

Responding to Information Requests: Guidance and Procedures

Scottish Information Commissioner



Scottish Information
Commissioner

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List of abbreviations used in the document

CST	Corporate Services Team
DHOE	Deputy Head of Enforcement
DO	Designated Officer, the officer designated to respond to the request
DPA 2018	Data Protection Act 2018
EIRs	Environmental Information (Scotland) Regulations 2004 (EIRs)
FAM	Facilities Manager
FOISA	Freedom of Information (Scotland) Act 2002 (FOISA)
HOCS	Head of Corporate Services

GDPR	General Data Protection Regulation
HOCS	Head of Corporate Services
HOD	Head of Department
HOE	Head of Enforcement
HOPI	Head of Policy and Information
P&I	Policy and Information Team
RPSI	Re-use of Public Sector Information Regulations 2015
SAR	Subject access request
Section 60 Code	Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the EIRs
SIC, the Commissioner	Scottish Information Commissioner
SMT	Senior Management Team

Responding to Information Requests

Introduction

1. This document sets out the procedures that should be followed on receipt of, and in responding to:
 - (i) requests for information or review under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs)
 - (ii) subject access requests (SARs) under the General Data Protection Regulation (GDPR) or the Data Protection Act 2018 (the DPA 2018)
2. The Commissioner has separate guidance for responding to re-use requests under the Re-use of Public Sector Information Regulations 2015 (VC78673).
3. This guidance sets out the *procedures* to be followed. It aims to give procedural guidance. Staff are expected to refer to published briefings, guidance and advice on technical issues. 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 SIC.
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. This means that:
 - (i) instead of having: a right to request, a right to review, a right to make an application and then a right to appeal to the Court of Session, plus the right to complain about our service to the Scottish Public Services Ombudsman (SPSO)
 - (ii) requesters to the SIC have: a right to request information and a right to request a review. If they are dissatisfied with the way we have responded they can also seek to have our decision judicially reviewed and/or complain about our service to the SPSO.
5. This means it is especially important to be as thorough and accurate as possible, particularly at 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

6. The SIC 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 SIC will take account of the requirements of the Equality Act 2010.
7. The presumption is always that information will be disclosed. We must always ask ourselves: even when an exemption applies and information could be withheld, should it be withheld? Unless there is an overriding reason for non-disclosure (e.g. personal data, or risk to the organisation), we should disclose as much as possible.

8. Information requests are an opportunity to engage and communicate with stakeholders. Where needed, responses should inform, assist and advise requesters, by providing explanations and context that 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, we will consider whether it would be beneficial to stakeholders to provide an explanation (e.g. through an FAQ) on our website.
11. SIC will monitor performance, and publish statistical information about how we respond to requests and reviews, at least annually.

Structure of the document

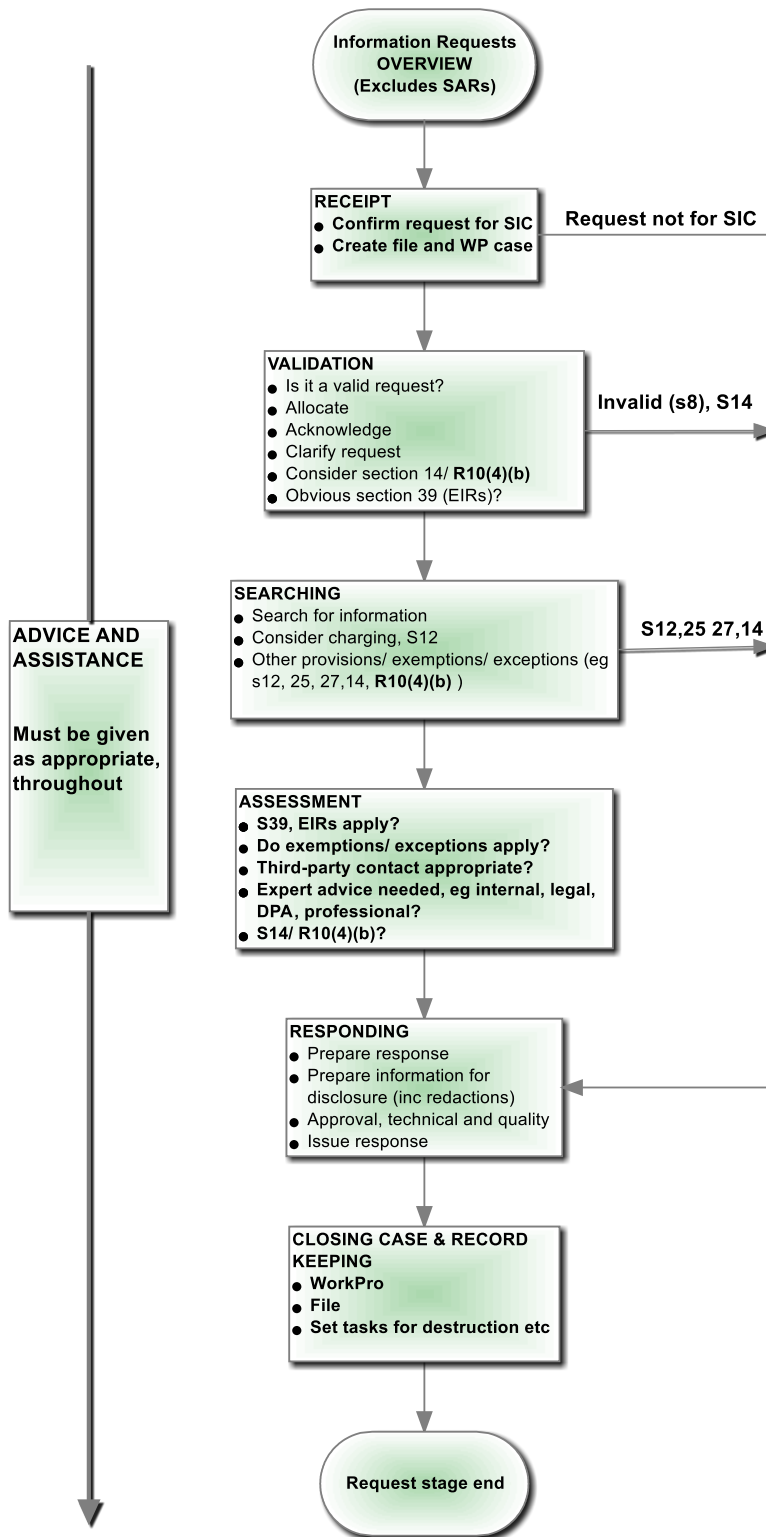
12. The document is set out in a series of sections, which can be read independently of each other, where specific guidance is sought.
 - (i) Introduction
 - (ii) Policy and principles
 - (iii) Responsibilities
 - (iv) Responding to requests under FOISA
 - (a) Receipt of a request
 - (b) Assessment of application of FOISA
 - (c) Responding to the request
 - (v) Requests for review under FOISA and EIRs
 - (vi) Timescales and monitoring
 - (vii) Responding to subject access requests

Responsibilities

Role	Responsibility
Ensure procedures and guidance reviewed and updated (actual reviewing likely to be delegated to colleagues)	HOCS
Allocation of information requests/SARs	HOE (DHOE in HOE's absence)
Approving fees notices	HOE/DHOE
Responding to requests	Designated officer (DO)
Management check of responses	SMT, HOE, DHOE
Allocation of review requests	HOPI
Identifying and reporting lessons learned	Reviewer
Monitoring and reporting performance	SMT
Searching for and locating information	Any individual commissioned by the DO
Reporting and uploading of statistics	FAM

Procedures for responding to requests for information, FOISA and EIRS

Overview of main steps in responding to information requests



13. The flow diagram sets out the broad process which should be followed when responding to a request for information. The application of this process is not intended to be linear and relies on judgement as to which parts can be carried out concurrently, and the amount of action needed in relation to each element.

Receipt of a request

14. The overall aim of this part of the process is to assess and decide whether the request is for the SIC, and to set up the file.
15. **All** requests for information should be referred to the CST, irrespective of who receives them and how they are received as soon as they are identified as information requests. If a request is received directly into the enquiries or SIC box, the CST should make the initial assessment about whether it is an information request or SAR. If it is unclear, advice on whether something is an information request should be sought from the HOE or a DHOE. If the request is, or appears to be misdirected, see [Misdirected requests](#).
16. If the request is contained within a letter/email/complaint which deals with other issues, the officer receiving the request should copy it and highlight the part containing the request and pass it to the CST immediately.
17. If a request contains (or appears to contain) a combination of a FOISA/EIRs request, a SAR or RPSI request, separate cases should be created for each at the outset. (See VC78673 for guidance on responding to re-use requests.)
18. If it becomes apparent during the handling of a request that it also contains a SAR or RPSI (or *vice versa*), a second case should be created at that point.
19. The CST will open a case in WorkPro, and create a hard-copy file.

Hard copy files

20. The type of hard copy file created is a matter of judgement, based on the request itself. The CST has a stock of prepared file dividers which will be used in every case (as it is administratively easier, but clearly officers will only use those they need to). The CST will decide what type of file cover to use when they create the record. The file dividers are as follows:
 - (i) Request and clarification
 - (ii) Searches and information not in scope
 - (iii) Correspondence
 - (iv) File notes and internal guidance
 - (v) Information withheld (note: marked-up with exemptions and whether considered at request/ review stage)
 - (vi) Information disclosed (note: marked up with exemptions and whether considered at request/ review stage)
 - (vii) Response to request
 - (viii) Review request and clarification

- (ix) Officer's note/other information for reviewer
 - (x) Review decision and response
21. The main record is WorkPro, but the hard copy file will be the working record so it is important that both are up-to-date.
22. Note that when the case is closed, CST are responsible for record-keeping and will recycle files/dividers, and store papers to minimise storage space.

Allocation

23. 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.
24. Allocation will be based on the following principles:
- (i) Which team?
 - E.g.
 - (a) Case related requests/information will be appropriate to Enforcement
 - (b) 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)
 - (c) Role and remit of the Commissioner or the office: to the CST or P&I
 - (d) The running of the office: to the CST
 - (e) HR: to the CST or appropriate member of SMT
 - (f) Finance: to HOCS or FAM
 - (g) Statistical information: to P&I or FAM
 - (h) SARs: to the appropriate individual (if a SAR and request are made in the same letter, both would normally be allocated to the same officer) – see below for rules on the allocation of SARs from current, past or prospective employees.
 - (ii) Which person within the team?
 - (a) For CST, the allocation will be to the team, who will ensure a specific officer takes the DO role.
 - (b) For Enforcement, the specific officer if 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.
 - (c) For P&I, the specific officer if the HOE (DHOE) considers appropriate, based on an assessment of, for example, annual leave, current workload, areas of responsibility and so on. The HOPI should be consulted as needed.
 - (d) For an individual (e.g. FAM), a check should be made of annual leave or other commitments (particularly out of the office), and where appropriate the allocation made to their line manager or another team where practicable.

25. The HOE (DHOE) will update the rota in VC82164.
26. The HOE (DHOE) will prepare any guidance/direction required they consider appropriate including who should approve the final response (DHOE or HOE) and in relation to searching for information. HOE will check the 20th working day on the front of the file. HOE will then pass the case to the CST who will, using **FOI00**:
 - (i) acknowledge receipt of the request advising the requester that [the nominated DO] will contact them within the next few days
 - (ii) issue an Equality Monitoring Form and
 - (iii) allocate the request immediately to the Designated Officer (DO).

Contacting the requester

27. The DO must send the requester an introductory letter (hard copy or email) within two working days. Standard letter **FOI01** should be used for this. **If a full response can definitely be sent in that time, this letter may be omitted.**

Validation

Misdirected requests

28. A large proportion 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 is an enquiry because the request was simply misdirected to us, or whether it is an information request. It may be necessary to clarify this before taking any action. If that is the case, clarification should, if possible, be by phone or email. If phone/email contact details are not held, rather than delay, treat the request as an information request. Seek HOE (DHOE) advice when needed, but broadly speaking:
 - (i) 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 information, then it should be treated as an information request.
 - (ii) If the requester is clearly seeking information (or advice) about where to go for information, then it should be treated as an enquiry
 - (iii) If it is unclear (even after seeking advice from the HOE (DHOE)), then it should be treated as an information request.
29. Where a misdirected request has been treated as an information request and the requester subsequently confirms the request was misdirected, close the case in WorkPro using outcome code 'Request withdrawn' and provide a brief reason in the Outcome Details section.
30. Misdirected requests and enquiries will normally be allocated to the CST, and must be responded to within two working days.
31. Even if a request is misdirected, there is always the possibility that we might hold some relevant information in relation to an application for a decision. The HOE (DHOE) will alert the DO to this, when aware of other information, and in such cases may decide to allocate the case to another team. The DO receiving the request should first of all check that the request is valid (see below).

32. If it is valid, the DO should take any reasonable (and proportionate) steps to check whether the SIC holds (any of) the information requested. This may involve checking with colleagues whether any ongoing or recent case has considered the type of information the requester is seeking.
33. In order to comply with FOISA/EIRs (and provided the information is not held), the response must explain that the information requested is not held. If it is known, or can be easily established, where the request should have been directed, this advice should be included in the response.
34. Whether or not information is held, if the DO believes section 18 (neither confirm nor deny) applies, guidance should be sought from the DHOE/HOE.
35. In all such cases, and in line with the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs ("the Section 60 Code"), the requester must be advised that they have a legal right to request a review of the response, even where it is extremely unlikely that this right would be exercised.
36. If it is **not** valid, the DO should contact the requester to offer advice and assistance and proceed on the basis of the outcome of that contact.

Assessing validity

37. 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:
 - (i) be in writing or in another form capable of being used for subsequent reference (e.g. email, tape, DVD)
 - (ii) state the name of the applicant and address for correspondence
 - (iii) describe the information requested.
38. If the request is for environmental information, the request can be made verbally, but should (ideally) include the information set out in section 8.
39. The HOE (DHOE) may have commented on the validity of the request when allocating it. The SIC's website has a range of information about validity of requests. It is recommended the DO refers to this or seeks further guidance from their DHOE if unsure or if the request appears to be anything other than straightforward.
40. If a request is clearly **not** valid, the DO should contact the requester immediately by the quickest method and give advice and assistance as needed. Subsequent action will depend on the outcome of that contact.
41. If a request is clearly **not** valid, and the request is straightforward:
 - (i) if information is not held, the requester should be told this and advice and assistance given as appropriate;
 - (ii) if information is held and can be disclosed in full, it should be sent to the requester even if the request is invalid and advice and assistance given as appropriate.
42. In both instances, the advice and assistance should explain that, as the request has not been responded to under FOISA/EIRs there is no right to review, and what needs to be done to make a valid request.

Clarification of the request

43. 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

44. 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 such a 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 "Advice and Assistance" guidance below.
45. 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:
- (i) the information requested is framed in too general a manner to be clear
 - (ii) the request uses ambiguous or unknown terminology
 - (iii) the request contains acronyms or abbreviations that are either unknown, or could have several meanings
46. 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, so the meaning will also need to be clear to the reviewer.

Process of seeking clarification

47. 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.
- (i) **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.
 - (ii) **By letter:** standard 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.
 - (iii) **By email:** straightforward clarification can be sought in the body of the email. If the matter is complex, standard letter **FOI02** should be used.
48. The 20 working days for responding to the request will commence on the day after receipt of the clarification.
49. If no response to letter **FOI02** has been received within 20 working days, the DO should write to the requester, explaining that we cannot proceed with it under FOISA/EIRs, as we do not have sufficient information to help us identify *precisely* 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. Standard letters **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.

50. If this is an EIRs case, the response must cite the exception in regulation 10(4)(c) (request formulated in too general a manner).
51. 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

52. If the request is made verbally (e.g. during a phone call), the officer taking the call should consider both:
 - (i) whether it is a request for environmental information, and
 - (ii) whether 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, SIC staff should endeavour to respond to the request regardless of the format of the request or the rights of the requester.
53. 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.
54. 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.
55. 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 standard letter **FOI05**. If further clarification is required, standard letter **FOI02** can be used to obtain clarification.

Name and address of the applicant

56. Section 8(1)(b) of FOISA requires that the requester provides a name and an address for correspondence. SIC 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.
57. 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.
58. 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 e.g. 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.)
59. Requests made on behalf of another person (e.g. by a firm of solicitors on behalf of a client) must name the third party (the "true applicant") in order to be valid.

60. If it is not appropriate in the circumstances to accept the request because we don't have a valid name and/or address, standard letter **FOI06** should be sent. HOE (DHOE) should be consulted before the letter is issued.

FOISA or EIRs?

61. 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.
62. 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.
63. There is [guidance](#) available on the SIC's website on determining whether information is environmental information for the purposes of the EIRs.

Mixed EIRs/FOISA requests

64. 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.
65. 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 as soon as possible from the HOE (DHOE).
66. Note, if the request also includes a SAR or re-use request, the response to request must be sent out in a separate letter.

FOISA section 14/EIRs regulation 10(4)(b): vexatious/ repeated/ manifestly unreasonable requests

67. SIC can refuse to comply with a vexatious or repeated request (section 14 FOISA) or with a request which is manifestly unreasonable (regulation 10(4)(b) EIRs). The SIC briefings on section 14 and regulation 10(4)(b) are helpful.
68. 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.
69. 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, letter **FOI07** should be issued, in consultation with the HOE (DHOE).

Advice and assistance (section 15 and regulation 9)

70. Both section 15 of FOISA and regulation 9 of the EIRs require SIC to provide reasonable advice and assistance to requesters.
71. 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.

72. 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

73. 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 SIC. This is clearly easier in a face to face situation, but can also be done by mail or email using standard letter **FOI05**.
74. The DO should provide the requester with two copies of the request (one for their records) and a business reply envelope for the reply.

Assistance in framing a request

75. 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, a requester asks for all the information we hold on a particular public authority. This wide 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.

Requests for information not held

76. If the information was at one time held by the SIC, but has been disposed of, this should be explained to the requester at the earliest possible opportunity. It is good practice to do this informally, preferably by phone, as this is likely to be the quickest approach for the requester. It should be made clear that this is not the SIC's formal response, but that one will be issued with the explanation in it, if that is what the requester wants.
77. The Commissioner's Retention Schedule (VC72711) may be useful in such cases, in explaining our procedures for retention, archiving and disposal.

Searching for information

Procedures

78. All searches for information will be initiated by the DO within one working day of receiving a clear information request (unless it is very clear that complying with the request is likely to exceed cost limits in FOISA or to be manifestly unreasonable under the EIRs). The DO should follow any guidance given at allocation. 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 SMT, DHOEs or the CST as needed.
79. All searches must be carried out promptly, to the timescale set by the DO. The DO will normally ask for searches to be completed by the end of the following working day, but this may be extended by negotiation with the DO if it is known the information is particularly complex or voluminous. 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.

80. Any officer required to carry out a search must respond, even to say no information is held.
81. If an officer 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 consulted immediately.
82. 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.
83. The checklist must record:
 - (i) Where searches are made
 - (ii) Who makes them
 - (iii) What search terms are used if electronic
 - (iv) A summary of the results
84. The Information Search Checklist should be kept up-to-date in WorkPro and printed out for the hard-copy file when it is complete. It should be filed in the relevant section of the file.
85. If the DO is of the view that there are likely to be charges they should, as appropriate:
 - (i) contact the requester immediately to offer advice and assistance
 - (ii) seek advice from the HOE (DHOE).
86. 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.**
87. 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:
 - (i) Where/what system they are required to search, e.g. Outlook email, notebooks, paper records
 - (ii) 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
 - (iii) Timescale for response
 - (iv) To reply to the DO by email confirming either:
 - (a) no information is held, or
 - (b) information is held and attached

- (v) 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
 - (vi) If a lot of information is held (e.g. in a case file), the DO should be notified so that arrangements can be made to have it copied for the paper file.
88. 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 colleagues as appropriate.
89. The DO must organise the information held and in scope as follows:
- (i) Sort documents into reverse chronological order (as far as possible)
 - (ii) Number the documents and then enter them into the Schedule of Information in WorkPro.
 - (iii) Scan (or have scanned) a complete set into the WorkPro record.
 - (iv) File a 'clean' hard copy filed in the paper file.
90. If information is not held, the DO must offer reasonable advice and assistance and/or respond as set out in the section on **Responding to the request**.

Chain emails

- (i) Chain emails often result in duplication of information. 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...*).
91. One way to separate chain emails is to:
- (i) Open the email, save it as an "HTML" document. Open the HTML document and insert page breaks at the end of each email in the chain. You will then have a document where each email starts on a new page.
 - (ii) The duplicate pages can then be removed and the information sorted into reverse chronological order, making it easier for the requester to follow.

Charging and excessive cost of compliance (section 12)

92. The SIC has published guidance on charging and excessive costs based on the Fees Regulations. The SIC has also published guidance on responding to manifestly unreasonable requests under the EIRs. This guidance, and FAQs, on the SIC website should be followed to establish whether charges are applicable under FOISA and/ or the EIRs.
93. Our Charging for Information Policy (VC49012) sets out when we will impose a charge. The online SIC publication scheme also sets out our charging policy: <http://www.itspublicknowledge.info/home/SICPublicationScheme/PSintro.aspx>. There is little information that will ever be charged for.

94. If a charge does apply, the CST should be asked to raise an invoice 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. If payment is made by cheque, CST should advise when it has cleared. The clock will restart the day after the cheque has cleared.
95. If fees are applicable, the DO must offer advice and assistance to the requester, explaining why fees are applicable and helping the requester to narrow the scope. This may include, for example, explaining what could be provided for no cost, or minimal cost.
96. In all cases where fees are applied, a fees notice must be drafted by the DO and approved by DHOE before it can be issued. Use standard letter **FOIO08**.
97. If the request is refused because fees exceed the upper cost limit or the cost of complying would be manifestly unreasonable, standard letter **FOI09** should be used. In all cases the requester must be advised in this letter 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. This might include providing a sample of the information held.

Assessment

Initial checks

98. The DO should ensure they are confident that searches are complete, 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

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

Action needed

100. The aim of the assessment part of the process is for the DO to reach a conclusion about whether the information held:
 - (i) 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
 - (ii) **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.
 - (iii) **Section 18**, neither confirm nor deny, applies.

Applying exemptions/exceptions

101. The SIC has issued extensive [guidance](#) on applying exemptions and exceptions. This should be applied as appropriate to the held information.

102. If the DO's view is an entire document should be withheld, the document should be annotated to this effect, saying which exemptions/exceptions apply, and the Schedule of Information updated.
103. If the DO's view is information in the body of documents should be withheld, then the document should be annotated (in pencil at this stage) in such a way that it is clear to anyone not familiar with the case, which information is being withheld and under what exemption/exception (e.g. bracket at start and finish of the extract, with the exemption/exception noted in the margin).
104. In considering whether exemptions/exceptions apply, the general advice in the next section should also be followed.

Requests for information about investigations

105. Requests for information relating to investigations must be given careful consideration.
106. 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 SIC or for other parties.
107. 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)).
108. Responses to such requests should always be discussed with the HOE (DHOE), and DO's should follow the guidance on third-party consultation where appropriate.

Information otherwise accessible (section 25)

109. If the request relates to a class of information in the Commissioner's publication scheme, the document may already be available online at <http://www.itspublicknowledge.info/home/SICPublicationScheme/PSintro.asp> or in the SIC store of publications. Most of the SIC's business documents are available here.
110. Information in the online publication scheme can always be disclosed as published. If the request is for information that is in the publication scheme but has not yet been uploaded to the website, the DO must check whether any exemptions apply e.g., personal data. If they do, the procedures for withholding information and serving notice should be followed.

Information intended for future publication (section 27)

111. If any of the information held is intended for future publication the SIC 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).
112. The intention to publish must be clear and demonstrable and not aspirational. For example, the annual report plan will give our intended date for laying before Parliament and launch; this is 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.

113. Helpful sources of information about future publication are the operational plan, project plans, register of key documents and colleagues. If in any doubt, speak to the relevant HOD.
114. If the request is for information that may be included in other reports, e.g. statistical information that we may be publishing in a special report, seek advice from the relevant HOD.

General assessment advice

Third Party Consultation

115. If the information held and in scope includes information about third parties such as applicants, public authorities or suppliers to the SIC, it may be appropriate to seek their views on disclosure. This is particularly pertinent where the release of such information without a third party's prior consent may result in an actionable breach of confidence or in a breach of data protection laws. (See the [Section 60 Code](#) for guidance on when third party consultation should take place.)
116. Consultation should take place as soon as practicable, as the response to the request must be within the 20 working days.
117. 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.
118. 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.
119. If consultation with third parties is appropriate, standard letter **FOI10** should be used. This letter sets out the parameters of the consultation and should:
 - (i) invite the third party to set out their views in the terms of the exemptions/exceptions/provisions they consider could apply to the information
 - (ii) make it clear that it is ultimately a matter for the Commissioner to decide whether the information should be released
 - (iii) give a date by which responses must be made, allowing time to formulate the response to the requester.
120. The DO must also follow the guidance on **Section 45 of FOISA**, when considering third party information.

Expert advice required?

121. Expert advice, such as technical advice from a subject expert (internal or external), legal advice, guidance from colleagues should be sought at the earliest possible opportunity and clear timescales set for the expected response.

122. Any request for internal advice should set out the request, or a short synopsis of the request (if very long), the issues and the advice/questions that need to be addressed.
123. If the advice is likely to be required from an external source, HOE guidance should be sought, whether or not the advice is likely to incur costs.

Section 45 of FOISA

124. 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*.
125. 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). This will involve not only the withheld information under consideration in any particular case, but also information contained in submissions, etc.
126. Section 45(2) sets out the circumstances where information can be disclosed without committing a criminal offence. The following are particularly relevant when dealing with information requests:
 - (i) *the disclosure is made with the consent of the person from whom the information was obtained or furnished*. In other words, if we obtain the consent of the public authority (or third party) to disclose the information, there will be no breach of section 45. (Even if consent is not given, it may still be possible to disclose information without breaching section 45, provided another condition in section 45(2) can be fulfilled.)
 - (ii) *the disclosure is made for the purpose of, and is necessary for, the discharge of a [European] Community obligation*. Probably the most important Community obligations for the purposes of section 45 are the duties to comply with subject access requests under the GDPR and the DPA 2018 (these are dealt with in **Responding to subject access requests** below) and to respond to requests for environmental information made under the EIRs. Where we receive a request for environmental information held by the Commissioner, we will have lawful authority to disclose that information provided it is *necessary* for us to disclose that information in order to comply with the request. This means:
 - (a) the request must be valid before information can be disclosed
 - (b) there must be a careful consideration of the terms of the request (e.g. it will not be necessary for the Commissioner to disclose information which falls outwith the terms of the request – although the duty to provide advice and assistance in terms of regulation 9 will remain) and
 - (c) where exemptions/exceptions are available to the Commissioner, they must be applied.

Again, even if disclosure is not necessary for the discharge of a Community obligation, it may still be possible to disclose information without breaching section 45, provided another condition in section 45(2) can be fulfilled.

127. In line with the Section 60 Code of Practice, it is good practice to consult with a public authority when dealing with a request for information provided by that authority.

Destruction of the information held

128. Under section 65 of FOISA and regulation 19 of the EIRs, it is a criminal offence, once a request has been made for information, to destroy etc. the information with the intention of preventing the information being disclosed.

129. Care must therefore be taken to secure any information covered by an information request against destruction between the time the request is received and the time it is responded to. In many cases it will be appropriate to alert the HOD, in their capacity as Records Custodian for their team, that an information request has been made. The HOD should ensure that team members are alerted using the most appropriate means in the circumstances.

130. This should be done at the earliest possible opportunity, where possible by the HOE at allocation.

Responding to the request

General process

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

- (i) The response should be drafted and rooted in the context of good “customer service”. It 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.
- (ii) The response should be legally and technically competent

132. The DO should:

- (i) Draft the response letter, ensuring it makes reference to the Schedule of Information (where appropriate) and rights of review
- (ii) 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.
- (iii) 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)
- (iv) Ensure the paper file is up-to-date
- (v) Refer the file and the draft response to the HOE (DHOE) for approval as directed by the HOE at allocation.

- (vi) 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 letters.** On the rare occasions a letter has to be drafted in full from scratch, the DO should refer to the Commissioner's guidance "Content of notices: Guidance on what a response to an information request must contain to comply with FOISA/EIRs" at http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx.

133. The HOE (DHOE) will :

- (i) check the response for:
 - (a) Accuracy (e.g. have all redactions been made properly, is any advice correct and so on)
 - (b) Quality (including use of plain English and appropriate context/advice and assistance)
 - (c) Technical competence (e.g. have exemptions/ exceptions/other provisions been properly applied)
- (ii) report any information which it may be appropriate to add to the SIC publication scheme, or website, to the SMT for consideration
- (iii) 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).

134. The DO will sign and issue the response, once approved.

135. All standard letter templates in WorkPro have a logo header and footer so that they can be sent out as email attachments. If you are sending a hard-copy letter, the header and footers should be deleted before printing on headed paper.

136. Emails sent from within WorkPro cannot request receipts so it must be emailed from the DO's inbox.

137. The response should generally be sent by the same means with which it was received, e.g. by email if it was received by email.

138. Covering emails must say that if there's any difficulty in reading the attachment, to let us know so that alternative arrangements can be made.

139. Whenever a response is issued by email, it is good practice to ask the requester to acknowledge receipt of the response and to request a read receipt. Evidence of receipt (including any contact from the requester confirming receipt) must be saved to the WorkPro file.

Information disclosed in full responses

140. Standard letter **FOI1** should be completed and sent to the requester. .

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

142. When responding to an email request for information which is available in the online publication scheme, either attach the documents to the response or send links to the scheme (where links are sent, the exemption in section 25 must be used).

Information not held responses

143. The requester must be informed that the SIC does not hold the information. Use standard letter **FOI12**.
144. If the information was at one time held by the SIC, but is no longer, this should be explained to the requester. The Commissioner's Retention Schedule (VC72711) may be useful in such cases, in explaining our procedures for retention, archiving and disposal.
145. 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

146. 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 standard letter **FOI13** should be used.

Withholding information/refusing to disclose responses

147. 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. Clearly, if we are refusing to confirm or deny whether information is held, the Schedule must not be sent to the requester.
148. 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). 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.
149. 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. The letter should also, where relevant, explain how the public interest test has been applied and why the conclusion has been reached that release is not in the public interest.
150. The requester should be told about their right to a review and asked to address any request for review to the SIC.

Formatting information

151. As noted above, as a general rule, responses should be sent by the same means that the request was made.
152. If we are disclosing a large amount of information and the request was made electronically, it may be appropriate to ask the requester if they would like to receive the information in a hard copy format to make it easier to read, before automatically issuing it by email.
153. If there is any possibility that the requester may have problems with the format the record is held in (e.g. 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).

154. 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 service provider (i.e. the SIC). Audio tape and large print versions of documents in-house can be provided. Braille and other specialist formats can be out-sourced as required: refer the matter to HOPI.
155. Similar duties are placed on the SIC in terms of provision of translated information. Translation work can be outsourced if required, after discussion with HOPI.
156. Any disputes with the requester about the format should be referred to HOPI in the first instance.

Tracking of responses

157. 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.
158. Once a case has been validated, the CST will add the case to the Information Request Monitoring Sheet (VC84883) and will note when the case reaches 15 days old. This sheet will be checked daily. Where a request has not been responded to by day 15, the CST will alert the HOE (or a DHOE in the HOE's absence) to ensure that a response will be issued on time.

Records management at request stage

159. The DO is responsible for:
- (i) Ensuring the electronic and hard-copy files are in good order, complete and up-to-date, to the point the case is referred to a reviewer. Both must contain the response and both information disclosed, and withheld.
 - (ii) Updating WorkPro, including closing the case.
 - (iii) Ensuring the 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.
 - (iv) Passing the hard-copy file to the CST for storage until either needed or destroyed in line with the Commissioner's Retention Schedule (VC72711).
160. The CST will ensure closed cases are appropriately filed:
- (i) Short cases, such as misdirected or brief information provided in full, will be transferred to plastic wallets clearly marked with the reference number and stored with similar cases in a central file.
 - (ii) The contents of files and/or ring binders will simply be filed until either the contents are destroyed or a review is requested.

Updating WorkPro

Requester tab

161. Enter all contact details provided.

162. Select type of requester from the drop down list and enter any special circumstances e.g. "needs large print"

Requester Details tab

163. Complete all fields.

164. Select type from the drop down list. These are the options:

- (i) FOI
- (ii) EIR
- (iii) Subject Access Request
- (iv) Joint FOI/EIR
- (v) Re-use request

165. The Request Details field must be completed in line with this guidance. It must not be left blank.

166. The data in this field is used to:

- (i) Monitor the information requests workload
- (ii) Alert us to any new trends so that we can take any appropriate action, for example, building template responses
- (iii) Help prepare the annual report statistics and is useful qualitative information when the statistics are analysed. It allows us to see very quickly what kinds of issues people have come to us about.

167. 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.

File Location

168. Throughout the Request Stage, from receipt to closure, the location of the file must be updated in WorkPro. This is done by updating the "case properties" section of the WorkPro file. It is the responsibility of the person transferring the file to update the location in WorkPro.

General tips

- (i) The name of the requester should be entered under the appropriate tab. For data protection purposes, the name of the requester should never appear in the request details.
- (ii) Spelling is really important so that we can search the reports.

Adding additional information

Phone notes

169. Phone notes should include the main points of the conversation. If possible, avoid recording personal data, particularly special category personal data. If the phone call is to discuss clarification of a request, a follow-up letter/email should be sent to the requester confirming any outcomes or actions agreed.

Attaching emails and documents to case files

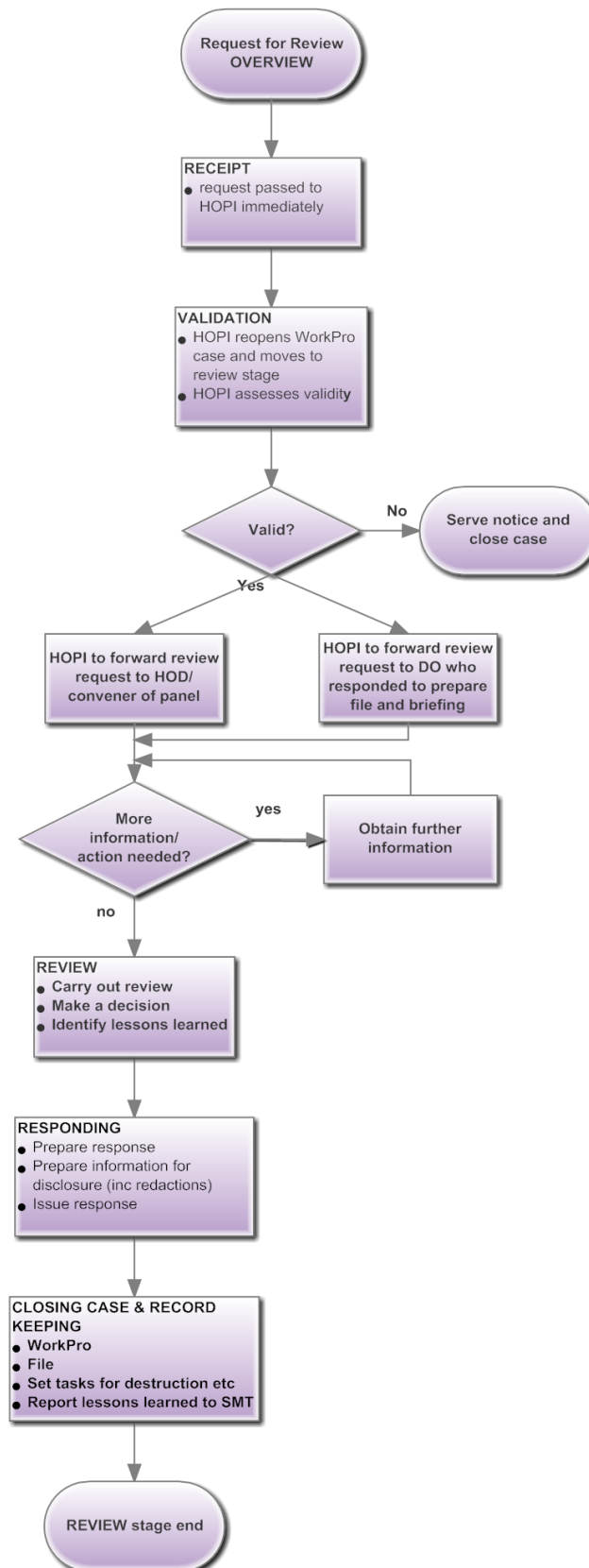
170. Emails should be forwarded from Outlook to WorkPro, and then attached to the case file as soon as possible.
171. Make sure that the email subjects are self-explanatory, particularly when strings of emails have been attached. Avoid duplicate titles for separate emails. Lock phone notes, letters and uploaded emails in WorkPro so that they cannot be amended later. Emails created in, or forwarded to, WorkPro are automatically locked and marked as sent.

Closing the case

172. Complete the Outcome Details in the Request Details tab.
173. You must complete the Provisions field.
174. Outcome details/general notes should only be used where it is important to leave information about the outcome for future reference.
175. Select Close Request.

Requests for review under FOISA and EIRs

Overview of the review process



Review procedure

176. If the requester is dissatisfied with the response to an information request, they have the right to request a review (but no right of further appeal to the Commissioner). Requesters should be asked to direct requests for review to the SIC.
177. Review requests will be passed to the HOPI immediately. The HOPI will decide whether it is valid and who should carry out the review. Depending on the case, this will either be by the Commissioner or an HOD. Wherever possible, the review will be carried out by a 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.
178. The HOPI may also recommend that the review should be carried out by a panel. In these cases the HOPI will discuss the matter immediately with the SMT or Commissioner, as appropriate.
179. **The HOPI will:**
- (i) re-open the original request case file in WorkPro and move it on to the Request for Review stage.
 - (ii) ensure the review request is valid, providing advice and assistance to the requester as appropriate.
180. In accordance with section 20 of FOISA, the review request must:
- (i) be made no later than 40 days from receipt of the information or notice, or from the 20th working day from making a request if we failed to respond. (Section 20(5) of FOISA allows SIC to accept a late request for review. Extension will be at the HOPI's 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.)
 - (ii) be in writing or another permanent form
 - (iii) state the requester's name and address for correspondence
 - (iv) specify the information request to which the review request relates
 - (v) specify why the requester is dissatisfied
181. 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:
- (i) be in writing
 - (ii) be made not later than 40 days from receipt of the information or notice, or from the 20th 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.)
182. If the review request is invalid and cannot be resolved through advice and assistance, the HOPI will write to the requester explaining why, and what rights the requester has, using standard letter **FOI16**.
183. If the review request is valid, the HOPI will forward the request for review to:

- (i) the appropriate HOD or convener of the review panel (the HOD should not have been the manager who approved the initial response to the request), and
- (ii) the designated officer (DO) who responded to the original request.

184. In many cases the HOPI will be the appropriate HOD and will therefore conduct the review.

185. **The DO who responded to the original request** must:

- (i) Ensure the paper case file is up to date within two working days of receipt of the request for review. The paper case file must contain marked-up copies of:
 - (a) the original request.
 - (b) any correspondence about the request (including correspondence with the applicant and any third parties).
 - (c) a record of searches undertaken to find information in scope of the request.
 - (d) the response to the original request (including a full copy of any information released).
 - (e) any withheld information.
 - (f) the request for review.
- (ii) Prepare a briefing for the reviewing HOD on the issues highlighted in the request for review within five working days of receipt.

186. **The reviewing HOD/ panel** should:

- (i) Acknowledge receipt using standard letter **FOI15** within two working days. The review must be an objective assessment of the complaint and involve a thorough assessment of the handling of the request. Reviews should be undertaken and completed as quickly as possible, and in all cases will be completed within the statutory 20 working days.
- (ii) Review the paper case file and briefing provided by the DO in the light of the dissatisfaction expressed in the request for review. 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. However, if circumstances have changed since we received the request (e.g. we now hold 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.
- (iii) 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 SIC to assist with the review.
- (iv) Create and maintain a record of the issues considered in the review and any learning points in the case file.
 - (v) Form a view on the case. If the review is to be by panel, the convener will arrange a meeting and ensure papers are circulated. The options open to the HOD/panel are to:
 - (a) Confirm the original decision
 - (b) Substitute a different decision
 - (c) Reach a decision (in the case of a mute or deemed response) for the first time.

(These are the options in line with section 21(4) of FOISA. Again, the EIRs are not as prescriptive. See *Decision 034/2017 Rob Edwards and the Scottish Ministers* which accepts that these options are also available under the EIRs.)
 - (vi) Prepare the appropriate standard letter to the requester (**FOI17** or **FOI18**) and share the findings with the DO who dealt with the original request.
 - (vii) Refer draft response to a colleague for quality review and, if new exemptions are applied, for a technical review. Record details in WorkPro.
 - (viii) Issue the response to the requester.
 - (ix) Report review outcome to the SIC and SMT, sharing any learning points.

Further right of appeal

187. 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 SIC to the Scottish Public Services Ombudsman.

188. 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

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

- (i) Ensuring the electronic and hard-copy files are in good order, complete and up-to-date from the point the DO refers the case to them
- (ii) Updating WorkPro after the review response has been issued, ensuring the final outcome is recorded and the Provisions field is completed.
- (iii) Ensuring the 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.
- (iv) Maintaining records of any further communication received or sent.

- (v) Passing the hard-copy file to the CST for storage until either needed or destroyed in line with the Commissioner's Retention Schedule (VC72711).
 - (vi) Updating the "case properties" section of the WorkPro file. This is done by updating the "case properties" section of the WorkPro file.
190. **CST** will ensure closed cases are appropriately filed until the contents are due to be destroyed and will update the "case properties" in the WorkPro case.

Timescales and monitoring

Timescales

191. 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.
192. 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. 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. SIC or HOE approval must be sought before doing that.
193. If a response cannot be sent straight away, the DO must send an acknowledgement letter/ email to the requester within two working days. Standard letter **FOI01** should be used for this.
194. The substantive response to a request for information must be sent within 20 working days.
195. If the response is straightforward and for full disclosure the DO should aim to do this straightaway and in no more than five working days.
196. A review response must be sent within 20 working days.
197. If the 20 working days is missed at any stage, the response should 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).
198. Day 1:
- (i) For **requests** is the first working 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). When clarification is sought, the first working day is the day following receipt of clarification of the information request
 - (ii) For requests for **review** the first working day is the day following receipt of the request (the same rules apply as for requests)

Monitoring

199. The SIC has a KPI to respond to 60% of requests within five working days and to 100% of requests and reviews within the statutory 20 working days. The Senior Management Team (SMT) will monitor and report against this KPI.
200. The SMT will report information requests and reviews activity in line with the SIC's governance framework, ensuring that lessons are learned and procedures and guidance remain up-to-date and fit for purpose.
201. The SIC will keep statistics about information requests in line with the data it requests from all Scottish public authorities. The FAM is responsible for uploading SIC statistics to the SIC statistics portal within 20 working days of the end of each quarter.

Guidance on responding to subject access requests

Responding to subject access requests

NOTE (DECEMBER 2020): GUIDANCE ON RESPONDING TO SUBJECT ACCESS REQUESTS IS BEING MOVED INTO OUR DATA PROTECTION POLICY AND HANDBOOK. FOR THE MOST UP TO DATE GUIDANCE, READ THE DRAFT HANDBOOK. THIS DOCUMENT WILL BE UPDATED WHEN THE DRAFT HANDBOOK IS APPROVED.

Introduction

202. Administratively, subject access requests will generally be processed in the same way as FOISA and EIRs requests. To avoid repetition, administrative guidance (opening files, searching for information, etc.) is not reproduced in this section, but references are made to other relevant guidance in this document.
203. Those dealing with subject access requests must also take account of the Information Commissioner's Subject Access Code of Practice - http://ico.org.uk/for_organisations/data_protection/~media/documents/library/Data_Protection/Detailed_specialist_guides/subject-access-code-of-practice.PDF

What are Subject Access Requests?

204. Subject access requests (SARs) are requests to the Commissioner for information about (and identifying) a living person, made by that person. They are governed by Article 15 of the General Data Protection Regulation (the GDPR), applied and modified in places by the Data Protection Act 2018 (the DPA 2018).
205. If the request relates to our law enforcement purposes, the SAR will be governed by section 45 of the DPA 2018.
206. In some cases, a SAR may be made by a third party, e.g.
- by a parent on behalf of a young child
 - by a representative on behalf of an adult with incapacity
 - by a solicitor on behalf of a client.
207. We must take reasonable steps to make sure that the person making the SAR is who they say they are.
208. If someone is making a request on behalf of a third party, we need to check that they have the authority to make that request (see the section on processing a request). If they do not have the authority to make the subject access request, their request should be treated as a request for third party personal information under FOISA or the EIRs. Where this happens, the information is likely to be exempt.

Receipt and allocation of SARs

Receipt

209. **All SARs made by:**

- (i) **a current employee**
- (ii) **an ex-employee or**
- (iii) **(provided the SAR relates to their application) by anyone who has applied for a job with the Commissioner**

must be passed to the HOCS immediately. In the case of HOCS absence or conflict of interest, the cases will be passed to SIC.

210. **All SARs made under section 45 of the DPA 2018 must be passed to the HOE (or, in HOE's absence, a DHOE) immediately.**
211. In these cases, the HOCS/HOE (as appropriate) will determine how best to record the SAR and what steps need to be taken to keep the personal data covered by the request secure and private. (All references to "HOE" in what follows will be taken to be a reference to "HOCS" for the cases referred in paragraph 209.)
212. In all other cases, SARs must be passed to the CST immediately. The CST will create the case records (WorkPro and hard copy). Detailed guidance can be found from paragraph 14 onwards.

Allocation

213. After the case has been created, it will be passed immediately to the HOE (or DHOE in her absence) for allocation as per the guidance at paragraph 23 onwards. The HOE will allocate the case to the designated officer.

Charging

214. We can charge a reasonable fee for complying with a SAR, but only where:
- (i) The requests are manifestly unfounded or excessive (in particular, taking account of their repetitive nature – see paragraph 240 onwards), or
 - (ii) The requester is asking for further copies of data provided already.
215. Our general policy is not to charge. A charge may be made in either of the above circumstances, with the agreement of the Commissioner (or, in the Commissioner's absence, the HOCS). When seeking agreement, it is important to state why a charge is considered appropriate in the circumstances (if the requests are considered manifestly unreasonable or unfounded, we must give the requester reasons for our decision).
216. Any fee charged must reflect our administrative costs in processing the SAR and must not exceed the prescribed amount.¹ A file note stating the reasons why a charge is being, and who has authorised the charge, must be included in the file.
217. There are specific provisions providing for access to "manual unstructured data" the SIC holds. If the data requested fall into this category, we are under no obligation to comply with the request where the cost of doing so exceeds £450. We are also under no obligation to comply unless the requester provides a description of the manual unstructured data they are seeking.

¹ As at 11/10/18, the regulations setting this amount have not yet been published.

218. This issue is unlikely to arise in practice: basically, “manual unstructured data” are manual records which are not structured by reference to individuals or to criteria relating to individuals. We are likely to hold information in that form only where it is of exceptional sensitivity, in which case it is likely to be exempt from disclosure: any cases which appear to involve unstructured personal data should be discussed with the HOE (DHOE). (Note that the right to make a SAR under section 45 of the DPA 2018 does not extend to manual unstructured data.)

“Validity” of SARs

Format of SARs

219. There is no requirement that a SAR must be made in writing, although we will generally need documentary evidence of the data subject’s identity (see below). Requests can be made by email, fax, etc., as well as orally (although evidence of an oral request may be helpful, for example writing it down and sending a copy to the requester to confirm what they are looking for, particularly if the request is complex).

220. Depending on how it is framed, a SAR may also be an information request under FOISA or the EIRs: if it is, it should be refused as such under section 38(1)(a)/regulation 11(1), before going on to respond to the SAR. Remember that the timescales for responding are likely to be different under FOISA/the EIRs and the GDPR/DPA 2018.

221. Remember that the request does not have to mention the GDPR/DPA 2018. The requester might just ask for access to personal data/information/files/records relating to them.

Making reasonable adjustments for disabled people

222. A person may have a disability and may find it difficult to communicate and, therefore, have difficulty making a SAR. Under the Equality Act 2010, the Commissioner has a duty to make reasonable adjustments. If the request is complex, it would be good practice to document it in an accessible format and send it to the person to confirm the details of the request.

223. We may also have to respond in a format which is accessible to a person who has a disability, for example, Braille, large print, email or audio formats. If this is needed, refer the matter to HOPI for advice.

Non-specific requests

224. In some cases, we may not have sufficient information

- (i) where we are processing a large amount of data about that individual), to be able to locate the information the requester is seeking or
- (ii) identify the processing activities that the person is concerned about

211. In these circumstances we may need to seek further information from the requester. If the requester is asked for further information but fails to provide it, we do not have to comply with the request.

Verify the identity of the Requester

225. It is important that the DO is satisfied as to the identity of the requester. (The timescale for responding to a request will not begin until proof of identity has been received.) Disclosure to the wrong person is likely to have serious consequences, so proof of identity must always be

obtained, even where there has been previous contact with the requester. (Requesters should be asked to provide a copy of their passport, driving licence or utility bill.)

226. The DO, taking guidance from the HOE (DHOE), will check the request to ensure that all of the necessary information has been provided to confirm the identification of the requester (and the location of the personal data).
227. If all the necessary information is there, the DO will issue letter **SAR01**.
228. Where further information is required (such as proof of identity or more details about the information requested), the DO will issue letter **SAR02**.
229. Where a third party has made a SAR on behalf of another person, in addition to verifying the requester's identity, it is very important to check that they have the authority to make the SAR. Use standard letter **SAR03**.

Searching for personal data

230. The DO will initiate the search for the personal data, following the guidance at **Searching for information**.

Assessment of SARs

Information to be provided

231. Under Article 15 of the GDPR, an individual is entitled to the following information:
- (i) confirmation of whether the Commissioner (or a data processor on behalf of the Commissioner) is processing their personal data
 - (ii) if their personal data are being processed by the Commissioner, a description of:
 - (a) the category or categories of personal data being processed
 - (b) the purposes for which the personal data are being or will be processed
 - (c) any recipients or classes of recipients to whom the personal data are or will be disclosed (basically, any person or organisation who is likely to receive the personal data in the course of processing, but not any person or organisation, for example, - the police or other law enforcement agency, who might obtain the data in pursuance of a statutory right
 - (d) the period for which the Commissioner intends to retain the data (or, where that is not possible, the criteria used to determine that period) – if in doubt, check Retention Schedule VC72711
 - (e) the source of the personal data, where available and where the source is not the data subject
 - (f) the logic involved in any automated decision-making about the requester (highly unlikely to arise in relation to personal data held by the Commissioner)
 - (g) where personal data are being processed for law enforcement purposes (e.g. for the purposes of investigating whether an offence has been committed under section 65 of FOISA), the legal basis for processing. Such cases will always be dealt with by the HOE (DHOE).
 - (iii) if their personal data is/are being processed, information about exercising the following rights:

- (a) rectification (Article 16 of the GDPR)
 - (b) erasure (Article 17)
 - (c) restriction of processing (Article 18)
 - (d) the right to object (Article 21)
 - (e) the right to complain to the ICO (section 165 of the DPA 2018)
- (iv) a copy of any personal data being processed..

232. When describing the personal data, the purposes and the recipients, it is sufficient to refer to general categories rather than being any more specific.
233. The personal data must be provided in an understandable, clear and easily accessible form. This must be a permanent form, generally in writing, unless the requester agrees otherwise: we should approach SARs on the basis that the data (and any other information to be provided to the requester) will be provided in permanent form. The data can be provided electronically, and should be (in a commonly used form) where the request has been made electronically, unless the requester specifically asks to be responded to in another form.
234. Any other information to be provided in accordance with paragraph 231 should be provided in an understandable, clear and easily accessible form, using plain language. Particular attention should be paid to this when responding to a child. (Remember also the SIC's duties under the Equality Act 2010.)
235. If the personal data contain codes or indicators which can only be understood by reference to a key, or if they contain abbreviations, technical terms or jargon, an explanation of these should be provided to the requester.
236. The requester is entitled to their personal data, as defined in Article 4(1) of the GDPR/section 3(1) of the DPA 2018. This means they will not necessarily be entitled to all of the information the Commissioner holds.
237. Where you are unsure, consider the relevant guidance issued by the ICO, particularly:
- (i) Relevant parts of its "Guide to the GDPR" (<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data/>) and
 - (ii) "Access to information held in complaint files" (https://ico.org.uk/media/for-organisations/documents/1179/access_to_information_held_in_complaint_files.pdf)
238. Any remaining questions should be discussed with the HOE (DHOE).
239. Reasonable care must be taken to secure any information covered by a SAR against destruction between the time the SAR is received and the time it is responded to.

Manifestly unfounded and excessive requests

240. Where requests are manifestly unfounded or excessive, we can either charge (see paragraph 214 above) or refuse to comply. As with charging, any decision to refuse to comply on this basis must be made by the SIC (in the SIC's absence, the HOCS and in the HOCS absence another HOD). When seeking the SIC's approval, it is important to state why a charge is considered appropriate in the circumstances: it is for the SIC to demonstrate that the requests are manifestly unfounded or excessive, so we will need to give the requester (and, potentially, the ICO) reasons for the decision.

241. Article 12(5) of the GDPR identifies the repetitive character of the requests as a particular factor in finding them to be manifestly unfounded or excessive. In this context, it may be relevant to consider whether a reasonable interval has passed between compliance with any previous request (from the same requester) and the making of the current request(s). In deciding what amounts to a reasonable interval, consideration should be given to the nature of the data, the purposes for which the SIC processes the data and the frequency with which the data are altered.
242. The following factors may also be relevant in considering whether requests are manifestly unfounded or excessive:
- (i) the difficulties in complying with the request, including any difficulties in finding the information
 - (ii) balancing any difficulties involved in complying against the benefits the information might bring to the requester (bearing in mind the fundamental nature of the right of subject access) – in the light of this balancing exercise, would it be disproportionate to be required to comply?
 - (iii) the burden of proof is on the data controller to show that all reasonable steps have been taken to comply with the SAR and that it would be disproportionate to take further steps
 - (iv) engagement with the requester: it may be appropriate to have an open discussion with the requester about the information they are requesting – files notes of any engagement should be kept as this may be relevant if the matter is referred to the ICO for an assessment
 - (v) even if it would be disproportionate to be required to respond fully, it is important to try to comply with the request in some other way (e.g. even if the personal data themselves cannot be provided, can some or all of the other information set out in paragraph 231 still be given to the requester?).

Third party information

243. Article 15 of the GDPR makes it clear that the requester's right to obtain a copy of their personal data cannot adversely affect the rights and freedoms of others.
244. In some cases, it will be impossible to comply with a SAR in full without disclosing information relating to another individual who can be identified from that information. It will be possible to identify another individual where they can be identified simply from the information disclosed, or from that information and any other information the data controller considers it reasonably likely is (or will be) in the requester's possession: if you are unsure, seek guidance from the HOE (DHOE).
245. Where compliance would involve disclosure of information relating to another individual and/or identifying another individual, the request does not have to be complied with unless either (a) the other individual has consented to disclosure of the information or (b) it is reasonable in all the circumstances to disclose the information without that consent. In considering what is reasonable, relevant factors include:
- whether there is any duty of confidentiality owed to the other individual
 - any steps taken to seek the other individual's consent
 - whether the individual was capable of giving consent

- whether the other individual has expressly refused consent

246. These matters must be taken into consideration. There may be other factors which are relevant, depending on the circumstances, but none of them necessarily preclude disclosure.
247. It may be possible to separate the information about the other individual from the requester's own personal data, e.g. by redaction of names or other identifiers: if so, this should be done to allow the SAR to be complied with. In such cases, it should also be possible to deal with that part of the request relating to the other individual's personal data as a separate request under FOISA/the EIRs.
248. Disclosing third party personal data without a valid reason may be a breach of Article 8 of the European Convention of Human Rights.
249. The ICO's Subject Access Code of Practice suggests the following three step approach when deciding whether to disclose third party information. You should record your decision making against these three steps in WP:

Step 1: Does the request require the disclosure of information that identifies a third party?

Is it possible to comply with the request without revealing information that relates to and identifies a third party? Take into account the information you are disclosing **and** any information you reasonably believe the person making the request may have, or get hold of, that would identify the third party.

You can delete names or edit documents if the third party information doesn't form part of the requested information.

If it is impossible to separate the third party information from the information that's been requested and still comply with the request, move to step 2..

Step 2: Has the third party consented?

The clearest basis for justifying the disclosure of third party information in response to a subject access request is that the third party has given their consent. It is therefore good practice to ask third parties for consent.

You are not obliged to try to get consent. In some circumstances, it will be reasonable to disclose without trying to get consent, such as where the information will be known to the requester anyway.

It might not always be appropriate to try to get consent if, for example, to do so would involve a disclosure of personal data about the requester to the third party.

If you don't have consent, move to step 3.

Step 3: Would it be reasonable in all the circumstances to disclose without consent?

In practice, it might be difficult to get third party consent. For example, a third party might refuse consent or may be difficult to find. If so, you must consider whether it is "reasonable in all the circumstances" to disclose the information about the third party anyway.

The DPA provides a non-exhaustive list of factors to be taken into account when making this

decision (see paragraph 245 above).

Exemptions

250. In certain limited circumstances, the Commissioner can refuse to comply with a SAR, either in full or in part. Schedules 2, 3 and 4 of the DPA 2018 set out the exemptions which may be used to withhold information from data subjects. The exemption most likely to be relevant is in paragraph 11 of Part 2 of Schedule 2, which allows information (including the data themselves) to be withheld to the extent that providing it would be likely to prejudice the proper discharge of the SIC's regulatory functions under FOISA, the EIRs and/or INSPIRE.
251. Other examples of exempt information are:
- (i) Personal data subject to legal professional privilege
 - (ii) Personal data in employment references given by the Commissioner (or an employee of the Commissioner, acting on their behalf) in relation to the data subject.
252. It is the Commissioner's policy to be as open as possible, in relation to requests under the GDPR/DPA 2018 as well as those made under FOISA or the EIRs. As the GDPR/DPA 2018 derives from a Community (EU) obligation, disclosure in response to a SAR will usually be with lawful authority for the purposes of section 45 of FOISA (see section 45(2)(c)(ii)). However, there may be cases where the information relates to matters falling outwith the scope of Community law (in particular, public security, defence, state security [including the state's economic well-being] and criminal law), in which case there cannot be a Community obligation and section 45 may apply. Any case where this appears likely to arise, or where it appears likely we should claim an exemption, should be discussed with the HOE/DHOE. (See also, the section above, [Section 45 of FOISA.](#))

Timescales for responding to SARs

253. Under Article 12(2) of the GDPR, a data controller (i.e. the SIC) shall comply with a SAR without undue delay and, in any event, within one month (i.e. a calendar month) of receiving a request from a requester or their representative. Any refusal of a SAR must also meet this timescale. For example, a (valid) request received on:
- (i) 1 February must be responded to by 1 March at the latest.
 - (ii) 3 March must be responded to by 3 April at the latest
254. Taking account of the complexity and number of requests made by the requester, the period for responding may be extended by a further period of two months. The requester must be informed of any extension, with reasons, within one month of receipt of the request. (Note that the timescale for responding to SARs made under section 45 of the DPA 2018 cannot be extended.)
255. Extensions must be agreed by the SIC (or, in the SIC's absence, the HOCS). When seeking agreement, it is important to state why an extension is considered appropriate in the circumstances, so the requester can be given the required reasons.

Responding to SARs

256. The general administrative process to be followed is the same as for information requests, at paragraph **131** onwards.
257. Personal data will usually be sent to the applicant by post – except where it has been requested electronically (see paragraph 233). Personal data sent by post must be sent by special or recorded delivery or by courier. Use standard letter **SAR04** and a Schedule of Information. If the information is particularly voluminous, it may be appropriate to ask the requester whether they wish to come to the office and look over the information.
258. The requester should be provided with a contact or reference point should they wish to discuss any of the information provided in response to their SAR. This will generally, but not always, be the DO who dealt with the SAR.
259. In all cases where a SAR is refused, the requester must be given reasons for the refusal. They must also be given information on their right to complaint to the ICO if they do not believe the Commissioner is complying fully with the DPA 2018 or the GDPR, and on seeking judicial remedies.

Appeals and complaints about the procedures

260. Unlike FOISA/the EIRs, the DPA 2018 does not give a data subject the right to seek an internal review if they are unhappy with the outcome of a SAR. Therefore, the requester should be advised to contact the (UK) Information Commissioner in Wilmslow. (<https://ico.org.uk/concerns/>).
261. If the individual is unhappy with the way in which his/her request was handled (i.e. the service they have received, rather than the outcome of the request), it should be dealt with as a service complaint, under our complaints procedures.

SARs Records Management

262. Responsibility for records management is the same as for information requests, with the exception of SARs made by current or ex-employees or by job applicants (see paragraph 209).
- (i) WorkPro should be updated promptly and all cases recorded following the guidance at paragraph **161**
 - (ii) At first response (i.e. the response to the SAR) follow the guidance at **159**.
 - (iii) At appeal/complaint, follow the guidance at **189**.

Other data subject rights

Introduction

263. The GDPR/DPA 2018 give data subjects a number of other rights in relation to their personal data. A summary of these rights are set out in more detail below. (Note that the rights in relation to a SAR made under section 45 of the DPA 2018 are more limited.)
264. Requests to exercise these rights will be allocated in the same way as SARs.

265. Case types are available in WorkPro (under Information request – e.g. “DP: Rectification”) to allow such cases to be recorded.

Right to rectification

266. Data subjects have the right to have inaccurate personal data rectified (Article 16 of the GDPR).

267. Article 16 also gives data subjects the right to have incomplete personal data completed, **taking account of the purposes for which the data are being processed**. With that qualification, this right is unlikely to extend to adding data which are not relevant to those purposes.

268. This right is subject to the same provisions on timescales as SARs (see above). The SIC has one calendar month to respond (and must do so without undue delay) and there are the same requirements for extensions.

269. In all cases where a rectification request is refused, the requester must be given reasons for the refusal. They must also be given information on their right to complaint to the ICO if they don't believe the SIC is complying fully with the DPA 2018 or the GDPR, and on seeking judicial remedies.

270. Where possible, and where it would not involve disproportionate effort, any third party with whom rectified data have been shared should be informed of the rectification.

271. The right is also subject to the provisions relating to manifestly unfounded and excessive requests (see above, in relation to SARs).

272. The exemption in paragraph 11 of Part 2 of Schedule 2 of the DPA 2018 applies to this right, so the SIC may refuse to agree to rectification/completion to the extent that doing so would be likely to prejudice the proper discharge of our regulatory functions under FOISA, the EIRs and/or INSPIRE. This is particularly likely to arise in requests arising out of investigations casework: any such cases should be discussed with the HOE before responding.

273. Where the data are being processed for a law enforcement purpose and we need to retain the data in their present form as evidence, we may restrict the processing of inaccurate personal data rather than rectifying them. Any such cases should be referred to the HOE.

Right to erasure (“right to be forgotten”)

274. In certain circumstances, data subjects have the right to require the Commissioner to erase (i.e. delete) data being processed about them (Article 17 of the GDPR):

- (i) where processing is based on consent alone and that consent is withdrawn, or
- (ii) in cases of unlawful processing (including where the data are no longer necessary for the purposes for which they have been processed, where the right to object has been claimed successfully or where erasure is required to comply with a legal obligation).

275. The right to erasure will not apply where the processing is necessary:

- (i) to comply with a legal obligation, or
- (ii) for the pursuit or defence of a legal claim.

276. This right is subject to the same provisions on timescales as SARs (see above). The SIC has one calendar month to respond (and must do so without undue delay) and there are the same requirements for extensions.
277. In all cases where a request for erasure is refused, the requester must be given reasons for the refusal. They must also be given information on their right to complaint to the ICO if they don't believe the SIC is complying fully with the DPA 2018 or the GDPR, and on seeking judicial remedies.
278. Where we agree to erase personal data which have been made public, reasonable steps should be taken to inform other bodies known to be processing the data. Where possible, and where it would not involve disproportionate effort, any third party with whom erased data have been shared should be informed of the erasure.
279. The right is also subject to the provisions relating to manifestly unfounded and excessive requests (see above, in relation to SARs).
280. The exemption in paragraph 11 of Part 2 of Schedule 2 of the DPA 2018 applies to this right, so the SIC may refuse to agree to erasure to the extent that doing so would be likely to prejudice the proper discharge of our regulatory functions under FOISA, the EIRs and/or INSPIRE. This is particularly likely to arise in requests arising out of investigations casework: any such cases should be discussed with the HOE before responding.
281. Where the data are being processed for a law enforcement purpose and we need to retain the data in their present form as evidence, we may restrict processing rather than agreeing to a request for erasure. There are also additional circumstances in which erasure of such data will be required, with or without a request, and other differences which apply to this kind of processing. Any such cases should be referred to the HOE.

Right to restriction of processing

282. In certain circumstances, data subjects have the right to require the SIC to restrict processing of their personal data (Article 18 of the GDPR):
- (i) where they are contesting the accuracy of the data, pending verification
 - (ii) where the right to object has been claimed, pending the outcome of that claim
 - (iii) where the data are no longer necessary for the purposes for which they have been processed (but the data subject still needs them to pursue or defend a legal claim), or
 - (iv) in cases of unlawful processing, where the data subject asks for restriction rather than erasure.
283. Restriction will mean – in addition to storage – processing the data only:
- (i) with the data subject's consent
 - (ii) to pursue or defend a legal claim, or
 - (iii) to protect the rights of others.
284. This right is subject to the same provisions on timescales as SARs (see above). The SIC has one calendar month to respond (and must do so without undue delay) and there are the same requirements for extensions.

285. In all cases where a request for restriction is refused, the requester must be given reasons for the refusal. They must also be given information on their right to complaint to the ICO if they don't believe the SIC is complying fully with the DPA 2018 or the GDPR, and on seeking judicial remedies.
286. Where possible, and where it would not involve disproportionate effort, any third party with whom restricted data have been shared should be informed of the restriction.
287. The right is also subject to the provisions relating to manifestly unfounded and excessive requests (see above, in relation to SARs).
288. The exemption in paragraph 11 of Part 2 of Schedule 2 of the DPA 2018 applies to this right, so the SIC may refuse to agree to restriction to the extent that doing so would be likely to prejudice the proper discharge of our regulatory functions under FOISA, the EIRs and/or INSPIRE. This is particularly likely to arise in requests arising out of investigations casework: any such cases should be discussed with the HOE before responding.
289. Where the data are being processed for a law enforcement purpose, the provisions relating to restriction are slightly different. Any such cases should be referred to the HOE.

Right to object

290. Data subjects have a right to object to processing of their personal data (Article 21 of the GDPR). Where the objection is to processing for direct marketing purposes, the data subject may exercise that right at any time and the SIC must stop processing for these purposes.
291. Data subjects can also object under Article 21 when the SIC is processing their personal data under condition (e) in Article 6(1) – the condition relating to tasks performed in the public interest and the exercise of official authority (which will apply to most processing in pursuance of the Commissioner's statutory functions). Where objecting under this heading, the data subject must provide grounds relating to their own particular situation, for example, relating to damage or distress they are suffering (or are likely to suffer) as a result of the processing.
292. Where a data subject makes the kind of objection described in paragraph 278, the SIC must consider the grounds on which their objection is founded. These may be outweighed by compelling legitimate grounds for our processing, if these can be established. In other words, a balancing exercise is required, and the onus is on the SIC to demonstrate that our legitimate grounds should prevail.
293. The SIC can also continue processing, notwithstanding an objection, if we can demonstrate that the processing is required to pursue or defend legal claims.
294. This right is subject to the same provisions on timescales as SARs (see above). We have one calendar month to respond (and must do so without undue delay) and there are the same requirements for extensions.
295. In all cases where an objection is refused, the requester must be given reasons for the refusal. They must also be given information on their right to complaint to the ICO if they don't believe the SIC is complying fully with the DPA 2018 or the GDPR, and on seeking judicial remedies.
296. The right is also subject to the provisions relating to manifestly unfounded and excessive requests (see above, in relation to SARs).

297. The exemption in paragraph 11 of Part 2 of Schedule 2 of the DPA 2018 applies to this right, so we may refuse to agree to an objection to the extent that doing so would be likely to prejudice the proper discharge of our regulatory functions under FOISA, the EIRs and/or INSPIRE. This is particularly likely to arise in requests arising out of investigations casework: any such cases should be discussed with the HOE before responding.
298. Where the data are being processed for a law enforcement purpose, there is no right to object. Any such cases should be referred to the HOE.

Appendix 1: List of standard letters & templates in WorkPro

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Document Control Sheet

Document Information	
Full name of current version: Class, Title, Version No and Status.	C2 Responding to Information Requests Guidance and Procedures v02 CURRENT ISSUE
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Summary of changes to document				
Date	Action by (initials)	Version updated (e.g. v01.25-36)	New version number (e.g. v01.27, or 02.03)	Brief description (e.g. updated paras 1-8, updated HOPI to HOOM, reviewed whole section on PI test, whole document updated, corrected typos, reformatted to new branding)
23/03/17	KB	02.00	02.01	New v02 created following approval
23/03/17	KB	02.01	02.02	Format changes
23/03/17	KB	02.02	02.03	DCS updated, published on website
26/03/17	DL	02.03	02.05	Instruction to use redaction software added at para 133iii
27/03/17	KB	02.05	02.06	DCS updated, published on website
12/06/17	KB	02.06	02.07	Amended CS to CST to clarify team dealing with information requests
22/06/17	KB	02.07	02.08	Opened in edit mode in error, no changes made
22/06/17	HGS	02.08	02.09	HOCS accepted changes made by KB
22/06/17	KB	02.09	02.10	DCS updated, published on website
05/07/17	MK	02.10	02.11	Tracked changes for consideration by HOCS: <ul style="list-style-type: none"> Table updated Typo in para 25 corrected Spacing sorted Text added (paras.225(i),230,231) to reflect revised Subject access code of practice (v1.2) re "disproportionate effort"
05/07/17	MK	02.11	02.12	Details re OGL added to backing.
07/07/17	HGS	02.12	02.13	HOCS included comments relating to paras 205, 212, 234
07/07/17	MK	02.12	02.13	Additional text added re Subject access code of practice re. requirement to follow code; reasonable adjustments and the "three steps" approach to third party data.
09/10/17	HGS	02.13	02.14	Opened in edit mode to check track changes
09/10/17	HGS	02.14	02.15	Removed comments
09/10/17	HGS	02.15	02.16	Accepted track changes
10/10/17	SH	02.16	02.18	Reviewed for approval, small typos marked up
11/10/17	HGS	02.18	02.19	Accepted track changes
13/10/17	MK	02.19	02.20	Minor typos in section on SARs sorted (not tracked).
13/10/17	HGS	02.20	02.21	SMT confirmed acceptance of changes and document finalised and DCS updated.
24/10/17	LB	02.21	02.22	DCS updated and document published
11/10/18	EM	02.23	02.24	Tracked changes for consideration by HOE/SIC – major review

				of guidance on responding to SARs, to take account of GDPR/DPA 2018
11/10/18	MK	02.24	02.25	<ul style="list-style-type: none"> • Changes (as above) reviewed • Additional minor changes made to the remainder of the document (tracked) • Table of contents updated
22/10/18	MK	02.25	02.26	Further minor changes suggested to SAR procedures
26/10/18	MK	02.26	02.27	Further changes made following discussion with DF
26/10/18	DF	02.27	02.28	Changes approved by DF
29/10/18	KB	02.28	02.29	DCS updated, published on website
05/03/19	MK	02.29	02.30	Incorrect statutory reference in para 240 corrected
07/03/19	BOW	02.30	02.31	DCS updated, published on website
14/05/19	MK	02.31	02.32	Minor changes made re SARs made under s45 of the DPA (see tracked changes in paras 210, 211, 218, 254 and 263)
13/08/19	MK	02.32	02.33	<ul style="list-style-type: none"> • Change to para 253 (tracked) to reflect updated ICO guidance • OGL statement updated at end of document
13/08/19	HGS	02.33	02.34	Changes approved and DCS updated
30/08/19	BOW	02.34	02.35	DCS updated, published on website
04/09/19	JC	02.35	02.36	Opened in edit mode in error – no changes made.
05/11/19	MK	02.36	02.37	Opened in edit mode in error – no changes made.
09/12/20	MK	02.37	02.38	Note added to page 30 re SAR guidance being moved to Data Protection Policy and Handbook
09/12/20	HGS	02.38	02.39	HGS (HOCS) approved change to page 30.
09/12/20	BOW	02.39	02.40	DCS updated, published on website

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