



**Responding to information  
requests and reviews**

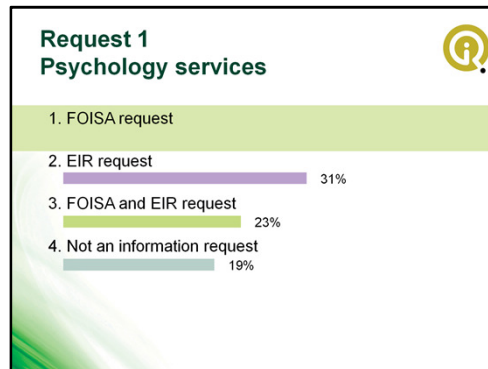
(and advice and assistance)

**Information requests** 



- The right to request and to receive
- Any information held by a Scottish public authority.
- Subject to provisions and exemptions

1. The public have a right to ask for information - people probably already ask you for information anyway, but from 1 September they will have a **legal right** to do so.
2. They'll be entitled to receive your information. I'm sure you already give out lots of information, what will change is that requesters will have a legal entitlement to receive it.
3. Of course those rights extend only to information you "holds" in terms of FOI – so the legal right is to ask for and to receive information about your secure accommodation services. If someone asks for information about something else your organisation does you are entitled to refuse to comply with the request as this part of your business is not subject to FOI law.
4. The legal rights are subject to provisions and exemptions in FOI law which allow you to reasonably and lawfully refuse to comply with a request or to refuse to disclose information. These important protections are written in legal language but are common sense. For example:
5. Confidentiality – if, by giving out the information, someone would sue you for breach of contract, you won't have to supply it.
6. But before we talk about handling requests in more detail, what's an information request?



### Information to give the audience

1. All questions have multiple choice answers, numbered 1-4. Numbers next to the answers correspond to the numbers on the voting pad.
2. When we tell you to vote, you'll have 10 seconds in which to do so. You can answer as quickly as you like.
3. If you change your mind or hit the wrong button by mistake, just press the correct one before the timer runs out and that will amend your answer.
4. And just to clarify, we can't identify you from your answers today so all of your answers will be in confidence.

### Using the Clickpads

1. Press "Spacebar" to start the vote
2. Press "Spacebar" again will end the vote and bring up the results.
3. You can also use the spacebar to move through the rest of your presentation slides

Notes:

**Option 1: FOISA request**

**Option 2: EIR request**

**Option 3: FOISA and EIR request**

**Option 4: not an information request**

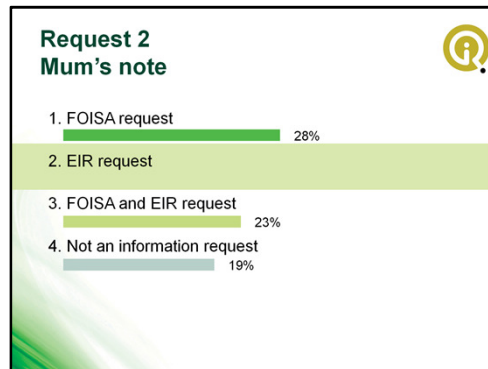
Answer: FOISA request. **See p 13 of YRTK**

Recordable format (email), gives requester's name and you have an address to respond to.

She describes the recorded information she wants.

She doesn't mention FOI law – she doesn't have to for her rights to apply.

She doesn't have to say why she wants it.



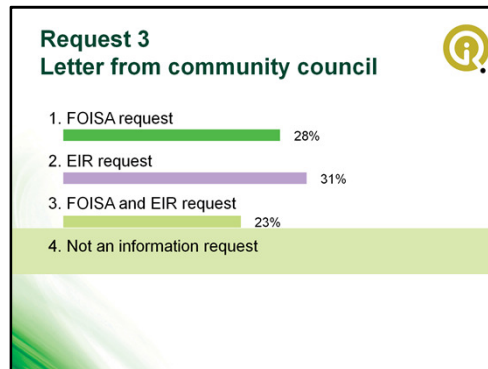
### Case study 2- Note given to head teacher

Answer 2 is correct : it's an EIR request because chemical ingredients are generally environmental information (trick question).

If you answered 1, you were close: It's a request, even though it's buried in a complaint.

- Recordable format
- Name and address for correspondence (you have her address)
- Describes recorded information Mrs Black wants to see (on the label)

If you didn't think it was an information request, this is an example of why you need to ensure everyone recognises an information request. They are sometimes buried in other correspondence, but there is the same right to request and entitlement to receive the information.



**Is this an information request #3?**

**Option 1: FOISA request**

**Option 2: EIR request**

**Option 3: FOISA and EIR request**

**Option 4: not an information request**

Could be an information request if your school holds recorded information about this issue – it if doesn't, then it's a request for opinion which is not covered by FOI law

Recordable format, name and address for correspondence

Does not describe recorded information he wants to see



1. Responding within 20 working days
2. In p6 of the Guidance for authorities new to FOI we set out the options for responding to requests

Full response, not just an acknowledgement, within the time period.

The law gives you lots of options for responding:

Default = disclosure (the requester is entitled to receive it). It should be the outcome in most cases. And is the easiest option for you.

You may issue a lot of not held information notices.

#### Provisions

You don't have to comply at all with requests that are vexatious, repeat or would cost too much to comply with (= a week's work). But you do have to respond to them. If you're considering doing this, use our briefings on the provisions.

#### Refusals

You can only refuse to provide information where FOI law allows you to. FOISA contains exemptions and EIRs contain exceptions which set out the circumstances where you can refuse to provide information. We have briefings on each one. P7 of our Guidance sets out what must be in your refusal notice.

For some requests, you may have to give several different types of notices in the response for example, disclose some information and give notice that other information is not held.

## Vexatious



Vexatious requests are those designed to harass or disrupt the authority, or which lack serious purpose or value.

Read our briefing very carefully – it's a hard provision to prove because you don't usually know the requester's motivation. What might seem frivolous to you may actually have a serious purpose.


You need to make sure you have the evidence to support use of this provision.



1. Sometimes requests are very unclear or vague. The request doesn't give you enough understanding of what the requester wants, so you can't provide a response.
2. In this case use clarification – go back to the requester and ask them to clarify their request. You must offer advice and assistance to help them. For example, did you mean x?
3. If the requester does not respond after 40 working days, you can treat the request as abandoned.
4. If the requester responds to a request for clarification, you should treat it as a new request (day 1).
5. Don't confuse the "clarification" process with the advice and assistance you'd give as a normal part of handling a request. It's common to go back and check a description or a date with a requester – that's not "clarification" in the sense of this provision – the clock doesn't stop in these circumstances because you already have a request that you can deal with.



**Searching for information** 



- Checking
- Collating
- Assessing
- Recording

1. The first thing to do, once you have a request you can respond to, is check what information you have that falls within the scope of the request.
2. One of the most common mistakes authorities make is not checking properly whether they have the information that's been asked for. You should not make any decision on whether to disclose or withhold it until you have the information in front of you.
3. A request can ask for any information of any age in any recorded format – paper, electronic, CCTV, audio file, etc. So make sure your search covers all possible areas and that you've checked with your colleagues who might have e.g., emails that haven't gone into the filing system yet.
4. Record your searches – so you know where you looked and what you found.
5. If you find it will take hours and hours of work to pull out all the information, you can consider fees or excessive costs...


**Fees**




**Charging:** Must issue a fees notice  
**Refusing:** Must explain why

In both cases, must offer advice and assistance


1. See pp18 and 19 of YRTK and our briefings
2. Under the EIRs, you can ask the requester to pay the full costs of providing information to them. Under FOISA the first £100 worth is free and you can charge 10% of the cost up to the £600 limit.
3. Most FOI responses are free of charge and even where they can charge, authorities don't do it. If you do charge for information under either FOISA or the EIRs, you must issue a formal fees notice, setting out the basis of the charge. The clock stops while you wait for the requester to pay and restarts when they do. If they don't pay, the request is deemed abandoned.
4. If a FOISA request would cost more than £600 to comply with, you can refuse to comply with it at all. There is no such limit under the EIRs
5. In any case involving charging or excessive costs you must always give the requester advice and assistance to help them reduce the potential costs.

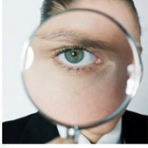
**Information not held** 



- Issue a “no information held” notice

1. If you find you don't hold any information in scope of the request, issue a no information held notice, setting out rights of review and appeal
2. If you know who does hold that information, you should advise and assist the requester by telling them where to direct their request to (don't transfer it).

**Deciding whether to disclose** 



**Disclosure:**

- rights of review and appeal


**Refusal:**

- Reasons
- Which exemption applies
- Harm test
- Public interest test
- Rights of review and appeal

1. When you've found information and you're not waiting for a fees notice
2. If you can disclose the information, then you must do so.
3. It's deliberately much harder to refuse than to disclose.
4. You can lawfully refuse to provide information only where there is an exemption or exception in FOI law that allows you to do that...

Refusals	
<p><b>Exemptions (FOISA)</b></p> <ul style="list-style-type: none"> <li>• Otherwise accessible</li> <li>• Prohibitions on disclosure</li> <li>• Law enforcement</li> <li>• Commercial interests</li> <li>• Confidentiality</li> <li>• Court records</li> <li>• Personal information</li> <li>• etc.</li> </ul>	<p><b>Exceptions (EIRs)</b></p> <ul style="list-style-type: none"> <li>• International relations, defence</li> <li>• Intellectual property rights</li> <li>• Confidentiality</li> <li>• Commercial information</li> <li>• Protection of the environment</li> <li>• Personal information</li> <li>• etc.</li> </ul>

1. The exemptions and exceptions provide lawful reasons why authorities cannot disclose some information. We can imagine, for example, it must be trying for some public officials that there is no exemption for embarrassment.
2. The critical consideration is always the information itself – there are no blanket exemptions that apply to particular types of information. You need to look carefully at the information and the exemption/exception to decide whether it applies.
3. There are very few absolute exemptions or exception in FOI law. That is, if the information fits the exemption or exception, it is automatically exempt.
4. Most of the exemptions contain a harm test (one of substantial prejudice) (The harm that would result from release must be real, not imagined.)
5. and/or a public interest test. (The balance of the public interest in withholding the information must be greater than the balance of disclosing it before a refusal notice can be issued.)
6. We have detailed briefings for all the exemptions and exceptions – the best way to proceed is to work through the information alongside the briefing.
7. We're going to work through the personal information exemption shortly to show you how that works (we think that's the exemption you'll most often consider).

**Reviews** 

- Request for review must specify grounds for dissatisfaction
- Respond within 20 working days
- Take a fresh look at the request and your handling of it
- Options:
  - Confirm original decision
  - Substitute a different decision
  - Reach a decision for the first time

1. Request for review must specify grounds for dissatisfaction
2. Respond within 20 working days (new regulations will allow more time for holidays)
3. Take a fresh look at the request and your handling of it (reviewer should not have responded to or been involved in the handling of the original request – not easy in a small organisation)
4. Options:
  1. Confirm original decision – uphold the original decision
  2. Substitute a different decision – e.g., disclose some or all of the information
  3. Reach a decision for the first time - only if you didn't respond to the original request (not recommended!)
4. Reviews are for you – avoid an appeal and even if there is one, have your case clear. (more work involved in responding to our investigations)