Letter 6</u></a>	Non-payment of fees
<a href="#"><u>Letter 7</u></a>	Extension of time limit
<a href="#"><u>Letter 8</u></a>	First letter to third party
<a href="#"><u>Letter 9</u></a>	Informs 3 <sup>rd</sup> party NIHE is or is not disclosing information
<a href="#"><u>Letter 10</u></a>	Informs 3 <sup>rd</sup> party of appeal to ICO
<a href="#"><u>Letter 11</u></a>	Provides applicant with information requested (3 variants)
<a href="#"><u>Letter 12</u></a>	Informs applicant of all the information held
<a href="#"><u>Letter 13</u></a>	Informs applicant some sought being withheld and some provided (3 variants)
<a href="#"><u>Letter 14</u></a>	Informs applicant information sought is not held-cannot be located-has been destroyed (3 variants)
<a href="#"><u>Letter 15</u></a>	Informs applicant request is being transferred to another public authority
<a href="#"><u>Letter 16</u></a>	Informs applicant request is being transferred to PRONI
<a href="#"><u>Letter 17</u></a>	Neither confirms nor denies existence of information to applicant
<a href="#"><u>Letter 18</u></a>	Requests information from Business Manager
<a href="#"><u>Letter 19</u></a>	Internal Review acknowledgement

## 13.0 Redaction or Blanking Out

### 13.1 Introduction

1. Redaction is carried out in order to protect sensitive details from a document. It should be used when one or two individual words, a sentence or paragraph, a name, address or signature needs to be removed. If so much information has to be withheld from a page that the document becomes nonsensical, the entire page should be removed, forming an extract rather than a deletion. In such cases it is for those creating redacted documents for release to use their judgement, in consultation with the Access to Information Unit, as to what is necessary to present the information requested
2. Under the FOIA and the EIRs, applicants may request that information be presented to them in electronic form. For paper documents, this will simply mean scanning the redacted version of the material. If, however, the level of resources required to do the scanning would make this unduly onerous, the FOIA allows the organisation to set aside the applicant's stated preference on the grounds of practicability ([FOIA, Section 11](#)).
3. The Act also permits that a summary of the document be transcribed. If a large percentage of the document needs to be redacted, this option of summarising its contents may be worth considering as a more viable alternative to redaction.
4. In order to conform fully with requests for information, it is essential that only exempt material be redacted. A whole sentence or paragraph should not be removed if only one or two their content or meaning clear. Reviewers should also consider that earlier statements in a document might suggest the content of removed material. For example, if a paragraph refers to reports from overt sources, and the following paragraph refers to reports from covert sources, as well as removing the words 'covert sources', 'overt sources' would also need to be removed or the meaning of the missing words from the second paragraph can be inferred.
5. Once redactions have been identified and agreed with any other interested parties, decisions need to be recorded. Simply keeping a copy of the released copy of a document may be enough, with a note explaining the reasons for redaction. If multiple requests are made for the same information, this will also show what decisions have been made in prior requests.
6. If more detailed records of decisions are required, this can be done on a standard form recording as much of the following information as is relevant:
  - Precise details of the material removed (this need not describe the content, but should show which section of the document has been withheld);

- The reason for non-disclosure of the information. If one or more FOI exemptions apply, these should be noted, along with the particular reasons they apply in this case; and
  - Any comments made by reviewers and other individuals consulted
7. Redaction must always be carried out on a copy, leaving all the information contained in the original document intact. There is a range of redaction methods, and any may be used effectively according to what best suits. This may depend on issues such as the structure and content of the document, the degree of confidentiality, cost and time available.
  8. However, whichever method is employed, the end result must ensure that the redacted material cannot be seen or guessed due to incomplete redaction. This means being certain that words cannot be made out when the document is held up to light or that the ends, top or bottom of text are not visible. The various methods of redaction are explained in the following paragraphs.

## 13.2 Methods of redaction

### 13.2.1 Cover-up tape

The simplest form of redaction is to use a high quality cover-up tape that can be placed over the areas to be redacted, taking care that no parts of words are showing. By making a further photocopy of the redacted text, an access version is produced ready for presentation. The tape is white, and acts in much the same way as if using correction fluid, but can be reused several times. It is available in 1/6" for a 10-12 font typewritten line, 1/3" for two typewritten lines and 1" for general corrections.

### 13.2.3 Blacking/whiting out

Another simple solution is to photocopy the original document and use a black marker pen to block out the sensitive material. The redacted version should then be photocopied again to produce an access version. The further photocopy is necessary as information redacted using marker pen can be read when held up to light.

The same process can be employed substituting marker pen for a good quality correction fluid. Ensure that no redacted text is visible before making the second photocopy, which again is necessary as correction fluid can be easily removed.

### 13.2.4 Scalpel

This is perhaps the most precise and secure method of redaction as the sensitive material is physically removed prior to making the second photocopy, leaving no risk of text being visible in the released version. A photocopy of the original is made. The material to be redacted is then cut from this photocopy using an artist's scalpel

or similar tool, leaving a 'doily', which is then photocopied again to provide the redacted document.

### **13.2.5 Photocopier with redaction facilities**

Photocopiers are available which, in addition to normal copying functions, also have facilities to automatically remove marked out areas on a document. They provide a secure method of redaction, as there is no possibility of the removed text being visible after copying. However, they are limited in their effectiveness as the programmes can, at present, only remove paragraphs and stand-alone areas of text such as addresses or signatures. They cannot detect small areas of data such as sentences or individual words.

### **13.2.6 Redaction of electronic records**

At the time of writing, redaction of born-electronic records remains a relatively new area of records management practice. Software is available to black out areas of text or alter text colour so that it is no longer visible. The preferred approach would be the removal of text to be replaced with white space so the text cannot be recovered within the redacted copy. The National Archives are not aware of independent tests to validate the security of the various redaction software available commercially. It is essential therefore that business areas are aware of the risks of the methods described below and discuss options with those responsible for information security.

Redactions on Word documents can easily be uncovered using track changes and also retain metadata showing authors and previous versions. Therefore redacted information should never be presented in this form. Conversion of Word documents to pdf's, rich text format (rtf) or tif files will prohibit the track changes function being switched on and should therefore be secure. Alternatively, redacted information can be copied and pasted onto a new blank document before saving or emailing, which preserves the appearance of the document whilst removing much of the hidden data. Office 2003 or Office XP also have downloads issued that remove all hidden data from Word, Excel and PowerPoint. Should answers to FOI requests require the release of a spreadsheet or database, certain fields may need to be redacted.

If there are concerns that redacted formats cannot be released in electronic form with security, the FOIA allows organisations to present information in alternative formats, such as printouts. Should business areas choose this approach, the reasons for doing so should be explained to applicants.

When redacting electronic formats, a record of decisions should be kept in the same way as with paper formats. At the very least, the following needs to be noted:

- Who has carried out the redaction?
- When was this done?

- Why was this done?

### 13.3 Matrix of considerations when applying the Public Interest Test

There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest. Setting out the considerations for a public authority, the Act requires that:

“... a public authority shall have regard to the public interest – in allowing public access to information held by the authority, and in the publication of reasons for decisions held by the authority.”

Public Interest Test favours Non Disclosure	← Balanced Against →	Public Interest Test favours Disclosure
<p><b>PUBLIC PROTECTION</b></p> <p>It may cause concern/impact to the public if the information was released e.g. prejudice the physical/mental health of an individual or group of individuals</p>		<p><b>PUBLIC ACCOUNTABILITY</b></p> <p>To show and advise on the health and safety of the public - bringing to light information affecting public health and public safety. The prompt disclosure of information by scientific and other experts may contribute not only to the prevention of accidents or outbreaks of disease but may also increase public confidence in official scientific advice</p>
<p>Where release of the records could impair a future decision</p>		<p>To increase public trust and confidence</p> <p>To show there is openness and transparency in the decision-making process</p>

Public Interest Test favours Non Disclosure	← Balanced Against →	Public Interest Test favours Disclosure
Where release may hinder frankness of discussion (internal) e.g. advice to Ministers		Disclosure will reveal reasons for decisions To show there has been informed debate to reach decisions / conclusions
Where there is a need to avoid serious damage to the proper working of government at the highest level		The accountability of administrators and scrutiny of decision-making processes promoting accountability and transparency by public authorities for decisions taken by them. Placing an obligation on authorities and officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration
When broader community interests must be considered, as distinct from those of the applicant and the subject of the information		The information will make a valuable contribution to the public debate on an issue furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate of issues under consideration by the Government or a local authority
Where release of the records could impair the integrity and viability of the decision making process to a significant or substantial degree without a compensating benefit to the public		The need for the public to have a better understanding and be better informed and more conversant on public affairs Allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions
The need to preserve		To show compliance with the

<p>confidentiality having regard to the subject matter and the circumstances of the information</p>		<p>spirit of legislation e.g. FOIA - the right of the public to have access to information</p>
<p>If may prejudice an investigation (ongoing) Time-bound – the exemption argument weakens after the investigation is closed</p>		<p>Promoting accountability and transparency in the spending of public money.</p>
<p>It may damage commercial interests or intellectual property e.g. patent</p>		<p>To show the decision-making process has considered value for money - accountability for the use of public funds</p> <p>The public interest is likely to be served, for instance in the context of private sector delivery of public services, if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials</p> <p>To show good re-use or better exploitation of information</p> <p>To provide the public with better access to services</p>
<p>It may damage relations e.g. international</p>		<p>Inform public debate on significant issues</p>

The list above is not exhaustive.

If invoking any grounds for non-disclosure, the decision maker must set out a reasoned argument as to why they apply and what precisely the effect of disclosure would be.

When considering the public interest, appropriate weighting should be given to the arguments both for and against release. If the arguments are equally balanced then disclosure must be favoured over retention. Such an approach is consistent with the Act and more likely to withstand any subsequent internal review or appeal to the Information Commissioner. The Act is designed to favour disclosure.

## **14.0 Links to guidance on considerations when applying exemptions and the public interest test:**

Information Commissioner - [ICO Guidance on Exemptions](#)

and the Ministry of Justice - [Ministry of Justice](#)

## 15.0 Publication Scheme

Section 19 of the Freedom of Information Act 2000 requires all public authorities to adopt, maintain and review a Publication Scheme and to publish information in accordance with that scheme.

Publication Schemes are designed to ensure that public authorities take proactive steps to release information to the public. [Section 19\(2\)](#) sets out requirements for the contents of a public authority's Publication Scheme. It must;

- Specify classes of information which the public authority publishes or intends to publish,
- Specify the manner in which information of each class, is or is intended to be, published, for example online or in hard copy; and
- Specify whether the material is, or is intended to be, available to the public free of charge or on payment.

Publication Schemes must be approved by the Information Commissioner. The Information Commissioner has provided a range of sector-specific 'Definition Documents' which set out the classes of information that should be published by the relevant public body.

Although most public authorities, including the Housing Executive, make their Publication Schemes available through their websites, it must also be made available in alternative formats to meet the reasonable needs of individual applicants (e.g. non-English speakers).

The Housing Executive's Publication Scheme has been approved by the Information Commissioner and can be viewed here: [NIHE Publication Scheme](#)

The Housing Executive's Publication Scheme is managed by the Access to Information Unit within the Communications Department, Corporate Services.

The Publication Scheme is subject to formal annual review by the Access to Information Unit and is monitored on an ongoing basis to take account of the following;

- Changes to FOI legislation

- Revised guidance issued by the Information Commissioner or the Ministry of Justice
- Introduction of new publications
- Changes and updates to existing publications

