

# Responding to Information Requests and Review Requests: Internal guidance and procedures for staff

**Scottish Information Commissioner**



## Contents

<b>List of abbreviations used in the document</b> .....	<b>iii</b>
<b>Introduction</b> .....	<b>4</b>
<b>Policy and principles</b> .....	<b>4</b>
<b>Responsibilities</b> .....	<b>5</b>
<b>Receipt of a request</b> .....	<b>5</b>
<b>Allocation</b> .....	<b>6</b>
<b>Validation</b> .....	<b>7</b>
Misdirected requests.....	7
Assessing validity.....	8
Clarification of the request.....	9
Unclear requests.....	9
Process of seeking clarification.....	9
Verbal requests.....	10
Name and address of the applicant.....	10
FOISA or EIRs?.....	11
Mixed EIRs/FOISA requests.....	11
Vexatious, repeated or manifestly unreasonable requests.....	11
<b>Advice and assistance (section 15 and regulation 9)</b> .....	<b>11</b>
Assistance to make a request in a recordable format.....	12
Assistance in framing a request.....	12
<b>Searching for information</b> .....	<b>12</b>
Procedures.....	12
Chain emails.....	14
Charging and excessive cost of compliance (section 12).....	14
<b>Assessment</b> .....	<b>15</b>
Initial checks.....	15
Environmental information.....	15
Action needed.....	15
Requests for information about investigations.....	15
Information otherwise accessible (section 25).....	16
Information intended for future publication (section 27).....	16
Third Party Consultation.....	17
Section 45 of FOISA.....	17
<b>Responding to the request</b> .....	<b>18</b>
General process.....	18

Information disclosed in full responses .....	19
Information not held responses.....	19
Neither confirm nor deny responses .....	20
Withholding information/refusing to disclose responses.....	20
Formatting information.....	20
Tracking of responses .....	21
<b>Records management at request stage .....</b>	<b>21</b>
Closing the case .....	21
Updating Workpro.....	22
Requester tab .....	22
<b>The Commissioner’s publication scheme duties.....</b>	<b>22</b>
<b>Requests for review under FOISA and EIRs.....</b>	<b>23</b>
Review procedure.....	23
Checking the validity of a review request.....	24
Carrying out the review .....	24
Further right of appeal .....	25
<b>Records management at review stage.....</b>	<b>26</b>
<b>Timescales and monitoring .....</b>	<b>26</b>
Timescales .....	26
Monitoring.....	27
<b>Appendix 1: List of standard letters &amp; templates in Workpro.....</b>	<b>28</b>
<b>Appendix 2: Information search checklist and guidance.....</b>	<b>30</b>
<b>Guidance notes .....</b>	<b>31</b>
<b>Document Control Sheet.....</b>	<b>34</b>

## List of abbreviations used in the document

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<b>CST</b>	Corporate Services Team
<b>DHOE</b>	Deputy Head of Enforcement
<b>DO</b>	Designated Officer, the member of staff designated to respond to the request
<b>DPA 2018</b>	Data Protection Act 2018
<b>EIRs</b>	Environmental Information (Scotland) Regulations 2004
<b>FAM</b>	Finance and Administration Manager
<b>FOISA</b>	Freedom of Information (Scotland) Act 2002
<b>UK GDPR</b>	United Kingdom General Data Protection Regulation
<b>HOCS</b>	Head of Corporate Services
<b>HOD</b>	Head of Department
<b>HOE</b>	Head of Enforcement
<b>HOPI</b>	Head of Policy and Information
<b>P&amp;I</b>	Policy and Information Team
<b>RPSI</b>	Re-use of Public Sector Information Regulations 2015
<b>SAR</b>	Subject access request
<b>Section 60 Code</b>	Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the EIRs
<b>Commissioner</b>	Scottish Information Commissioner
<b>SMT</b>	Senior Management Team

# Responding to Information Requests

## Introduction

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1. This document sets out the internal procedures that should be followed by the Scottish Information Commissioner (Commissioner) and their staff on receipt of, and in responding to requests for information or review under:
  - the Freedom of Information (Scotland) Act 2002 (FOISA) and
  - the Environmental Information (Scotland) Regulations 2004 (the EIRs)
2. The Commissioner has separate guidance for responding to:
  - subject access requests, etc. under the United Kingdom General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 (DPA 2018) which is set out in the Data Protection Policy and Handbook (VC149083) and
  - re-use requests under the Re-use of Public Sector Information Regulations 2015 (VC116656).
3. This guidance sets out the internal procedures to be followed. It aims to give procedural guidance to all members of staff on the handling of and management of requests for information made to the Commissioner. Staff are expected to refer to published briefings, guidance and advice on technical issues when considering the response to the request. This document only gives technical guidance in relation to specific legislative provisions where there is none available through published briefings and guidance, or a specific interpretation applies to the Commissioner.
4. Requesters have slightly different rights to access to information held by the Commissioner when making information requests under FOISA or the EIRs. Unlike when requesting information from most other Scottish public authorities, requesters cannot make an application to the Commissioner.
5. This means it is especially important to be as thorough and accurate as possible, both at the initial and the review stage. At the same time, a proportionate approach should be taken, based on the principles of good and effective communications and helping requesters.

## Policy and principles

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6. The Commissioner will respond to all requests for information and review promptly. The actual time taken will depend on the request and the amount of information held. The general principle is that a response will be made as soon as practicable, within statutory timescales. At all points, the Commissioner will take account of the requirements of the Equality Act 2010.
7. The presumption is always that information will be disclosed where possible.
8. Information requests are also an opportunity to engage and communicate with stakeholders. Responses to requests should inform, assist and advise requesters, by providing explanations and context to help them to understand and interpret the information disclosed or why it is being withheld.

9. We will ensure that, when information is disclosed, we will also consider whether it should be published under our publication scheme.
10. When information is withheld (or not held), we will consider whether it would be beneficial to stakeholders to provide an explanation (e.g. through an FAQ) on our website.
11. The Commissioner will monitor performance, and publish statistical information about how we respond to requests and reviews, at least annually.

## Responsibilities

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Role	Responsibility
<ul style="list-style-type: none"> <li>• Ensure procedures and guidance reviewed and updated in liaison with HOE</li> </ul>	<ul style="list-style-type: none"> <li>• HOCS</li> </ul>
<ul style="list-style-type: none"> <li>• Allocation of information requests to designated officer (DO)</li> </ul>	<ul style="list-style-type: none"> <li>• HOE (DHOE in HOE's absence) – subject to discussion with HODs</li> </ul>
<ul style="list-style-type: none"> <li>• Approving fees notices</li> </ul>	<ul style="list-style-type: none"> <li>• HOE/DHOE</li> </ul>
<ul style="list-style-type: none"> <li>• Responding to requests</li> </ul>	<ul style="list-style-type: none"> <li>• DO</li> </ul>
<ul style="list-style-type: none"> <li>• Allocation of review requests</li> </ul>	<ul style="list-style-type: none"> <li>• Commissioner / HOD</li> </ul>
<ul style="list-style-type: none"> <li>• Identifying and reporting lessons learned</li> </ul>	<ul style="list-style-type: none"> <li>• Reviewer</li> </ul>
<ul style="list-style-type: none"> <li>• Monitoring and reporting performance, including:               <ul style="list-style-type: none"> <li>○ providing information on key performance measures, volumes and subject matter of requests and reviews to inform resource planning, including statistics</li> <li>○ reviewing responses to requests to determine whether additional information should be published</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• HOCS</li> </ul>
<ul style="list-style-type: none"> <li>• Provide information on key performance measures, volumes and subject matter of requests and reviews to inform resource planning, incl. statistics</li> </ul>	<ul style="list-style-type: none"> <li>• HOCS</li> </ul>
<ul style="list-style-type: none"> <li>• Searching for and locating information</li> </ul>	<ul style="list-style-type: none"> <li>• Any member of staff requested by the DO</li> </ul>
<ul style="list-style-type: none"> <li>• Reporting to SMT</li> <li>• Uploading of statistics</li> </ul>	<ul style="list-style-type: none"> <li>• HOCS – report to SMT</li> <li>• FAM</li> </ul>

## Receipt of a request

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12. The overall aim of this part of the process is to assess and decide whether the request is for the Commissioner, and to set up the case file in Workpro.
13. Many requests will be made directly to the Enquiries inbox and will be received by CST. However, requests can also be received direct by the Commissioner direct or by any member of staff. **All** requests for information must be forwarded to the CST, irrespective of who receives them and how they are received.

14. If the request is contained within a communication which deals with other issues, the member of staff receiving the request should copy the communication to the CST, highlighting the part containing an information request.
15. If it is unclear to CST whether it is an information request, or whether it should be treated as a misdirected request, advice must be sought from the HOE or a DHOE. (If the request is to be treated as misdirected, see [Misdirected requests](#).)
16. CST will open a case in Workpro and email the HOE (or in the HOE's absence, a DHOE) that the case has been opened.
17. If a request contains (or appears to contain) a combination of a FOISA/EIRs request, a SAR or RPSI request, separate Workpro cases should be created for each at the outset and the relevant procedures followed for responding to each of the requests.
18. If it becomes apparent during the handling of a request that it also contains a SAR or RPSI (or *vice versa*), a separate Workpro case should be created at that point.

## Allocation

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19. All cases will be passed to the HOE (or, in the HOE's absence, a DHOE) for allocation and initial guidance (where needed), on the same or next working day.
20. Allocation will be based on the following principles:
  - Which team?
    - Case related requests/information will be appropriate to Enforcement
    - Information not held: to the CST if straightforward about the office, or a specific individual if related to a particular subject or information type (e.g. legal advice)
    - Role and remit of the Commissioner or the office: to the CST or P&I
    - The running of the office: to the CST
    - HR: to the CST or appropriate member of SMT
    - Finance: to HOCS or FAM
    - Statistical information: to P&I or FAM
    - Information likely to be held in restricted area: to SMT
    - Where the request covers more than one team, the HOE will determine which team will take primary responsibility for responding.
  - Which person within the team?
    - RFIs to be dealt with as misdirected requests to be transferred direct to CST (in discussion with the team)
    - For Enforcement, the specific team member the HOE (DHOE) considers appropriate, based on an assessment of, for example, who dealt with the underlying case, how many information requests already dealt with, annual leave, current caseloads and so on.

- For CST (except for misdirected requests), the specific team member HOCS considers appropriate, based on an assessment of, for example, appropriate team member, how many requests are currently being dealt with in the CST, annual leave, current workload, areas of responsibility.
- For P and I, the specific team member HOPI considers appropriate, based on an assessment of, for example, appropriate team member, how many requests are currently being dealt with in P and I, annual leave, current workload, areas of responsibility.
- In the absence of the HOCS or the HOPI, the HOE (DHOE) will decide following discussions with the relevant team.

21. The HOE (DHOE) will email CST (on the same or following working day) to:

- confirm the DO
- confirm the final day for responding for inclusion in the monitoring spreadsheet
- provide any necessary guidance/direction required they consider appropriate
- confirm whether the response should be approved (and if so, by whom) before issue
- confirm whether CST should notify All-OSIC to advise that the information request has been made (to ensure, as far as possible, that information falling within the scope of the request is not amended or deleted before a response can be given – section 1(4) and (5) of FOISA)

22. CST will:

- acknowledge receipt of the request using FO01
- allocate the Workpro request to the DO
- update the allocation rota (2023 – VC180513)
- update the monitoring spreadsheet
- notify All-OSIC of the subject matter of the request in line with HOE (DHOE) advice

## Validation

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### Misdirected requests

23. Many of the information requests we receive are for information which is not held by the Commissioner. Often, it can be difficult to decide whether it should be treated as an enquiry (because the request was simply misdirected to us) or as an information request. It may be necessary to determine this before taking any action.
24. If you need to determine whether the request is an information request or an enquiry, seek HOE (DHOE) advice when needed, broadly speaking:
- If it is obvious that the requester has misunderstood the role and remit of the Commissioner, and has misdirected their request, but is still requesting recorded information, then it should be treated as an information request – although the

requester might have understood our role, it is possible we will hold some of the information requested

- If the requester is clearly seeking information (or advice) about where to go for information, then it should be treated as an enquiry
- If we have simply been copied in to the request, treat it as an enquiry
- If it is unclear whether the request was meant for us, but the request would not comply with section 8 of FOISA (or, as appropriate, regulation 5 of the EIRs), treat it as an enquiry

25. Misdirected requests should be responded to within two working days of receipt, wherever possible.

### Assessing validity

26. To be a valid request under FOISA a request must meet the requirements set out in section 8 of FOISA. In summary, the request must:

- be in writing or in another form capable of being used for subsequent reference, for example, email, DVD.
- state the name of the applicant (note that the name cannot only appear in the body of the email address - see the Commissioner's guidance on [the name of the requester or applicant](#)) and
- state the address for correspondence
- describe the information requested.

27. If the request is for environmental information, the request can be made verbally, but should (ideally) include the information set out in section 8 of FOISA.

28. The HOE (DHOE) may have commented on the validity of the request when allocating it. The Commissioner's website has a range of information about validity of requests. The DO should refer to this guidance and seeks further guidance from the HOE (DHOE) if unsure or if the request appears to be anything other than straightforward.

29. If the request is **not** valid, but:

- the request is simple and straightforward
- we can disclose all of the information on time and
- it is unlikely that the requester will be dissatisfied with the response

it is good practice to respond to the request (see [Section 60 Code](#)). However, the response must make it clear that, as the request has not been responded to under FOISA/EIRs, there is no right to review. The requester must also be told what they need to do to make it a valid request.

30. With all other invalid cases, the DO should contact the requester immediately and give advice and assistance as to what needs to be done to make a valid request. (In many cases, this will simply be asking them to add their full name to the end of an email.)

## Clarification of the request

31. There are many reasons why a request may require clarification, the most common being it is simply unclear what the requester is asking for.

### *Unclear requests*

32. Section 1(3) of FOISA deals with the issue of unclear requests and regulation 9(2) of the EIRs deals with those which have been formulated in too general a manner for an authority to comply. If an unclear request is received, the DO must provide advice and assistance in accordance with section 15 of FOISA/regulation 9 of the EIRs before either accepting a revised request which meets the criteria or closing the case. See the section on "Advice and Assistance" guidance below.
33. It is critical that the DO responding to the request is clear about what is being asked for. If there is any doubt, and it is reasonable to do so, clarification should be sought, and the reasons why we are seeking it explained clearly to the requester. For example:
- the information requested is framed in too general a manner to be clear
  - the request uses ambiguous or unknown terminology
  - the request contains acronyms or abbreviations that are either unknown, or could have several meanings
34. There is no timescale by which clarification must be sought, but it should be sought as soon as possible.
35. It is a matter of judgement for the DO as to how much clarification is needed, but it should be remembered that the requester may seek a review regarding the need for clarification, so the meaning will also need to be clear to the reviewer.

### *Process of seeking clarification*

36. The process of seeking clarification must be recorded in Workpro. The DO should use the most efficient method to help them respond quickly. A helpful approach is to say what you *think* the requester is asking for and to explore with them your understanding.
- **By phone:** if the clarification sought is something quick and simple (e.g. confirming what an acronym stands for, or clarifying timescales), this can be done by phone and a note kept of the conversation. If the request appears complex, it is good practice to phone the requester to offer advice and assistance, and then to follow this up with a letter or email.
  - **By letter:** FOI02 can be used to do this. If the request appears complex, it is good practice to phone the requester to offer advice and assistance, and then to follow this up with a letter or email.
  - **By email:** straightforward clarification can be sought in the body of the email. If the matter is complex, FOI02 should be used.
37. The 20 working days for responding to the request will commence on the day after receipt of the clarification.
38. If no response to FOI02 has been received within 20 working days, the DO should write to the requester, explaining that we cannot proceed with the request under FOISA/EIRs, as we

do not have sufficient information to help us identify what is being asked for, or whether we hold it and that if we do not hear from them by [insert date that is day after 40th working day] we will close the case. If there is no response by that date, close the case and notify the requester. FOI03 and FOI04 should be used. It is good practice to send the requester any information we hold that we think is in scope, making it clear that we have done so to be helpful, not because we were required to.

39. If this is an EIRs case, the response must cite the exception in regulation 10(4)(c) (request formulated in too general a manner) and consider the public interest test.
40. The requester must be told about their right to request a review. If there is no response within 40 days, the case can be closed.

### **Verbal requests**

41. If the request is made verbally (e.g. during a phone call), the member of staff taking the call should consider whether:
  - it is a request for environmental information, and
  - it would be in the requester's interest to make the request in a recordable format so that the rights under FOISA will apply. This should certainly be discussed with the requester where there is any doubt whether all the information can be provided. In all cases, the Commissioner's staff should endeavour to respond to the request regardless of the format of the request or the rights of the requester.
42. If it is not clear what information is being asked for in a verbal request, this should be explored as far as possible while speaking with the requester.
43. The verbal request should be recorded in a note. The request and/or any follow-up conversation about it must be followed-up with a letter or email on the same or next working day.
44. The note of a verbal request should be forwarded to the CST to be registered as a request for allocation on the same day and followed up the same or next working day with FOI05. If further clarification is required, FOI02 can be used.

### **Name and address of the applicant**

45. Section 8(1)(b) of FOISA requires that the requester provides a name and an address for correspondence. the Commissioner interprets "address" as meaning that the requester has provided sufficient contact details to allow staff to respond to them. Therefore, an email address or a PO Box would be sufficient contact information to enable us to respond.
46. The EIRs do not require a requester to provide contact details, although there would clearly be a practical difficulty to responding to a request if we did not know where to send the information. Practical solutions to this should be explored, such as viewing the information at the office, or picking it up in person.
47. If there is any doubt whether all the information can be provided, it is important to make sure that the applicant has included their name in the body of the email. If they have not done so, or have used a pseudonym, their ability to, for example, seek a review, may be affected. (If in doubt, seek advice from the HOE (DHOE) or read the Commissioner's [guidance](#) on the name of the requester or applicant.)

48. Requests made on behalf of another person (for example, by a firm of solicitors on behalf of a client) must name the person on whose behalf the request is being made in order to be valid. In these types of cases, reasonable steps must be taken to ensure that the requester has authorised the third party to make the request on their behalf. (See the Commissioner's guidance on [the name of the requester or applicant](#).)
49. If it is not appropriate in the circumstances to accept the request because we don't have a valid name and/or address, FOI06 should be sent. HOE (DHOE) should be consulted before the letter is issued.

### **FOISA or EIRs?**

50. From the outset of responding to an information request, the DO must consider whether it is for environmental (EIRs) or non-environmental information (FOISA), as this will determine under which legislation it is considered. This is particularly relevant where information is likely to be withheld.
51. If information is to be disclosed in full, consideration of which type of request should not delay making a response, but it is important to reach a conclusion for our own records.
52. There is [guidance](#) available on the Commissioner's website on determining whether information is environmental information for the purposes of the EIRs.

### **Mixed EIRs/FOISA requests**

53. If the request covers both environmental information and non-environmental information or some of the information is not held, the DO must separate out all the elements of the request and deal with each element individually according to these procedures. All parts of the request can be dealt with in one response letter.
54. If it is a mixed request and the DO is concerned, given the size of the request, that section 12 (excessive costs) and/or regulation 10(4)(b) (manifestly unreasonable request) might apply, seek advice from the HOE (DHOE).

### **Vexatious, repeated or manifestly unreasonable requests**

55. The Commissioner can refuse to comply with a vexatious or repeated request (section 14 of FOISA) or with a request which is manifestly unreasonable (regulation 10(4)(b) of the EIRs). The Commissioner briefings on section 14 and regulation 10(4)(b) are helpful and should be considered.
56. Consideration as to whether a request is "vexatious" applies at every stage of responding to a request, but is most likely to be in the early stages.
57. The HOE (DHOE) should be consulted for guidance if a request is believed to be vexatious, manifestly unreasonable or repeated. If the final determination is that the request is vexatious, manifestly unreasonable or repeated, FOI07 should be issued, following consultation with the HOE (DHOE).

### **Advice and assistance (section 15 and regulation 9)**

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58. Both section 15 of FOISA and regulation 9 of the EIRs require the Commissioner to provide reasonable advice and assistance to requesters.
59. The [Section 60 Code](#) (paragraph 5.1.1) states:

*Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.*

60. The Section 60 Code of Practice expands on this and recommends a number of practical steps.

#### *Assistance to make a request in a recordable format*

61. If the requester is having difficulty making a request in a recordable format, whether because of a disability or any other reason, the DO should offer to write it down for them. In such cases the requester should be asked to sign and return the written request to the Commissioner. This is clearly easier in a face to face situation, but can also be done by mail or email using FOI05.

#### *Assistance in framing a request*

62. If the requester has difficulty in stating what information they want, the DO should work with them to try to frame the request and/or narrow the information down to something we can help with or which might be more useful. For example, if a requester asks for all the information we hold on a particular public authority, the request would embrace (but not be limited to) information relating to investigations, publication scheme approval, enquiries, research/events co-ordinated by P&I, and it is unlikely that the requester actually wants everything. In this instance, it would be good practice to describe the sorts of information we do hold, helping to identify the elements the requester would like to see.

## **Searching for information**

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### **Procedures**

63. The DO will have to arrange for searches to be carried out to determine what information we hold falling within the scope of the request unless, for example:
- a request is for a copy of information which can be easily located (for example, the current version of the Investigations Handbook; the name of a contractor; a copy of a case file; the number of live investigations)
  - it is very clear that complying with the request is likely to exceed cost limits in FOISA or is vexatious or repeated
  - we are very likely to find that the request is manifestly unreasonable under the EIRs
  - we know we hold the information but it is subject to an absolute exemption (e.g. a copy of a named member of staff's fit note)
64. Where searches are needed, they will be initiated by the DO within five working days of receiving a clear information request. The DO should follow any guidance given at allocation by the HOE/DHOE/HOD.
65. If the DO is in any doubt about where searches should be made and who should be asked to conduct them, they should seek advice from the SMT, the DHOEs or CST as needed.
66. All searches must be carried out promptly, to the timescale set by the DO. The DO will normally ask for searches to be completed within three working days working days, but this

may be extended with the agreement of the DO, particularly if it is known the information is particularly complex or voluminous or a member of staff is on leave. Searching for information requested by the DO is a priority. Any conflicts or issues in relation to other priorities should be discussed with the appropriate line manager or HOD.

67. Any member of staff required to carry out a search must respond, even to say no information is held.
68. If the member of staff is of the view that searching for the information is likely to be extensive and potentially near or exceed cost limits, the DO must be advised immediately.
69. A single summary of searches will be recorded on the Information Search Checklist in Workpro, which also contains additional guidance on how to approach the search. **It is the DO's responsibility** to ensure that this summary contains a complete picture of the searches carried out, when and by whom.
70. The checklist must record:
  - where searches are made
  - who makes them
  - what search terms are used if electronic
  - a summary of the results
71. The Information Search Checklist should be updated in Workpro as searches are carried out. It should be filed in the relevant section of the electronic case file.
72. If the DO is of the view that there are likely to be charges they should, as appropriate:
  - contact the requester immediately to offer advice and assistance and
  - seek advice from the HOE (DHOE).
73. It is for the DO to decide how to carry out and commission searches, following the principles of **thoroughness and proportionality**. For example, if the information is for something very specific, and the only place it is held is in an email account inaccessible to the DO, they may simply email appropriate staff asking them to search their email boxes using specific search terms. There may be occasions where multiple searches are needed and it is expedient to email copies of the Information Search Checklist (full or amended versions) to multiple staff. Round-robin emails should be avoided where possible.
74. All requests to colleagues to search for information must be made by email. Every member of staff who is asked to search for information must be told:
  - where/what system they are required to search, e.g. Outlook email, notebooks, paper records
  - what search terms they are required to use, if electronic, e.g. "Mr Jones; Jon Jones, Johnathan Jones, Jonathan Jones" ... Check your notebook for information about the meeting with XYZ on XX/XX/XX
  - timescale for response
  - to reply to the DO by email confirming either:

- (a) no information is held, or
  - (b) information is held and attached or where it is located within the Commissioner's records
- The following should be attached to the response to the DO:
    - (a) the search results if electronic
    - (b) all information (or reference to the hard copy information) that on the face of it is in scope (see also point (vi))
    - (c) information located that may be in scope, but it is unclear
  - If a lot of information is held (e.g. in a paper case file), the DO should be notified so that arrangements can be made for electronic copies to be placed on the case file.

75. When the DO is content they have all the information held, a check should be made to ensure it is all within scope, seeking advice or guidance from the HOE (DHOE) or relevant colleagues as appropriate.

76. The DO must organise the information held and in scope as follows:

- sort documents into reverse chronological order (as far as possible)
- number the documents and then enter them into the Schedule of Information in Workpro.
- scan (or have scanned) a complete set into the Workpro record.

77. If no information is held, a Schedule need not be completed.

#### *Chain emails*

78. Chain emails often result in duplication of information. Not only can duplicate information make the information to be disclosed more difficult for the requester to comprehend, it can also cause issues where information is to be redacted, either because it falls outwith the scope of the request or is subject to an exemption or exception.

79. The DO should ensure that, wherever possible, chain emails are separated into separate emails and duplicates removed. (Care should be taken to keep emails together when needed (e.g. *in point 6 of your email below ... as I set out in my last email...*.)

80. Where appropriate, a DO can cut and paste emails into a separate document to prevent email chains.

### **Charging and excessive cost of compliance (section 12)**

81. The Commissioner has published guidance on charging and excessive costs based on the Fees Regulations. The Commissioner has also published guidance on responding to manifestly unreasonable requests under the EIRs. This guidance, and FAQs, on the Commissioner website should be followed to establish whether charges are applicable under FOISA and/or the EIRs.

82. Our FOI and Re-use Charging Policy sets out when we will impose a charge. The online the Commissioner publication scheme also sets out our [charging policy](#). There is little information that will ever be charged for.

83. If we are considering charging or refusing a request on cost grounds, it will usually be necessary to carry out a sampling exercise to in order to demonstrate the costs which would be incurred in responding to the request.
84. In all cases where fees are applied, a fees notice must be drafted by the DO and approved by HOE (DHOE) before it can be issued. Use FOI08.
85. If a charge is to be applied apply, the DO must email CST and request that an invoice be raised for the amount. The invoice must clearly set out how the charge has been calculated. The 20-working day clock stops when the invoice is sent out and restarts the day after payment is received. CST will advise when the payment has been made. If payment is made by cheque, CST should advise when it has cleared. The clock will restart the day after the payment has been made or a cheque has cleared.
86. If the request is refused because fees exceed the upper cost limit or the cost of complying would be manifestly unreasonable, FOI09 should be used. The requester must be advised whether (and, if so, how) to bring their request within the cost threshold, by describing, in line with the duty to provide advice and assistance in section 15 or regulation 9, the information that could be provided with that limit, or by helping them find the most suitable way to limit the scope of their request.

## Assessment

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### Initial checks

87. The DO should ensure they are confident that searches are complete, that all information held has been identified and that it is all within scope. They should also re-consider whether charges apply and whether the request should be refused under section 14 (FOISA) or regulation 10(4)(b) (EIRs), in line with guidance above.

### Environmental information

88. The DO should confirm whether the information held is environmental as this will determine under which legislation a response should be made.

### Action needed

89. The aim of this part of the process is for the DO to reach a conclusion about whether the information held:
  - should be **disclosed** in full, e.g. because no exemptions/exceptions apply, or because even if they do, we have decided to disclose the information anyway
  - should be **withheld**, either in full or redacted as part of a document because exemptions/ exceptions apply to the information and we have concluded that it should not be disclosed.
  - **Section 18**, neither confirm nor deny, applies.

### Requests for information about investigations

90. Requests for information relating to investigations must be given careful consideration.
91. Information relating to ongoing investigations is likely to be more sensitive than information from a closed case, but, in either situation, it is important to consider whether disclosure

would have any adverse consequences, either for the work of the Commissioner or for other parties.

92. The Commissioner is most likely to withhold information where disclosure would contravene one of the data protection principles (section 38(1)(b)/regulation 11(2)) or where disclosure would affect our ability to reach a decision on this or any other case (section 30(c)/regulations 10(4)(d) or (e)).
93. Responses to such requests should always be discussed with the HOE or a DHOE, and DO's should follow the guidance on third-party consultation where appropriate.

### **Information otherwise accessible (section 25)**

94. Information in the Commissioner's Publication Scheme which is published on the Commissioner's website can be disclosed as published.
95. If the request is for information that is referred to in the SMT minutes of meetings but has not yet been uploaded to the website the DO must
  - check whether any exemptions apply for example, personal data
  - consult the HOCS (or in absence of the HOCs, the FAM) before disclosing the information
  - if the information should not be disclosed, the procedures for withholding information and serving notice should be followed.

### **Information intended for future publication (section 27)**

96. If any of the information held is intended for future publication the Commissioner will not normally disclose it until the publication date. That said, a considered approach should be taken, the underlying principle being to disclose at the earliest possible time (remembering that section 27 is subject to the public interest test and that for the exemption to apply it must be reasonable to delay disclosure).
97. The intention to publish must be clear and demonstrable and not aspirational. For example, if we have an agreed plan setting out when we intend to publish the ARA, this is evidence of a clear intention to publish. In contrast, for example, "we are currently reviewing our approach to "XYZ" and aim to have completed this work by the end of August", is vague.
98. The agendas, the agreed minutes of SMT meetings and any related Committee reports (CRs) will be published on the Commissioner's website, redacted as appropriate in line with data protection requirements or in line with exemptions that would apply to the withholding of information under freedom of information legislation. Where information is being withheld on the grounds that it is intended for future publication, the related CRs will explain this and regard should be had to the SMT's decision and the anticipated publication date.

If in any doubt, speak to the relevant HOD. The HOCS should also be consulted in respect of any document that is intended for future publication relating to the following Classes of documents in the Commissioner's GTI:

- Class 1 - governance and accountability
- Class 3 - governance and finance
- Class 4 – financial resources

- Class 5 - the management of human, physical and information resources
  - Class 6 – procurement of goods and services
  - Class 7 – how the organisation is performing
  - Class 9 – open data made available
99. If the request is for information that may be included in other reports, for example, statistical information that we may be publishing in a special report, seek advice from the relevant HOD.

### **Third Party Consultation**

100. If the information held and in scope includes information about third parties. See the [Section 60 Code](#) for guidance on when third party consultation should take place.
101. Consultation should take place as soon as practicable – the need to consult does not extend the timescale for responding to the request.
102. Consultation should always be “proportionate”. It is a matter of judgement as to what proportionate is, and if in doubt HOD (DHOE) advice should be sought. For example, it would not be proportionate to consult the views of all authorities surveyed in a research study before releasing a copy of the report as long as no confidentiality commitments had been made during the course of the study. Before consulting, check with the colleague who manages the relationship with the third party as we may have already identified particular sensitivities in the information.
103. If the information which has been requested was provided to the Commissioner by a public authority, the views of the public authority on disclosure should always be sought, unless the Commissioner does not intend to disclose the information. If the Commissioner considers that some of the information may be exempt from disclosure (or subject to a provision in Part 1 of FOISA or in the EIRs), but other information may not, the consultation with the public authority should make that clear.
104. If consultation with third parties is appropriate, FOI10 should be used. This sets out the parameters of the consultation and should:
- invite the third party to set out their views in the terms of the exemptions/exceptions/provisions they consider could apply to the information
  - make it clear that it is ultimately a matter for the Commissioner to decide whether the information should be released
  - give a date by which responses must be made, allowing time to formulate the response to the requester.

### **Section 45 of FOISA**

105. Section 45 of FOISA makes it a criminal offence for the Commissioner, a member of the Commissioner’s staff or an agent of the Commissioner to knowingly or recklessly disclose information which has been obtained by, or furnished to, the Commissioner under or for the purposes of FOISA (or the EIRs) if that information is not, and has not previously been, available to the public from another source, *unless the disclosure is made with lawful authority.*

106. It is very important that staff take account of section 45 in dealing with any information request which involves the possible disclosure of information obtained from a third party (this will usually, but not always, be a public authority). As regards investigations case work, this will involve not only the withheld information under consideration in any particular case, but also information contained in submissions, etc.

## Responding to the request

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### General process

107. Whatever the outcome of the request, the underlying principles in responding to requests are:

- The response should be drafted in plain English and you should avoid unnecessary jargon.
- Where jargon or technical language are needed, it should be explained or the requester should be referred to other guidance which gives more information. We should be seeking to be helpful, as well as responding to the letter of the law.
- The response should be legally and technically competent

108. The DO should:

- Draft the response letter, ensuring it refers to the Schedule of Information (where appropriate) and rights of review
- Ensure the Schedule of Information is complete.
  - This should include documents we are disclosing.
  - The normal practice is to send information with the Schedule.
  - If there is only a small amount of information being disclosed and in the DO's judgement a Schedule is not appropriate, the covering letter **must** list the information enclosed so that it is clear exactly what was sent.
- Prepare (or arrange to have prepared) the information to send to the requester, including redactions where needed (redactions should be made using the software available on designated PCs – see the Adobe Acrobat DC Redaction Guide for further guidance in VC77954)
- Redacted documents should be scanned and scanned copies used for responding to the requester.
- Refer the file and the draft response for approval (if so directed by the HOE (DHOE) at allocation).
- Standard letters should be used, adapted as necessary, when responding to a request.
- **The DO must never delete information about review and/or appeal rights from the templates.**

109. The approver (or, if the response does not need to be approved, the DO) will:

- check the response for:
  - accuracy (e.g. have all redactions been made properly, is any advice correct and so on)
  - quality (including use of plain English and appropriate context/advice and assistance)
  - technical competence (e.g. have exemptions/ exceptions/other provisions been properly applied)
- sign-off the response via a file-note on Workpro or by sending an email to the DO (which the DO must add to Workpro).

110. If the response is to be approved before issue, the approver will email confirmation to the DO that the response has been approved. The DO must file this email in the this Workpro case file

111. The DO will issue the response.

112. The response should generally be sent by the same means with which it was received, for example, by email if it was received by email.

113. Whenever a response is issued by email, it is good practice to request a delivery receipt and ask the requester to acknowledge receipt of the response.

114. Evidence of an email being delivered (such as a delivery receipt or acknowledgement) should be saved to the Workpro file.

115. Covering emails must explain to the requester that, if they have any difficulty in reading the attachment, they should let us know so that alternative arrangements for accessing the response can be made.

### **Information disclosed in full responses**

116. FOI11 should be completed and sent to the requester.

117. The information should be collated, accompanied by a Schedule of Information and, if necessary, transferred into the agreed format.

118. When responding to an email request for information which is available in the Commissioner's publication scheme or published on the Commissioner's website, either attach the documents to the response or send links to the relevant classes/documents in the Publication Scheme (where links are sent, the exemption in section 25 must be used).

### **Information not held responses**

119. The requester must be informed that the Commissioner does not hold the information. Use FOI12.

120. If the information was at one time held by the Commissioner, but is no longer, this should be explained to the requester. The Commissioner's C5 File Plan and Retention Schedule may be useful in such cases, in explaining our procedures for retention, archiving and disposal. If you need guidance on this, please consult the FAM or the HOCS.

121. Where we hold evidence that a specific document or file has been destroyed, it may be helpful to provide the requester with a copy of that evidence.

### **Neither confirm nor deny responses**

122. In limited circumstances, it may be necessary to issue a section 18, regulation 10(8) or regulation 11(6) refusal letter which neither confirms nor denies that the information is held by this organisation. In this circumstance FOI13 should be used. If we are refusing to confirm or deny whether information is held, the Schedule must not be sent to the requester (see below).

### **Withholding information/refusing to disclose responses**

123. If information is to be refused and withheld in full, the DO will use FOI13a and prepare a Schedule of Information listing what is being withheld under what exemption (notwithstanding where section 18/regulation 10(8)/regulation 11(6) applies). Bear in mind this should already be on file by this stage. If we are refusing to confirm or deny whether information is held, the Schedule must not be sent to the requester.

124. If information is to be partially refused, the DO will use FOI14, and a Schedule of Information listing what is being disclosed/withheld (notwithstanding where section 18/regulation 10(8)/regulation 11(6) applies).<sup>1</sup>

125. Again, if we are refusing to confirm or deny whether information is held, the Schedule to be sent to the requester must not make any reference to the information we are refusing to confirm we hold.

126. In the refusal letter:

- all information withheld, including redactions, must be explained by citing the relevant exception/exemption and why it has been applied, making reference to the schedule as appropriate
- where relevant, the letter should also explain how the public interest test has been applied and why the conclusion has been reached that release is not in the public interest
- the requester must be told about their right to a review and asked to address any request for review to the Commissioner.

### **Formatting information**

127. As noted above, as a general rule, responses should be sent by the same means that the request was made.

128. If there is any possibility that the requester may have problems with the format the record is held in (for example, PowerPoint), the DO should check with the requester before sending the information. We will comply with their format preference where it is reasonably practical to do so (see section 11 of FOISA).

129. The Equality Act 2010 applies to information requests as it does to all other service provision. If the requester has specified a format because of a disability, we must comply unless it would be unreasonable to do so. The burden of proof of what is reasonable lies with the

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<sup>1</sup> A template – SL14b – has also been prepared for responding to requests for third party personal data.

service provider (that is the Commissioner). Audio tape and large print versions of documents in-house can be provided. Braille and other specialist formats will need to be outsourced as required and where such a format is requested, the HOPI and the HOCS should be consulted.

130. Similar duties are placed on the Commissioner in terms of provision of translated information. Translation work can be outsourced if required, after discussion with HOPI.

131. Any disputes with the requester about the format should be referred to HOPI in the first instance.

### **Tracking of responses**

132. It is good practice for all Scottish public authorities to track responses to information requests to ensure that responses are made within 20 working days.

133. As noted above, once a case had been allocated, CST (Administrator or FAM) will add the case to the Information Request Monitoring Sheet (VC84883) and will:

- check the Information Request Monitoring Sheet each working day
- note when a case reaches 15 days old
- where a request has not been responded to by day 15, alert the DO and the HOE (DHOE) to remind them that a response is due within the 20 working day deadline.

### **Records management at request stage**

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134. The DO is responsible for:

- ensuring the Workpro case file is in good order, complete and up-to-date, to the point the case is closed
- the Workpro case file must contain the response and both information disclosed and withheld
- closing the Workpro case file
- ensuring the Workpro case is closed by no later than the next working day after the response is sent or by the close of the last working day of the month, whichever is sooner.

#### *Closing the case*

135. Complete the Outcome Details in the Request Details tab.

136. You must complete the Provisions field.

137. Outcome details/general notes should only be used where it is important to leave information about the outcome for future reference.

138. Select Close Request.

## Updating Workpro

### *Requester tab*

139. Enter all contact details provided.
140. Select type of requester from the drop down list and enter any special circumstances or reasonable adjustments from the drop down list (e.g. Large Type Documents).

### *Request Details tab*

141. Complete all fields.
142. Select type from the drop down list. These are the relevant options:
  - FOI
  - EIR
  - Joint FOI/EIR
  - Re-use request
143. The Request Details field must be completed in line with this guidance. It must not be left blank.
144. The data in this field is used to:
  - monitor the information requests workload
  - alert us to any new trends so that we can take any appropriate action, for example, building template responses
  - help prepare the quarterly and annual report statistics and provide qualitative information when the statistics are analysed. It allows us to see very quickly what kinds of issues people have come to us about.
145. The request details should provide a succinct (**no more than 200 characters**) account of the subject of the request. It should give sufficient information to allow any colleague to understand what the request was about. It must not contain any personal data, such as the name of the requester.

## The Commissioner's publication scheme duties

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146. Section 23 of FOISA requires the Commissioner to adopt and maintain a publication scheme, publish information in line with that scheme and review the scheme from time to time.
147. The Commissioner has adopted the Model Publication Scheme (MPS) in its entirety and the Key Document C5 Publication Scheme Handbook sets out:
  - the Commissioner's policy on compliance with the publication duties in the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs)
  - the procedures for publication and maintenance of the Guide to information (GTI).

148. The HOCS has lead responsibility for the publication and maintenance of the Commissioner's Publication Scheme and the GTI and ensuring that the Commissioner's GTI complies with updates of the MPS.
149. The Commissioner's GTI:
- is published on the Commissioner's website in the About Us section
  - allows anyone to see what information is available (and what is not available) in relation to each class
  - states what charges may be applied
  - explains how to find the information easily
  - provides contact details for enquiries and to get help with accessing the information
  - explains how to request information that has not been published
  - is regularly and routinely updated
150. If the DO considers that the information which was the subject of the request should be published as part of our publication scheme, they should alert their HOD and the HOCS.

## **Requests for review under FOISA and EIRs**

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### **Review procedure**

151. If the requester is dissatisfied with the response to an information request, they have the right to request a review.
152. Reviews should be undertaken and completed as quickly as possible, and in all cases will be completed within the statutory requirement of 20 working days.
153. Review requests will be passed to the HOE (DHOE) as soon as possible after the request for review is received.
154. The HOE (DHOE) will decide whether the review request is valid and who should carry out the review.
155. Depending on the case, this will either be the Commissioner or an HOD. Wherever possible, the review will be carried out by an HOD whose department was not previously involved in responding to the request. Reviews must not be carried out by the manager who approved the response.
156. The HOE (DHOE) will notify the CST that a request for review has been received, confirming the final day for responding for inclusion in the monitoring spreadsheet.
157. CST (FAM or Administrator) will:
- re-open the original request case file in Workpro and move it on to the Request for Review stage
  - provide advice and assistance to the requester which the HOE (DHOE) will advise on, as appropriate,
  - acknowledge receipt using standard letter **FOI15** within two working days

158. CST (Administrator or FAM) will also add the case to the Information Request Monitoring Sheet (VC84883) and will:

- check the Information Request Monitoring Sheet
- note when a review case reaches 15 days old
- where a review request has not been responded to by day 15, alert the DO and the HOE (or DHOE) to remind them that a response is due within the 20 working day deadline

### **Checking the validity of a review request**

159. In accordance with section 20 of FOISA, the review request must:

- be made no later than 40 days from receipt of the information or notice, or from the 20<sup>th</sup> working day from making a request if we failed to respond. (Section 20(5) of FOISA allows the Commissioner to accept a late request for review. Extension will be at the HOE (DHOE) discretion, taking into account the circumstances at the time. Reasons must be recorded on the case file and in Workpro, and communicated to the requester.)
- be in writing or another permanent form
- state the requester's name and address for correspondence
- specify the information request to which the review request relates
- specify why the requester is dissatisfied

160. Regulation 16 of the EIRs does not go into the same detail as section 20 of FOISA. However, a request for review under the EIRs ("representations to a Scottish public authority") must:

- be in writing
- be made not later than 40 days from receipt of the information or notice, or from the 20<sup>th</sup> working day from making a request if we failed to respond. (There is no discretion under the EIRs to accept a late request for review.)

161. If the review request is invalid and cannot be resolved through advice and assistance, the HOE (DHOE) will write to the requester explaining why, and what rights the requester has, using **FOI16**.

### **Carrying out the review**

162. If the review request is valid, the HOE (DHOE) will forward the request for review to:

- the appropriate HOD (the HOD should not have been the manager who approved the initial response to the request), and
- the designated officer (DO) who responded to the original request.

163. The appropriate HOD will conduct the review.

164. **The DO who responded to the original request** must prepare a briefing for the reviewing HOD within five working days of receipt using the template set up in WP ("DO briefing for reviewer".)

165. **The reviewing HOD should:**

- carry out an objective assessment of the review request, including undertaking a thorough assessment of the handling of the request
- consider and review the review request, the response case file and the briefing provided by the DO
- when carrying out a review, the reviewer must consider the status of the information and other relevant circumstances at the time of the receipt of the request
- if circumstances have changed since we received the request for example, the Commissioner now holds information which we didn't hold when we received the request, the reviewer may address the change in circumstances either by, in this example, disclosing the information we now hold or advising the requester to make a new request for the information
- according to the circumstances of the case, it may also be necessary to:
  - perform (or arrange for) a further search for information
  - read other associated case files.
  - contact the requester for clarification
  - seek legal advice on points of law
  - discuss the merits of the review further with the DO who responded to the request
  - call upon other staff in the Commissioner's office to assist with the review.
- create and maintain a record of the issues considered in the review and any learning points in the case file.
- The decision options available to the HOD are to:
  - confirm the original decision
  - substitute a different decision
  - reach a decision (in the case of a mute or deemed response) for the first time.
- prepare the appropriate letter to the review requester (FOI17 or FOI18) and share the findings with the DO who dealt with the original request.
- issue the response to the requester.
- report review outcome to the Commissioner and SMT, sharing any learning points.

**Further right of appeal**

166. The template letters explain that the requester has no further right of appeal under FOISA/the EIRs, but if they believe that there has been administrative failure, failure to provide a service, or failure in a service provided to the point where they have suffered injustice or hardship as a result of these failures, they should be informed that they can complain about the Commissioner to the SPSO

167. The requester should also be told about their right to seek a judicial review. It is important that in doing this, we do not give legal advice. The wording should make it clear that there is a general right to challenge public bodies through the judicial review process, but the requester would need to seek independent legal advice about this.

## Records management at review stage

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168. The **Reviewer** is responsible for:

- ensuring that the Workpro case file is in good order, complete and up-to-date from the point the review request is referred to them
- updating the Workpro case file after the review response has been issued, ensuring the final outcome is recorded and the Provisions field is completed.
- ensuring the Workpro case file is closed by no later than the next working day after the response is sent or by the close of the last working day of the month, whichever is sooner.
- maintaining and managing records of any further communication received or sent.

## Timescales and monitoring

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### Timescales

169. Requests for information and review should be dealt with promptly and in the shortest reasonable time. The aim is to make information available at the soonest possible point.

170. Section 10(1) of FOISA (and regulation 5(2) of the EIRs) make it clear that the 20 working days for response is a maximum and that public authorities are required to disclose information as soon as they are in a position to do so.

171. Regulation 7 of the EIRs allows for the timescale to be extended, but we will only seek to extend the time period in the most complex and voluminous cases. The Commissioner or HOE approval must be sought before doing that.

172. Except where regulation 7 of the EIRs applies, the substantive response to a request for information must be sent within 20 working days.

173. Review responses must be sent within 20 working days. (The first working day is the day following receipt of the request. So, for a request received on Tuesday (regardless of the time it is received), the first working day will be Wednesday. For a request received on a Saturday, the first working day will be Monday (provided the Monday is not a bank holiday, in which case it will be the Tuesday).

174. If the 20 working days is missed at any stage, the response must be given priority and sent out as soon as possible, even if the requester has since requested a review or made a complaint about service. If the response is sent out after a request for review has been submitted, it must be in terms of section 21(4)(c) (reach a decision where no decision has been reached).

## **Monitoring**

175. The Commissioner has a KPI to respond to 100% of requests and reviews within the statutory 20 working days. The HOCS monitors and reports against this KPI.
176. The HOCS also reports information requests and reviews activity in line with the Commissioner's governance framework, ensuring that lessons are learned and procedures and guidance remain up-to-date and fit for purpose. The HOCS will consider whether additional information needs to be published in the Commissioner's GTI.
177. The Commissioner will keep statistics about information requests in line with the data it requests from all Scottish public authorities. The FAM is responsible for uploading the Commissioner statistics to the Commissioner statistics platform within 20 working days of the end of each quarter.

## Appendix 1: List of standard letters & templates in Workpro

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Standard letters	
FOI01	Acknowledgement
FOI02	Seeking clarification
FOI03	Reminder no response to FOI02
FOI 04	No response to FOI 02 or FOI 03 close case
FOI 05	Confirm verbal request
FOI 06	Identity of requester
FOI 07	Vexatious/ manifestly unreasonable
FOI 08	Fees notice
FOI 09	Exceeds cost limits/ manifestly unreasonable
FOI 10	Third-party consultation
FOI 11	Full disclosure response
FOI 12	Information not held
FOI 13	Neither confirm nor deny
FOI 13a	Full refusal response
FOI 14	Partial disclosure
FOI 14b	Full refusal response – 3 <sup>rd</sup> party personal data
FOI 15	Review acknowledgment
FOI 16	Review request invalid
FOI 17	Review amended decision
FOI 18	Review confirm decision

<b>Other templates</b>
Information Search Checklist
Schedule of Information
DO briefing for reviewer

## Appendix 2: Information search checklist and guidance

	Note
<b>Workpro Case Reference:</b>	
<b>Name of designated officer:</b>	1, 2
<b>Date searches completed:</b>	3
<b>Information requested:</b>	4

**Schedule of information attached:** yes/ no  
(template in Workpro,)

**Information located:** attached/ to follow/ none held

Records/ systems/ locations searched (Note 5)	Note	Search terms and/ or description of search (Note 6)	Initials of member of staff and date of search (Note 6)	Brief comment on outcome and/ or issues (Note 7)
Virtual Cabinet	2,8			
Workpro	2,9			
MS Outlook, i.e.: • Email • Calendar • Tasks • Contacts • Outlook on office mobile phones	2,11			
Documents • office PC • laptop	2,12			
Desktop • office PC • laptop	2,12			
Downloads • office PC • laptop	2,12			
P:Drive	2,12			
Z:Drive	2,12			
E:Drive	2,12			
S:drive (sage data)	2,12			
Office mobile phone, laptop	2,12			
Memory sticks and other external storage media (e.g. CD, DVD)	2,12			
Website	2,13			
Guide to Information	2,14			
Finance records, including Sage (not in VC)	2,15			
MS Teams calendar				
Hard-copy files/ folders/ records – office premises	2,17			

Records/ systems/ locations searched (Note 5)	Note	Search terms and/ or description of search (Note 6)	Initials of member of staff and date of search (Note 6)	Brief comment on outcome and/ or issues (Note 7)
and remote work location				
Notebooks and other personal hard-copy records, e.g in office premises ( desk drawer, filing cabinet), , remote working location	2,18			
Any other source not listed above, e.g., secure store, archived files	2.19			

## Guidance notes

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1. These notes provide guidance on completing the form and should be read in conjunction with the Guidance on Responding to Information Requests. The designated officer (DO) is responsible for managing the search process, and ensuring that all relevant members of staff are asked to conduct searches. **The DO will keep a comprehensive, single record of searches.**
2. When the DO requests other members of staff to carry out searches it will be by the most appropriate method, e.g. by providing a brief description in an email or by issuing a copy of this form (full version or amended to direct very specific searches) indicating which sections require completion. Where appropriate the DO should include specific instructions, such as the search terms to use.
3. Issues the DO should consider when conducting or commissioning searches:
  - Is the information of a particular type and so likely to have restricted access? (E.g. HR information, personal data, confidential documents? – if so, FAM and HOCS will need to be requested to carry out searches
  - Requests for case-related information may also require a Virtual Cabinet search, particularly if records held only in VC, for example, complaint cases, cases where legal advice obtained.
  - Do several search terms need to be used, e.g.: an abbreviation and the full (or elements of the full) term, alternative spellings of a word or name, especially if commonly or easily mistyped.
  - If the request is time-bound, members of staff need to be advised/reminded of this so they can direct searches or eliminate records that fall outwith the time
  - Is the information likely to have been destroyed in line with our retention policy, if so checks may need to be made before commissioning searches – seek guidance from the FAM
  - Have arrangements been made to search corporate/ office/ team email accounts?
4. The date should be inserted by the DO when all searches are completed.

5. This should be the final, clarified version of the information request. If the request alters for any reason, a fresh search form should be used so that it is evident exactly what search was made in respect of what request.
6. There is no reason why the form cannot be adapted by adding extra rows to record individual searches of a system or type of record, or why rows can't be deleted if the form is being used to request a member of staff to conduct a search of specific systems/ locations.
7. Apply judgement as to what is recorded. The aim is to make it clear to any third-party what was searched, by whom and when. For example, if several individuals were asked to conduct different searches, then each would need recording. If a team was asked to carry out an identical search then record the name of the team and the range of dates, making sure the case records contain sufficient detail. The DO should also record brief details for the rationale behind the search if it is not self-evident.
8. The DO may decide to complete this in advance if asking others to search for information, to ensure that searches are consistent across the office.
9. This should be completed for all searches made, including no information held.
10. If information is held, it should be listed in a schedule attached to the search checklist.
11. If a member of staff is aware that information has been destroyed brief details should also be included. Members of staff are not expected to actively check retention schedules; this is simply additional information that may help the DO. If a member of staff is aware of having put relevant information in the secure shred-it bins they should seek the advice of the DO and HOCS immediately.
12. Searching Virtual Cabinet. It is expected that the DO will carry out the majority of searches of Virtual Cabinet<sup>2</sup>. Where searches are required of records to which the DO does not have access (e.g. HR records), **the DO should seek the advice of the FAM/HOCS as to who the appropriate members of staff are to ask to search, or for technical help.**
13. Searching Workpro. It is expected that the DO will carry out searches of Workpro, whether or not they are the owner of a case being enquired about. The DO should approach CST for technical help, if required.
14. Searching MS Outlook.
  - The DO should apply judgement as to who to ask to search MS Outlook rather than simply issuing a blanket email to all staff.
  - If the member of staff conducting a search thinks they may have deleted information from their deleted items folder (e.g. permanently deleted from deleted items when they log-off) within the last five days, they should recover the deleted items and search them. Seek CST guidance if unclear on this point.
15. Desktop, P:Drive, Z:Drive, E:Drive, office mobile phone, laptop, memory sticks and other external storage media (e.g. CD). While the DO may be able to search some locations, it is unlikely they

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<sup>2</sup> As at October 2023, when using the content search function in VC, searching for a term does not bring back results from all filing cabinets. The DO will need to search by selecting an individual cabinet (for example, corporate services, enforcement) and then repeat the search in all relevant filing cabinets which may result in duplicate results. If you need assistance please contact a member of the Corporate Services Team.

will have access to all locations, so it will be necessary from time-to-time for the DO to ask members of staff to conduct searches of locations to which only they have access, including remote working locations. The DO should give whatever guidance they can, on what types of documents information is likely to be found in. The DO should seek advice from CST and or P and I about searching and what information may be held.

16. Website - it is good practice to search the Website. Advice/guidance can be obtained from P and I.
17. Guide to Information – this should be searched for published information, even if information is found in another location, just to make sure that we have neither missed it, and in case information is held which has not yet been published.
18. Searching Sage. The FAM should be asked to conduct searches for financial information. Advice about whether other members of staff are likely to hold financial information should be sought from the FAM and the HOCS.
19. Hard-copy files/ folders/ records, notebooks and other personal hard-copy records and locations, e.g. desk drawer, filing cabinet, remote working locations. Search terms are clearly not appropriate to this type of search, so it is important that a description of the search is recorded.
20. No recorded information should be held on personal devices – only work devices, such as work laptop, work mobile phone.



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