

FOI 2022/31579 digest

Checklist for dealing with a Freedom of Information (FOI) Request

- We receive the majority of our requests via our dedicated mailbox monitored by the Central FOI Unit (CFOIU) in Parliamentary, Ministerial and Central Services Directorate (PMCS). CFOIU log requests and allocate them to the appropriate departments, via their Open Government Liaison Officers (OGLOs), according to subject matter. OGLOs then pass requests to the colleague with the relevant subject matter expertise (the Lead Officer) to respond.
- CFOIU also assign a Case Manager (CM) from within the team to monitor each request and provide support to the department. Your CM should be your first point of contact for any queries relating to the handling of a request.
- The clock starts ticking once a request is received anywhere in the FCO. If you receive a request directly, please send it immediately to the CFOIU inbox (foi-dpa.pmcs@fco.gov.uk) for logging and processing.
- The checklist below applies to non-historical requests. (The Historical FOI team in Hanslope Park have slightly different handling procedures).

Please note that it is a criminal offence to deliberately destroy, hide or alter requested information to prevent it being released. If you are asked to search your personal area and/or outlook account in response to a request you must provide all the relevant information that you hold. If you have any concerns about information being released you should consult your case manager in CFOIU.

When you first receive the request: OGLO

a) Please take action!

- As a public authority the FCO is **legally obliged** to reply to FOI requests within **20 working days** of receipt. (In some more complex cases, involving public interest test considerations, you can extend this deadline **within reason** - normally a maximum of 20 further working days).

b) Read the request carefully

- Check that you understand **exactly** what information is being requested. If you are not sure, discuss with your CM - you may need to go back to the requester to seek clarification
- If you don't think your department is the appropriate one to deal with the request, please inform your CM immediately.

c) Ensure you keep a record of the request so you can monitor progress. (You can use the filters in CFOIU's weekly Digest to create a list of cases assigned to your department/team).

d) Pass the request to the relevant Lead Officer for action and advise your CM who is leading on the request.

- Make sure that the Lead Officer is on duty, is aware of the deadline and has the capacity to deal with the request within that deadline.

e) Create a folder in your departmental shared area for **all** correspondence relevant to the request.

- This will allow other colleagues to handle the request in the designated DO's absence.

When you receive the request: Lead Officer

- Please take action (see above)!
- Ensure you copy your OGLO into all further correspondence relating to the request.
- Use the FOI Decision Template to record the key issues and your draft response, and use it to complete the clearance process.
- Please contact your CM as soon as possible if you think you will be unable to meet the final deadline for response.
- If you require legal advice when considering your response please follow the Best Practice guide.

a) Start by considering the following provisions of the act - they may help you to close the request more quickly:

- does s21 (information already accessible to the applicant) apply? (For example, is it published on gov.uk ?)
- does s12 (cost limit) apply?
- does s14 (vexatious) apply?

b) If none of the above are applicable, complete your search for information.

c) Do we hold relevant information?

- No – issue a no information held response
- Yes - assess the information for release (see box below)

Assessing information for release: some points to consider

- Discount any information not relevant to/in scope of the request
- Decide if any of the information in scope can be disclosed, in full or in part
- If you plan to withhold any information, decide which exemption(s) apply and note your reasons.
- If using any qualified exemptions, assess the public interest **for and against** disclosure for each exemption, and note your reasons.
- If releasing information that requires some redaction, please follow the redaction guidance.
- [REDACTED]
- If you are exempting material under **section 36 (Prejudice to effective conduct of public affairs)** you will need ministerial approval – submissions should be cleared via the Head of CFOIU.
- Other high profile cases may also warrant a submission to ministers. Again, all submissions on FOI issues should be cleared by the Head of CFOIU.
- Ensure you consult and clear your draft response with all interested stakeholders before release. **Confirm the clearance chain with your OGLO and/or CM.**
- Any 3rd parties mentioned in the response should be consulted. (They should also be advised that FOI responses are in the public domain and may be published by KMD on gov.uk).
- Final clearances should be by a senior member of your team/department (normally D7 or SMS) followed by your CM.
- If you are releasing information contained in valedictory dispatches or annual reviews, your Director should also clear the response.

Final response

a) There are Templates and Model Language to help you structure your response.

b) Your response should always include:

- the FCO case reference number
- confirmation of whether or not we hold information relevant to the request (unless you are issuing a “neither confirm nor deny” [NCND] response)
- a list and explanation of all exemptions being used (where applicable)
- public interest arguments for and against all qualified exemptions (where applicable)
- standard paragraphs on copyright (if releasing original documents)
- standard paragraphs on how to request an Internal Review (IR) and/or contact the ICO

c) Once cleared by your CM your response should be issued to the requester in **PDF format** and either blind copied or a separate copy sent to your CM for filing.

d) Any request for Internal Review (IR) of your response should come via the CFOIU mailbox. However, if you receive any further correspondence direct from the requester, please contact your CM as soon as possible.

Completing the Audit Trail: OGLOs

a) Update your departmental request log.

b) Make sure a copy of all correspondence relating to the request is saved in your departmental case file.

- This should include copies of the information in scope of the request, information released with the response and information withheld under exemptions (where applicable).
- FOI case files should be retained in the department for 2 years following the last action.

Last updated: 16/08/2019

CFOIU

FOIA s12: Guidance on assessing whether a request is over the cost limit

- A request can be refused if we estimate that the cost of complying would exceed £600 (24 hours of staff time or 3 ½ working days).
- This includes time taken to search for, retrieve and extract material in scope of the request but not time taken to consult (internally or externally) on the response or to review or redact the in-scope material.
- Additionally, the aggregation provisions under s12 mean that where two or more requests are made by one person which relate to the same or similar information, and the requests are received within any period of sixty consecutive working days, the cost is to be taken as the *total* costs of complying with *all* of the requests.”
- There is no need to conduct a full search, but you will need to have evidence to show that the cost limit would be exceeded. The best way to do this is to complete a sample search.

Key points:

- When considering s12, always consider the total request. As a rule, you should not answer part of the request and refuse the rest under s12.
- You are responding on behalf of the whole FCO, not just one department. Consider whether other departments or posts may also hold relevant information.
- All staff time spent searching for relevant information can be included in evidence that a request exceeds the cost limit.
- Section 12 needs to be cited as early as possible within the initial 20 day deadline. You cannot extend the deadline to consider a s12 response further.
- By law, we are required to provide advice and assistance to a requester on how they might refine their request to bring it within the cost limit.

Step 1: Consider how extensive your search would need to be

Which (and how many) of the following would need to be included?

Electronic Files

- Teams – Departmental channels

- S drive - universal tier (*which areas of the S Drive are likely to hold relevant material?*)
- [REDACTED]
- P drives- universal tier (*how many individual Firecrest users are likely to hold relevant material?*)
- [REDACTED]
- Outlook accounts – universal tier (*how many individual Firecrest users are likely to hold relevant material?*)
- [REDACTED]
- iRecords
- [REDACTED]
- Stand-alone systems (*if relevant*)

Paper/manual files

- Held in relevant departments/teams/posts (*if any*)
- Held in the HP archives (*if request is for information over 4 years old but post-1990*)

- Given that electronic files can be searched automatically, and the time waiting for an electronic search to complete cannot be included in your calculation, you can only include the time required to set up each individual search.
- This stage of the exercise is therefore only likely to invoke s12 if there are a very large number of shared and personal areas that would need to be included.
- The FOI&DPA team will try to filter out such requests before accepting them if it is clear from the outset that the scope is too wide.
- Using an average of 3 minutes per search, if you assess that a request that has been allocated to you would require more than 480 individual electronic searches to be carried out, you can cite s12.
- If the request would also involve searches of paper/manual files (see below) you should include the time required to search those in your calculation.
- You should keep a record of how you came to your conclusion in case of challenge.

- If it is clear at this stage that the search for relevant information would exceed the cost limit due to the number of separate searches that would need to be conducted, you can prepare a Section 12 response, including advice on how the requester might narrow their request. (Your FOI Case Manager/CM can advise you on this).
- If you need more evidence, move to Step Two.

Step 2: Conduct a Sample Search

A sampling exercise will give an indication of the number of documents your search is likely to produce. This will be relevant for a s12 response if all the documents concerned would need to be read through/reviewed to see if they actually held material in scope of the request. The broader/more general the scope of the request, and/or the wider the time-frame, the more documents you are likely to retrieve and the more time you are likely to need to check the content for relevance.

- Guidance on searching Firecrest and Outlook
- It is important to use appropriate search terms to narrow the number of results as far as possible. If you are unsure, please ask your Case manager (CM) for guidance.
- Remember to keep a record at each stage of your search:
 - date
 - area searched
 - search terms
 - number of results
 - time taken to review sample documents etc.
- This will provide evidence to support a s12 decision if a complaint is made to the ICO.

Suggestions for conducting a sample search:

- To keep the amount of time/resource to a minimum it may be easiest to start with a search of the Universal shared area and/or any team Sharepoint sites (your IMO should have the appropriate permissions).
- If your initial search produces a large number of documents, is it clear that all would be in scope of/relevant to the request?
- If not, select and read through the first 10, noting the time required to establish whether or not they are in scope.
- Assuming a similar amount of time would be required to consider every further group of 10 documents, would a full search take the request over the cost limit?
- If so, s12 will be invoked.
- If not, you can carry out a further sampling exercise, eg. by asking ask one or two desk officers to search their P drives or outlook accounts

Example

- The team allocated a request conducts a search of their Universal shared area, producing 300 “hits”. It is not clear that all the documents concerned would hold relevant material.
- A review of the first 10 of these documents for relevance takes 10 minutes. Total for all 300 thus assumed to be 300 minutes.
- In addition, they assess that they would need to ask a total of 50 individuals to search their Outlook accounts for relevant information.
- A search of one person’s Outlook account retrieves 100 relevant emails. Again, it is not clear that all would hold information relevant to the request.
- Judging this to be the higher end of the average number per person, the department estimates conservatively at around 50 email “hits” per person, ie 2500 in total.
- A review of the first 10 emails for relevance takes 5 minutes. Total for all 2500 thus assumed to be 1,250 minutes.
- Estimated total so far is 1550 minutes, ie 25.8 hours. s12 is therefore invoked.

Other key points

Manual/Paper files

The Retrievals Team in HP will be able to assist with searching for paper files held in the Archive. Remember to include their time in your sampling exercise if your search needs to include archived files.

Unlike electronic files, paper files cannot be searched automatically using key search words/terms. The main basis for searching will therefore be by file title. Unless the title indicates that all the content of the file is likely to be in scope, the only way of searching further is to go through the file folio by folio. So, if manual files are involved, the initial search element of the exercise may invoke s12.

If there are paper files which would need to be searched for material relevant to a request, consider the following:

- How easy would it be to narrow down which files are likely to hold that material (ie are there file titles which clearly indicate they would hold relevant documents)?
- How many individual files could potentially hold relevant material?
- Approximately how many documents (or how much paper in inches/centimetres) does this represent?
- You can conduct a similar sampling exercise with paper files by selecting a measured number of documents and noting the time required to go through them to establish whether or not they are in scope.

Requests for statistical information

- If a request is for statistical information, consider whether we hold the information concerned in a format that would allow us to extract it within the cost/time limit.
- For example, do we routinely record the information concerned in a centrally searchable database? If so, is the database constructed in a way that would allow us search for and extract the information in the detail requested?
- If we don't already have a business requirement to record the information requested in the detail requested (eg for internal reporting/audit purposes), and extracting it for the purposes of an FOI request would thus involve searching through a large number of separate files/folders, s12 may be invoked.

Advice and assistance

- A s12 response requires us to offer advice and assistance to the requester to enable them to bring their request within the cost limit. In doing so, we need to be clear and realistic about the options, taking into account the way our IT and wider record-keeping systems are structured.
- Whilst it is up to the requester to define what information he/she is looking for, you should avoid suggesting a refinement to a request that is likely to lead to a further s12 response.
- Please discuss with your CM if you need further guidance.

And finally...

- If you conclude that s12 is not appropriate

but

- you have a large amount of material in scope of the request which would require assessment for potential exemptions

then you should

- consider the use of s14(1) (Vexatious – significant/excessive burden)

FOIA s14 (1): Guidance on assessing whether a request is vexatious

- When considering “vexatiousness” it is important to focus on the request, not the requester.
- There are a number of key features that may potentially identify a request as vexatious (see last page of this document for more detail).
- This guidance deals principally with requests which would impose a significant/oppressive burden on the FCO but are not covered by the s12 cost limits. This means cases involving a large amount of in-scope information where review, redaction and consultation would be particularly time consuming.
- Before citing s14 it is good practice to contact the requester to see if they are willing to submit a less burdensome request and advise them how they might do so.
- Although there is currently no defined cost/time limit in the legislation for s14(1), ICO guidance indicates that the bar for refusing a request as excessively burdensome is likely to be much higher than that for a s12 refusal.
- Based on a case recently upheld by the ICO, our working assumption for the application of s14 is that the time required to respond to the request would equate to at least 5 working days/36 hours (in addition to any time taken to locate and extract the in-scope information).

Key points

- You should always consider s12 first - ie can you locate and extract all material in scope of the request within the cost limit? (If not, then refuse request under s12).
- S 14 (1) should be considered if you are able to locate and extract all the material in scope within the relevant cost limit but the cost and effort associated with considering exemptions, and/or redacting exempt information (including applying the public interest test), and/or otherwise preparing information for release (eg creating a digest) would be excessively burdensome. This means that:
 - there is a substantial amount of material in scope and
 - you have legitimate concerns about potentially exempt information
- You can also take into account whether extensive consultations with outside stakeholders would be required to determine whether exemptions need to be applied to the material in question and to clear the response.
- If, as is likely, a s14 refusal leads to a complaint to the ICO you will need clear evidence to support your claim that the request is excessively burdensome. The best way to gather this evidence is to carry out a sampling exercise and record the results.

- In some cases you may also need to consider the purpose and value of the request in terms of the wider public interest in the information sought – might they be enough to justify the impact on the FCO?
- If you plan to cite s14, you must gather the necessary evidence and send your response as soon as possible within the 20 working day deadline. You cannot extend the statutory deadline to consider a s14 response further.

Suggested process

- How many in-scope documents did your s12 sample search identify?
- How many are likely to contain material which will need to be considered for exemptions? (Unless you are sure that a document could be released in its entirety without reading through first, it is likely to fall into this category).
- Select a sample of 10 of these documents – assign someone with relevant subject knowledge to read them through and highlight information that would need to be considered for redaction before release.
- Note how long this takes.
- Assuming a similar amount of time would be required to consider every further group of 10 documents for redaction, would a full search take the request over 36 hours?
- **Yes** - s14 (1) will be invoked.
- **No** – carry out further sampling exercise (see s12 guidance).

Recent example of a s14 (excessively burdensome) refusal upheld by the ICO

- An FCO department had approximately 3000 documents in scope of a request, many of which contained classified material which would need to be considered for exemption under a number of different sections of the FOIA.
- Their sampling exercise concluded that it would take 50 hours to consider whether any of the documents could be released, either in full or in part.
- This calculation did not include the time required to identify and clear redactions and prepare material for release in a redacted form.
- They also noted that not all of the material originated from the FCO so additional time would be required to consult with the originators.
- The ICO agreed that s14 should apply. They noted in particular: the volume of documents, the sensitivity of the information concerned, the discussions with third parties that would be required and the additional time that would be required to carry out the redaction process.

Other potential indicators of a vexatious request

The ICO guidance on s14 identifies other potential indicators of a vexatious request – some of these are listed below. Please consult your case manager (CM) if you think any might potentially apply to a request that has been allocated to you/your team.

- **Abusive or aggressive language**

The tone or language of the requester's correspondence goes beyond the level of criticism that a public authority or its employees should reasonably expect to receive.

➤ **Unreasonable persistence**

The requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.

➤ **Frequent or overlapping requests**

The requester is placing a significant strain on a public authority's resources by submitting frequent requests on the same issue, or sending in new requests before the public authority has had an opportunity to address their earlier requests. (Note, however, that "opportunity to address" will only normally cover the standard 20 working day period for issuing a response, plus one PIT extension if qualified exemptions are being considered).

➤ **Scattergun approach**

The request appears to be part of a completely random approach, lacks any clear focus, or seems to have been solely designed for the purpose of 'fishing' for information without any idea of what might be revealed.

➤ **Disproportionate effort**

The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.

v3: January 2016

FOI CASE-HANDLING: BEST PRACTICE TIPS FOR CFOIU CASE MANAGERS (CMs)

(v1: Feb 2019)

(CR = centralised request; NCR = non-centralised request)

Receipt of request

- Make sure you understand what the request is about and what is being asked for. If the subject matter is unfamiliar, discuss with the department. This is important for both CRs and NCRs – we need to ensure requests are interpreted correctly from the outset so we can offer appropriate advice to departments.
- An early meeting/discussion with the department can help to clarify the most appropriate approach and is usually more productive than a long chain of emails.
- Be alert to colleagues who are new to FOI requests – they are likely to need additional support and guidance on NCRs.
- Please ensure you/the department are using the most recent document templates throughout the handling process.

Deadlines/PIT extensions

- It is clearly important not to miss deadlines! If a request has a long clearance chain, you should aim to have the agreed draft ready to circulate by the 15 day deadline at the latest. This is particularly important if the deadline cannot be extended.
- PIT letters should be used to extend deadlines when necessary but only if it is legitimate to do so (ie if we are considering the public interest test under a qualified exemption). Remember that we can also extend deadlines using the neither confirm nor deny (NCND) provisions in the qualified exemptions.
- We should not send a PIT letter if we don't yet know whether we have any information in scope (eg if the department have not started/completed the search but think they may have info in scope). It is reputationally damaging for us to confirm initially that we hold information then send a NIH response.
- If you need to PIT more than once, don't just continue to send the same generic PIT letter. Add some text apologising for the further delay and/or assuring the requester that we are working on the response. This won't necessarily prevent them from complaining (either to us or the ICO) but personalising the correspondence in some way looks better from a customer service point of view.

Database

- It is really important that you update the database correctly at all stages of a request! It is our key management tool and we use it to provide our statutory statistical returns to the Cabinet Office. We have an obligation to ensure these are accurate.
- See Annex 1 for some tips on making entries in the database. If you are unsure about anything please ask a colleague.

When to involve Casework Supervisors (CS) and/or Team Leaders (TL)

- If you need advice on handling a case you should consult your CS initially. If they are absent (on leave etc) you should refer initially to the other CS.
- Referrals to TL should come via your CS, with their comments. If you need to refer a case directly to a TL you should always cc your CS so they are kept in the loop.
- When referring, please be clear about the advice you need and the deadline you need a response by. Explain the key issues and try to offer your own suggestions/options for handling. Always attach the latest version of the DT.
- Note the advice you are given for future reference. If you don't understand/agree with it please ask for further clarification.
- As CM you are the department's key contact in CFOIU. If you are giving advice to them after referring to a CS (and/or TL) avoid using language such as "my manager says..." Try putting the advice in your own words, or say, for example that you have discussed the case with your CS and that "we recommend the following approach".
- If a CS (or TL) gives advice on, or becomes involved in a case, please don't assume you are no longer responsible for running with it. We are here to offer further help and guidance when required but it is still your case - you need to stay involved and ensure it is closed successfully.
- Please note that CS and TL should have sight of all correspondence we receive from the Information Commissioner's Office (ICO).

Referrals to Clearing House (CH)/[REDACTED] etc

- If you need to clear a draft response externally, for example with the CH or [REDACTED], please make sure it is correct and typo-free before forwarding. (NB See [Annex 3](#) for CH triggers).
- For NCRs, referrals to CH/[REDACTED] should be sent by the CM rather than the department.
- If a request needs to be cleared by both [REDACTED] and CH, remember to advise CH whether or not we already have clearance from [REDACTED] when you forward the draft to them.
- When clearing externally, don't include internal email chains discussing the case – just send the draft response with a brief email on why you are referring it. If necessary, you can include the DT if it helps to explain the approach taken.
- If you need to consult externally (eg with CH) on the best approach to take to a case before drafting a response, set out clearly what you think the issues and options are and why we are seeking advice. If in doubt, discuss with your CS.

Complaints about late responses

- A complaint from a requester about a delay in receiving a substantive response to a request is normally acknowledged and handled as a request for Internal Review/IR (see below). If you receive such a complaint you must ensure it is actioned. If the response is close to completion, the complaint can also be addressed in that response. Otherwise, a separate response to the complaint must be sent to the requester.
- A complaint from the ICO relating solely to a delay in responding to the original request (a “handling” complaint) does not usually require a reply. But you must note the final response deadline given by the ICO and, for NCRs, ensure the department are made aware. Failure to meet that deadline could result in a formal DN which will be published on the ICO website.

Internal reviews (IRs) and ICO complaints about substantive responses

CRs:

- IRs and ICO complaints relating to CRs will be handled by a TL in CFOIU. Please check that both your CS and the appropriate TL have been copied into the IR request or ICO letter when forwarded from the mailbox.
- Please ensure that all the relevant background documents are available for consultation in the shared case folder. This includes the DT for the original request and, for ICO complaints, the DT for the IR.
- TL will continue to copy you into key documents relating to IRs and ICO complaints so you can update the case folders and database.

NCRs:

- Action on IRs and ICO complaints for NCRs will remain with the original department. This includes IRs/ICO complaints relating to any requests received prior to a Directorate being centralised.
- As CM, you will continue to be the department's key contact on the case and will be responsible for monitoring progress during these additional stages.
- Please forward IRs and ICO complaints to the appropriate departmental contact as soon as possible after receipt, attaching the DT for the original request (and, if relevant, the DT for the IR) as background. For IRs, you should also cc your CS; for ICO complaints you should cc CS and TL.

- Legal advisers should always be consulted on responses to ICO complaints, so the appropriate departmental legal adviser should also be alerted to/copied in on such complaints at an early stage.
- For both IRs and ICO complaints, make sure you are clear what the issues are so you can offer further advice. ICO complaint letters can appear rather daunting at first so it is helpful to highlight the key points in the letter that the department need to address.
- Responses to the ICO should include enough detail to enable the ICO to understand our position on the case. They are unlikely to be aware of our internal working procedures; nor are they experts on, for example, the conduct of bilateral relations. So it is advisable to consider adding a few paragraphs giving background/context to the issues under review.

Appeal to Tribunal

- For both CRs and NCRs, the ICO Decision Notices (DN) on a complaint should be shared with the lead department and legal adviser as soon as possible, copying to CS and TL.
- If the decision is against us (either fully or partially) we may wish to appeal to the First Tier Information Tribunal (FTT). If you are asked for advice on this, you can draw on Annex 2 below.
- If a decision is made to appeal, the subsequent process will normally be led by FCO legal advisers and Government Legal Department (GLD). As CM you should maintain a watching brief, including saving relevant correspondence to the shared folder. You may also be asked to provide GLD with background documents relating to the case.
- It is possible that CFIU may need to be more actively involved in an Appeal, for example if we wish to defend our use of s12 or s14 to refuse a request.

Annex 1: Top tips for completing the Database correctly

Status and exemptions

- Always enter the status when closing a case.
- If you are selecting the status *part refusal* or *full refusal*, always tick the exemptions box and then all exemptions used to refuse information.
- If the status is *advice & assistance* or *over 600*, you should not select any exemptions unless you are using section 21.
- If the status is *granted in full, not held, s12 or s14*, no exemptions should be ticked.

PITs

- Don't tick any exemption boxes if a case is being pitted – you should only complete the exemptions when the case is being closed.
- If you are pitting, please remember to enter the number in the PIT box under the notes field (1 for first PIT, 2 for second etc).
- Remember to change the deadline and enter the date the PIT is sent in the notes field.

Turnaround

- Remember to calculate and complete this box when the case is closed.

Met or Not Met

- One of these boxes must always be filled in when closing the case.
- Not Met should never be ticked if the turnaround is under twenty days.

IRs/ICO complaints

- Data on internal reviews and ICO complaints is required for the annual statistics. Please make sure turnaround times and outcomes (eg upheld, handling complaint, full/part release) are also entered for these stages of a case.

Annex 2: Appeals to the First Tier Tribunal

- Either party has the option to appeal the ICO's decision on a case to the First Tier Information Tribunal (FTT).
- If the decision is against the FCO (either fully or partially) and we do not wish to release material that they have instructed us to release, or otherwise disagree with their decision on the case, we should consider appealing. Notice of appeal usually needs to be made to the FTT within 28 calendar days of the date of the ICO DN.
- Legal Directorate have a budget for appeals to Tribunal. The decision on whether we want to go down this route will depend on how strongly we feel about the release of the material concerned and/or how strongly we feel about defending the position we took on the case (for example a refusal under 12 or s14). We also need to assess how strong our arguments are in this regard and our chances of success at appeal.
- As appeal to FTT is the first stage of litigation, the process is normally led by a departmental legal adviser in conjunction with Government Legal Department (GLD). The latter act as our "solicitors" in this regard and liaise with the tribunal authorities. GLD will also appoint Counsel (a barrister) to act for us and represent us at the Tribunal hearing. Some appeals may be decided on the papers only, without a public hearing.
- The lead FCO department (ie the subject matter experts) will usually need to prepare a witness statement and provide other background documents for Counsel. Unless the appeal is to be decided on the papers only, they will also usually need to provide a witness to attend the tribunal hearing.
- If the ICO DN is in our favour, the complainant may appeal the decision to the FTT. Although the ICO is the initial defendant in such cases, we will need to decide whether or not we want to apply to be joined to the appeal proceedings. It is our normal practice to do so if it is important to us that the material concerned should be protected, or we wish to defend the approach we have taken. This is usually the case if we have reached this stage! We cannot rely on the ICO to fight our corner for us, and they do expect us to join as a matter of course, as it is our material at stake. This would involve the same process as above regarding the involvement of legal advisers, GLD, Counsel etc.
- There may be cases where both we and the complainant appeal the ICO DN to the FTT – for example if the DN is partially in our favour and partially against.
- We may also consider joining appeals involving requests to other authorities if our equities/material are involved – for example, where the original request

was made to The National Archive (TNA) for material originating from the FCO.

Annex 3: Triggers for referral to the Cabinet Office Clearing House (CH)

- Significant policy development cases engaging both section 35/36 especially where there is a cross cutting interest
- Significant implementation of high profile policy initiatives
- Cases involving high political sensitivity including confidence and supply agreement, passage of legislation, high profile policy issues.
- Cabinet and Cabinet Committee documents (including correspondence)
- Ministers (collective responsibility, cross-cutting scope, high political sensitivity)
- National Security
- Royal cases
- Requests relating to current or former Prime Ministers and for correspondence with No 10
- Propriety and ethics (including former and current Ministers and Senior Officials, requests for diaries of Ministers and Senior Officials and leaked documents)
- Risk of international repercussions and information received from a foreign government or international body, including requests relating to the EU
- Requests relating to Brexit.
- Sensitive information relating to major government projects and any reports of such projects (Project Assurance Reports / Gateway reviews)
- Honours and significant public appointments
- Any case with a high likelihood of harmful media interest
- Internal Reviews/ICO cases where the original case was referred
- ICO Decision Notices from cases not previously referred where Ministers decide to appeal or where the ICO order disclosure of sensitive information
- Tribunal Cases
- Round robins and suspected Round Robins
- Requests where the boundary between FOI and EIR is involved
- Requests concerning Article 10 of the ECHR

Searching for Information to answer an FOI request

Q8: What information do I need to consider when replying to an FOI request?

You need to consider all the information that the FCO holds relevant to the request. If the FCO holds information that has originated from another source e.g. another Whitehall Department, former Ambassador, former Minister etc., you will generally need to contact the originator, as a courtesy, to find out if they are content for the information to be disclosed. If you are unsure as to whether or not you should contact the originator of the information, then discuss with your Case Manager in the FOI and DPA Team.

Q9: Where do I look for information to answer an FOI request and who carries out the searches?

- iRecords - Ask the IMO or ISO to carry out the search on iRecords as they have access to all the folders
- Shared Drive - Desk Officer or OGLO will normally search the Shared drive
- P-Drives and PSAs - Colleagues who are likely to have been involved in work relevant to the FOI request need to search their P drive, Outlook and their PSAs
- Paper Files and [REDACTED] - Desk Officer or OGLO need to search paper files and [REDACTED].
- Retrievals – Information over 4 years old may be held in Hanslope Park – the OGLO or desk officer should send the original request to the Retrievals team and ask them to carry out a search.

It is also important to bear in mind that FOI requests are to the FCO as a whole and other posts/departments may hold relevant information – it all has to be considered.

The OGLO or desk officer should contact other FCO officials at post(s) or in other FCO departments that may hold relevant information and the above applies to them as well.

Q10: How do I look for information to answer an FOI request?

For all searches, use key search words relevant to the request that will enable you to find the information required in order to answer the request fully.

Remember the parameters

–what exactly has the requester asked for?

Are there time limits or other limits to the information in the scope of the request?

E.g. does the request specify particular people, or documents, or types of information or correspondence between particular institutions?

Bear in mind that the FOI is about information, not documents - you may only need to provide extracts from only a handful of documents to answer the request. It is important to keep an audit trail of the key words that are used when searching and a list of the results.

The FOI Act is about information which the FCO holds at the time of the request.

Do not create new information to answer a request

Do not ask other government departments to provide you with information to answer an FOI request sent to the FCO.

If another government department does or may hold relevant information then advise the requester to make another FOI request to the relevant Government department.
