FREEDOM OF INFORMATION REQUESTS

A GUIDANCE NOTE FOR THE CITIES AND LOCAL GROWTH UNIT

Background


What is a Freedom of Information (FoI) request?

Any written request for recorded information that is not routine business should be treated as a Freedom of Information (FoI) request. Information means “information recorded in any form”, and may include official information in private email accounts. Correspondents don’t have to refer to FoI when making their request and the reason for the request is irrelevant. Requests for information apply to material “held” at the time the request was received. We are not expected to create information in order to respond to a request. We are legally required to answer FoI requests within statutory deadlines.

What is an Environmental Information Regulations (EIRs) request?

If the information requested is environmental information (related to the land, air or water), you should check whether all or part of the request should be treated under the Environmental Information Regulations (EIRs). The EIR Regulations are derived from European law and implement Council Directive 2003/4/CE on public access to environmental information in the UK. The principle behind the law is that giving the public access to environmental information will encourage greater awareness of issues that affect the environment. If you receive a request under the EIR regulation you should contact Information Rights Unit (IRU) in BIS or the Knowledge and Information Access (KIA) in DCLG urgently to ensure any reply complies with the legislation.

Who's responsible at a departmental level?

FoI requests are all dealt with by the Information Rights Unit (IRU) in BIS and the Knowledge and Information Access (KIA) team in DCLG. They will allocate the request to the appropriate policy team. If you are allocated a request, you are responsible for preparing the reply. It is for you to provide all documentation that you consider to be within scope of the request by the deadline. If you think you have received a FoI request direct from a correspondent, or if you are not sure whether a question asked, e.g. in a random email, should be treated as a FoI request, you should seek advice from IRU or KIA straightaway.

In all instances when a case is allocated to a team in CLoG, please notify David Masino who keeps a record of all case received.

Who's responsible at the national level?

The Information Commissioners Office (ICO) is the UK’s independent body set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. It is a non-departmental public body which reports directly to Parliament. The Information Commissioner is an independent official appointed by the Crown. The current Commissioner is Christopher Graham. His tenure is due to end in June 2016. Further advice on the ICO and its FoI role can be found here.

A requester dissatisfied with the handling of a request, following an internal review, is entitled to apply directly to the Information Commissioner for a decision. The ICO can take action to ensure public bodies meet their information rights obligations.

The process

It depends on which department the request was made to. If it’s a BIS case, IRU will allocate it to the policy lead by email notification. DCLG cases are allocated via Despatch Box.

It is then for you to assess the request, search for the information requested and to draft a response. David Masino can offer advice on the handling of requests.

Timetable for responses

The statutory deadline is the date of receipt in the department plus 20 working days. However, the date for submitting the draft response to IRU or KIA should be the date of receipt plus 15 working days to allow time for processing. The allocation email will state what these dates are.

It is possible to get an extension to these deadlines, but only if there is a good reason. This will probably be the case if third parties have to be consulted. You cannot get an extension simply because you have other things to do. The five working days between the draft and statutory deadlines is so that all SpAds and Press Office, if request is from a journalist, can see and clear the response.

Points for handling a request

1. What was actually asked (not what we think they mean)?
2. Do we hold the information?
3. Is any of the information requested environmental information? Should the request be treated under the Environmental Information Regulations (EIRs)?
4. Where to search for the information? Have you tried all corporate systems like Matrix, Alfresco, Outlook, personal and shared drives (including the M Drive), local systems or databases, registered files or other paper records?
5. What is the scope of the request? Are any timeframes specified?
6. How long would it take to collect the information?
7. How much will it cost to collect the information?
8. Are any third parties in scope? Have you got their permission to release their information?
Exemptions
While the default in law is that all information will be released, the FoI Act recognises that this could cause harm so exemptions do exist. If you think information should be withheld, speak to your IRU or KIA case adviser. The exemptions that are likely to apply, with links to further advice from the ICO, are:

21. Information accessible to applicant by other means *
22. Information intended for future publication
22A Research
23. Information supplied by, or relating to, bodies dealing with security matters
24. National security
26. Defence
27. International relations
28. Relations within the United Kingdom
29. The economy
30. Investigations and proceedings conducted by public authorities
31. Law enforcement
32. Court records, etc.
33. Audit functions
34. Parliamentary privilege
35. Formulation of government policy, etc. *
36. Prejudice to effective conduct of public affairs
37. Communications with Her Majesty, etc. and honours
38. Health and safety
39. Environmental information
40. Personal information *
41. Information provided in confidence
42. Legal professional privilege
43. Commercial interests *
44. Prohibitions on disclosure

* Those most likely to apply to cases in CLoG

Exemptions – public interest test
The majority of these exemptions are subject to a public interest test where any potential harm to the bidder has to be balanced against the public interest of releasing the information. These cases must be discussed with IRU or KIA. All EIR exceptions are subject to a public interest test – the information can only be withheld if the public interest in withholding is greater than the public interest in release. Your case adviser can help you form the appropriate arguments.

Clearing the response
A draft response should be cleared by David Masino who will check it for formatting, consistency of response to similar requests and interpretation of the rules, and by your DD from a policy point of view in time for it to reach IRU or KIA by the deadline for drafts. IRU and KIA will handle the SpAd and Press Office clearance.
Recent examples in CLoG

1. A request for papers on a LGF funded project, the South Wye Transport package, from a local campaigner unhappy with his local authority’s support for a project which would see a new road built through a residential area. This case demonstrated the importance of the lead official conducting a thorough search of the documents in scope as well as fully understanding what is being asked for, because in this case some additional papers were only discovered and disclosed following a request for an internal review of how the original request was processed. Clearly such failings result in reputational damage to BIS/DCLG and government more widely and we should make every effort to avoid them.

2. A request for papers on HMG’s decision to expand the original growth deal. An example where, due to the volume of documentation potentially in scope, we would not be able to answer the request without exceeding the cost limit. The requestor was advised that if they decided to re-submit the request, they should narrow its scope, which would allow officials to focus on the most relevant correspondence.

Further advice

If you receive a FoI request and need advice on the interpretation of the request or on the drafting or handling of the response please contact David Masino.