

# FOIA/EIR Casework Service Guide

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## Contents

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1. [Introduction and service commitment](#)
2. [New cases and screening for eligibility](#)
3. [Triage and identifying cases for early resolution](#)
4. [Scoping and progressing early resolution complaints](#)
5. [Scoping and progressing full investigation complaints](#)
6. [Obtaining information and assessing the PA's response](#)
7. [Informal resolution](#)
8. [Decision notices and appeals](#)
9. [Using insights from complaints and other sources](#)
10. [Service compliments and complaints](#)
11. [Glossary](#)

## Appendices

1. [FOI Service Commitment](#)
2. [Process map](#)
3. [Self-service portal](#)
4. [Screening tool](#)
5. [Pre-allocation letter to PA](#)
6. [Schedule of information held or withheld](#)
7. [Closure letter to PA following ER](#)

## 1. Introduction and service commitment

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1.1 The [Freedom of Information Act 2000](#) (FOIA) and the [Environmental Information Regulations 2004](#) (EIR) set out a clear legislative basis for the Information Commissioner's complaint handling powers.

1.2 Section 50 of FOIA states that:

*"(1) Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I."*

1.3 Regulation 18 of the EIR applies the enforcement and appeals provisions of FOIA to the EIR. This means that there are very few differences in the way FOIA and EIR complaints are handled and determined.

### Aim of the service guide

1.4 This service guide is designed to provide a framework for investigating FOIA and EIR complaints. It is aligned with the Commissioner's [Service Charter](#). We want to be reliable and responsive, while managing relationships effectively, and this guide will help us achieve these aims.

1.5 The service guide only relates to complaints that fall within the scope of section 50 of FOIA and regulation 18 of the EIR. The Commissioner may consider enquiries, complaints or concerns about other matters separately.

1.6 Whilst this service guide is primarily a tool for ICO staff, we recognise that it will also be of interest to public authorities, complainants and other stakeholders. We want to be open and transparent about the way we investigate complaints, so that people who use our services know what we need and what they can expect from us.

1.7 We have used plain language where possible but because of the legislation we regulate, we do need to include some specialist language and legal terms. We have included a glossary at the end of this guide to explain these words and phrases.

- 1.8 The service guide sets out the key principles and processes that will help ensure consistency, efficiency and proportionality in FOIA/EIR investigations and complaint handling. However it cannot replace the judgement and expertise of ICO case officers. The investigation and handling of any particular case will always depend on the specific circumstances of the case, and may not follow every process set out in the service guide.
- 1.9 Associated administrative procedures and casework resources are set out in separate documents. These can be accessed on [Sharepoint](#). Case officers will ensure that appropriate records are kept in line with [ICO records management procedures](#).
- 1.10 We will proactively publish this service guide and will conduct annual formal reviews, taking into account any feedback received.

#### General principles of case handling

- 1.11 The Information Commissioner's Office is the independent decision maker. This means we are impartial and we do not act on behalf of complainants or public authorities.
- 1.12 The Commissioner does not investigate cases personally. He has authorised case officers to investigate eligible complaints on his behalf. Case officers may seek submissions from the public authority, and they will usually need to see any withheld information. They will also take into account relevant information provided by the complainant.
- 1.13 Case officers will adopt early resolution principles where possible, ensuring that investigations are proportionate to the issues raised in the complaint. In such cases, case officers will share their views with the public authority and the complainant at the earliest appropriate stage.
- 1.14 Case officers will also explore informal resolution, ie closing the case without a decision notice. It should not delay the timely resolution of the complaint, and could resolve the complaint more quickly. Therefore it may offer a more proportionate use of resources and a better outcome for all parties. Informal resolution may be appropriate where:
- The case officer could not require the public authority to take any further action, for example where it is clear that the requested information is not held.

- The case officer is satisfied that the requested information should not be disclosed, especially in cases where there is clear precedent.
- The public authority responded outside the time for response but the requested information has now been disclosed.
- The public authority agrees to disclose some or all of the requested information, especially where the case officer is satisfied that the remaining information should not be disclosed.

1.15 The Commissioner expects public authorities to engage effectively with his case officers. Authorities will be expected to provide relevant information in a timely manner and at the first time of asking, so as to help resolve the complaint more quickly. The Commissioner may issue an information notice to require the public authority to provide him with relevant information, including withheld information.

1.16 If the complaint is not resolved informally the Commissioner will issue a decision notice. This is a formal document that records the Commissioner's decision in a particular case. It may require the public authority to take remedial steps.

1.17 The Commissioner will use his formal powers where required, including issuing [information notices](#) and [decision notices](#), and enforcing these where required. The Commissioner will refer to his [Regulatory Action Policy](#) as appropriate.

1.18 Case officers are responsible for investigating and progressing complaints. They receive training, mentoring and other support and have access to casework and legal resources.

1.19 Case officers may seek advice from colleagues at any stage, especially if the case involves novel or particularly complex issues. This may involve:

- Other case officers
- Senior managers
- Insight and Compliance
- Legal
- FOI Policy
- Criminal Investigations

## Service standards and key performance indicators

- 1.20 Our general [service standards](#) and [Service Charter](#) are published on the ICO website, and we are committed to promoting [equality and diversity](#). In addition we have additional service standards that relate specifically to FOIA and EIR casework.
- 1.21 We will treat everyone with politeness and consideration, and expect the same in return. Managers may impose restrictions on complainants who behave inappropriately. They will follow the [Managing Customer Contact](#) policy.
- 1.22 In addition, we work to departmental key performance indicators (KPIs). We are committed to resolving 90% of FOIA/EIR complaints within six months of receipt and all complaints within twelve months of receipt.
- 1.23 Although there are no formal response times concerning cases which have been allocated for investigation, case officers should bear in mind these indicative service standards for enquiries when communicating with the parties to a complaint.
- 1.24 Complainants can expect to be provided with updates as appropriate during the investigation. The case officer will aim to respond to correspondence from the complainant promptly. We will do this in line with the ICO's service standards and Service Charter.
- 1.25 The case officer will ensure that appropriate records are kept of contact with the parties. For example, it is not necessary to record full details of every telephone call, but the fact of the call, the date and time, as well as key discussions, actions and issues should be recorded.

**Appendix 1: [FOI Service Commitment](#)**

**Appendix 2: [Process Map](#)**

## **2. New cases and screening for eligibility**

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- 2.1 We expect complainants, where possible, to use the self-service portal when submitting a complaint. The portal should ensure that it is easy for everyone to make use of their information rights. We want to empower people to plan and submit valid requests and check a public authority's response if they are not happy.
- 2.2 The self-service portal will assist people at all stages:
- Making a request
  - Challenging a response
  - Complaining to the ICO
- 2.3 The self-service portal will help complainants clarify and confirm the scope of their case. It will also help them provide appropriate evidence at the earliest opportunity. This will speed up assessment and allocation, and will help us provide a better service.

### **Appendix 3: [Self-service Portal](#)**

#### If the complainant cannot use the portal

- 2.4 We recognise that not everyone will be able to use the portal. Some people do not have access to the Internet or scanning facilities. People with disabilities or impairments may also have difficulties using the portal. We will reflect the ICO's equality and diversity goals and provide service adjustments where appropriate.
- 2.5 Complainants may ring the Helpline for guidance on how to use the portal but we will not usually submit their complaint for them.
- 2.6 We need to ensure that people who can use the portal do so, and those who can't are not disadvantaged. We will keep use of the portal under review. If we receive complaints via other channels we will still assess them for eligibility.

#### Sifting cases

- 2.7 The sift team sets up new FOIA and EIR cases and assigns them to the appropriate sectoral team for assessment and investigation. The sift process is set out in the [Sift Manual](#).
- 2.8 The sift team will usually identify the correct access regime and sector. For example, if the request is for the complainant's personal data, the case will be set up as a data protection complaint and

allocated to Public Advice and Data Protection Complaint Services (PADPCS).

- 2.9 Where a complaint includes a request for the complainant's personal data in addition to other information, separate cases will be set up for the data protection and FOIA/EIR elements to be investigated. The case officer may need to consult with a manager or colleagues in PADPCS to ascertain the correct access regime or regimes.
- 2.10 Complaints are allocated to sectoral queues to help identify common themes and trends. The queues are currently as follows:
- FOI 1: local government
  - FOI 2: police and justice and some local government
  - FOI 3: health and education
  - FOI 4: central government and London Boroughs
  - FOI 5: public authorities in Northern Ireland and Wales

#### Eligible cases

- 2.12 When a case is transferred into the sectoral team it will be assessed for eligibility. The case officer will also conduct an initial check to see whether the case might be suitable for early resolution, should be prioritised, or is linked to other cases.
- 2.13 The Commissioner can only make a decision on eligible complaints. An eligible complaint must relate to a specific request for information made by the complainant.
- 2.14 The complainant needs to be able to identify the specific information request they wish to complain about. If it is not clear to the case officer they will ask the complainant for clarification.
- 2.15 If a complaint relates to more than one request, it may need to be separated and each request investigated under a separate case reference.
- 2.16 The self-service portal should ensure that the complainant provides us with the information we need to determine eligibility. However the case officer will still need to check new cases for the following indicators of ineligibility:
- The complaint does not fall under s50 (not FOIA/EIR, not a public authority (PA), or the complaint is about a Scottish PA).
  - The complaint is frivolous or vexatious.
  - There has been "undue delay" in submitting the complaint.

- No “specified respect” as required by section 50, eg insufficient or unclear grounds for complaint.
- The requested information is (or would be, if held) clearly the complainant’s personal data.

2.17 The Commissioner’s remit is to make a decision on specific matters raised by the complainant. For this reason we need complainants to tell us what they are complaining about, rather than saying “see attached”, “please investigate”, etc. We will help complainants to clarify their complaint, but case officers will not go through correspondence to construct complaints.

2.18 If the complainant has not provided the information we need, the case officer will ask them to clarify the complaint or to provide specific documents relevant to the request. They may direct the complainant to the appropriate part of the self-service portal to help them submit a clear, specific complaint.

2.19 Template letters relating to common scenarios have been developed to assist case officers, accessible on [Sharepoint](#). Case officers will adapt these according to the circumstances of each case.

#### When a case is not accepted as eligible

2.20 If the case officer cannot identify a valid request, or assesses that a complaint is otherwise ineligible, they will explain this to the complainant and let them know whether there is anything they can do to resubmit an eligible complaint.

2.21 Section 50(2)(b) of FOIA says that the Commissioner is not required to make a decision if there has been undue delay in submitting the complaint. A complaint will not normally be accepted as eligible if it is submitted more than three months after the complainant has received their final response or last substantive contact with the PA. Case officers may wish to seek advice on whether to accept a complaint in exceptional circumstances.

2.22 If a complaint is ineligible it will be closed. If the complainant provides the information the case officer needs to assess the complaint as eligible, within 28 calendar days, then the case will be re-opened. If the complainant provides this information after more than 28 calendar days the case officer will consider but may reject the case as out of time.

2.23 Case officers are not required to engage in lengthy exchanges with complainants in order to assess eligibility of a complaint or to identify relevant documents as requested in the portal. If the case

officer is not sure whether or not a complaint is eligible, they should seek advice.

- 2.24 Case officers will allow complainants one further chance to provide adequate or appropriate information. If the complainant fails to do so the case officer should close the case unless there are exceptional circumstances.
- 2.25 If a complaint is closed as ineligible the case officer does not generally inform the PA that the complaint was received. However they may log it with the relevant [sectoral database](#) if it indicates evidence of poor or concerning practice.

#### Section 50(2)(c): frivolous or vexatious complaints

- 2.26 Section 50(2)(c) of FOIA says that the Commissioner is not required to make a decision in respect of a complaint that is frivolous or vexatious.
- 2.27 It is important to note that it is the complaint, not the complainant, or the request, that must be frivolous or vexatious. The complainant's intentions may be relevant, but this will not always be the case.
- 2.28 The case officer will consider each complaint on its own merits. They take into account our duty to make effective use of our limited resources, ensuring that the ICO and FOIA/EIR are not brought into disrepute by progressing complaints which do not justify serious consideration. We will also consider section 50(2)(c) where the complainant is not prepared to engage properly with the casework process, the legislation or the Commissioner's reasonable requests.
- 2.29 A complaint may be considered *frivolous* if it has no serious intent, or is considered unworthy of serious treatment.
- 2.30 The case officer should take account of the Commissioner's guidance on vexatious requests when considering whether a complaint is *vexatious*. They should consider the complainant's apparent purpose and the effect of handling the complaint.
- 2.31 If the case officer determines that a complaint is frivolous or vexatious the complainant may decide to make a complaint to the ICO about the way in which their case has been handled. This may then be referred to the PHSO. Alternatively the complainant may decide to apply to bring a claim for Judicial Review.

2.32 Therefore the case officer will ensure that they clearly explain to the complainant the grounds for determining that the complaint is frivolous or vexatious. The case officer must seek advice from a manager before proceeding, including who should sign any letter issued under section 50(2)(c).

#### When a case is accepted as eligible

2.33 When a complaint is accepted as eligible, standard letters should be issued to the complainant and to the PA advising that the case officer will contact them when the case is allocated for investigation. This letter will indicate current allocation timescales.

2.34 The pre-allocation letter to the PA explains the kind of information the case officer will require and why. It advises the PA to prepare and collate relevant documentation to avoid delay when the case is allocated.

2.35 It will also contain a checklist that smaller or less experienced PAs may find helpful in preparing for the investigation. Finally, it sets out how the Commissioner expects the PA to engage with the ICO and the consequences of failing to do so.

#### Information provided for compliance and insight

2.36 The Commissioner can only issue a decision notice in respect of a request for information, but we encourage the public to share relevant information about compliance issues involving PAs. For example, this could be a PA's failure to adopt a publication scheme, or a pattern of responding late to requests for information.

2.37 In such circumstances, the case officer will set up a case as usual on ICE and flag in the case title that it relates to insight information rather than an individual complaint. The case should be closed as "Not FOI".

2.38 The case officer will record relevant information on the [sectoral database](#) for further analysis. The case officer may also flag the issue with the relevant group manager or casework lead.

**Appendix 4: [Screening tool](#)**

**Appendix 5: [Pre-allocation letter to PA](#)**

### **3. Triage and identifying cases for early resolution**

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- 3.1 Case officers will assess eligible cases in order to ascertain whether they should be prioritised, escalated, etc. This assessment provides an opportunity to gather data and intelligence from the case at an early stage, such as novel issues, high profile requests or linked requests.
- 3.2 Case officers will use their judgement to assess cases. They may take into account various factors, including:
- “Round robins”: similar requests made to more than one public authority by the same complainant.
  - Similar complaints submitted by complainants as part of a campaign.
  - Novel issues or complaints.
- 3.3 The case officer may add a note to the case to flag up issues, or if an action/decision needs to be taken before the investigation can start. Case officers or managers may decide to co-ordinate investigations, for example allocating a single case officer to handle linked complaints. For operational reasons the Commissioner reserves the right to allocate complaints to case officers as he considers appropriate.
- 3.4 If a complainant asks that their complaint be prioritised, a manager will consider their reasons for requesting prioritisation. However, in the interests of fairness, given the number of complaints received , requests for prioritisation will only be accepted in exceptional circumstances and on a case by case basis.

#### Identifying linked cases

- 3.5 It may be more efficient to investigate linked cases together, for example where a complainant has made the same request to a number of PAs. Case officers may wish to seek advice on how to approach linked cases effectively.

#### High priority (HP) cases

- 3.6 A case may be identified as high priority according to the following criteria:
- High profile issues (as advised by senior managers)
  - Complaints submitted by elected representatives
  - Complaints that are the subject of media coverage

- 3.7 The case officer will provide the FOI Principal Adviser with details of the case so that it can be added to the HP list. The FOI Principal Adviser can also provide advice on whether a case should be added to the list.
- 3.8 Cases identified as high priority may be prioritised or escalated. The case officer will keep the FOI Principal Adviser updated of progress, and may need to update the press office, private office and senior staff as appropriate.

#### Allegations of criminal offences

- 3.9 Complainants may allege that a public authority has committed an offence, most commonly section 77 of FOIA. Early identification of s77 offences is crucial to conducting a prompt investigation within the six month timescale set out in the legislation:
- When a specific or explicit allegation is made by a complainant
  - When the complainant alludes to an offence being committed by using phrases such as 'the requested information has been deliberately blocked' or 'the document has been altered'
  - When a case officer or FOI appeals lawyer suspects that the PA has committed or is committing an offence.
- 3.10 The case officer will refer the matter to the Criminal Investigation Team (CRIT) for [review and assessment](#). The CRIT referral form contains details of the criteria for accepting a section 77 allegation for investigation.
- 3.11 If in doubt the case officer should seek advice at the earliest opportunity.

#### Pre-allocation action

- 3.12 The case officer may decide to request the withheld information from the PA in advance of allocation (assuming it is straightforward to do so). This should help the case officer in progressing the investigation to decision stage.
- 3.13 This may be more appropriate where the information is limited in volume, where the scope is not disputed, etc. It may not be feasible

for PAs dealing with several complaints, or where there is a dispute as to what information falls within the scope of the request.

- 3.14 Since the PA has had two opportunities to deal with the request (initial response and internal review) it should be clear about what information is held, what has been provided, and what has been withheld. If there is any doubt, the PA should resolve this before the case is allocated for investigation.
- 3.15 If necessary, the case officer may ask the PA to produce a schedule of the information held which is relevant to the request. This reinforces to the PA that it is responsible for providing the ICO with relevant information. It may be especially helpful where the requested information is voluminous, or where more than one exemption is applied within a document.
- 3.16 This may be particularly helpful where the complainant claims that the PA has not provided all the information it holds. If the PA is amenable, the case officer could share this schedule with the complainant in order to clarify the scope of information held.

#### **Appendix 6: [Schedule of information held or withheld](#)**

- 3.17 Where the requested information appears from the correspondence to be particularly sensitive, the case officer may check with the PA whether the information can be provided to the ICO when the case is allocated, or if an inspection may be required.
- 3.18 The case officer should flag the case with a manager/HP list if early guidance is required.

#### Identifying and scoping cases for early resolution

- 3.19 Early resolution (ER) is the preferred method of dealing with complaints that can be resolved with minimal or no investigation.
- 3.20 Identifying cases suitable for ER should provide a quicker service, and often a better outcome for all parties whilst making proportionate use of resources. The aim is to enable case officers to allocate cases and progress investigations more quickly.

- 3.21 Eligible cases will be assessed for ER. The key indicator is the extent of investigation likely to be required before an informed decision can be made.
- 3.22 The case officer may need to contact the PA to obtain the withheld information or to check factual information, but lengthy consideration is not required. ER cases may be closed informally, or may require a decision notice (DN).

#### Key indicators for early resolution

- 3.23 The following factors may be relevant when assessing whether a case is suitable for early resolution.

#### What does the complainant want?

- 3.24 In some circumstances complainants may prefer an early assessment of the likely outcome of a complaint, especially where this provides a quicker outcome. Informed complainants such as journalists and researchers may find early resolution a useful way to ascertain whether a request is likely to have been properly refused without having to wait for the outcome of an investigation.
- 3.25 If the PA has responded out of time but no steps are required, it may be quicker to issue a DN recording that fact, especially if the complainant would prefer a formal outcome. The case officer may wish to consult with their manager to determine how the case is resolved.
- 3.26 The complainant may not necessarily disagree with the refusal; they may not understand the reasoning or they may not trust the PA. In these cases we may be able to provide an explanation that enables the complainant to accept the refusal.

#### Can we make a decision based on the correspondence (and the withheld information where provided)?

- 3.27 The case officer will decide whether or not to seek further information from the PA before making a decision. In some cases we can reach a view based on the correspondence already provided to us.
- 3.28 The quality of the PA's explanation to the complainant is key. For example, if the refusal notice and internal review address the complainant's specific concerns, there may be nothing more that could be added by further investigation. This is why we encourage

PAs to ensure that refusal notices and internal reviews are clear and thorough.

- 3.29 If the case appears straightforward, we may ask the PA whether they are happy for the Commissioner to make a decision on the basis of the refusal notice and internal review, ie with no further correspondence.
- 3.30 We will usually need to see the withheld information, unless it is obvious what the information is and inspecting it would not provide any additional information to the case officer.
- 3.31 In some cases we may be able to issue a DN without needing to contact the PA at all, for example where the requested information is clearly special category personal data.
- 3.32 The key question for the case officer will be to consider whether there is any value in exchanging investigatory correspondence with the PA. If a decision can be made on the correspondence alone, the complainant should receive an outcome more quickly. This also enables case officers and PAs to target resources more effectively.

#### What do we know about the PA?

- 3.33 Early resolution will often be informed by what we know about a PA, for example its previous engagement with the ICO. Some PAs are more amenable to informal resolution and negotiation.
- 3.34 If the PA has clearly misinterpreted the request, or applied the wrong access regime, then the case officer may require it to reconsider the request rather than investigate its handling to date. This is likely to provide a quicker and more useful outcome for the complainant.
- 3.35 If the PA has failed to issue a substantive response to a request the case officer may issue a reminder and/or issue a DN. Case officers may consider the possibility of a permitted extension under regulation 7 in respect of EIR complaints.

#### Does the Commissioner have an existing position on the requested information?

- 3.36 The case officer will consider whether the advice and guidance on the ICO website provides a clear indication as to the likely outcome of a particular complaint. If so, the case officer will explain this to

the complainant in order to manage their expectations and explore early resolution.

- 3.37 Case officers will consider ICO lines to take (LTTs), precedent cases and case law. If the case officer establishes that there is a clear position to follow, they will explain this to the complainant.
- 3.38 It is important to stress that each case will be considered on its own merits, but the outcome of previous cases may be relevant if the circumstances or requested information are similar.
- 3.39 Case officers are encouraged to discuss and share learning from casework, to encourage consistency and good practice. Case officers are also encouraged to explore innovative approaches to improve the effective handling and investigation of complaints.

#### **4. Scoping and progressing early resolution complaints**

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- 4.1 If the case clearly falls within the scope of early resolution, there is no need to check with the complainant before proceeding (eg non-response). If there is any doubt, the case officer should contact the complainant and ascertain how they wish to proceed. The complainant's understanding of the legislation and the ICO's role will be relevant considerations.
- 4.2 The case officer may be able to confirm or limit the scope of the investigation, explain technical refusals such as the cost limit or where information is not held. It may be that explaining the refusal and why it appears reasonable is sufficient to resolve the complaint. The case officer will also consider the difference between offering a view on whether further action is required, and recording procedural breaches.
- 4.3 Again, the quality of the PA's correspondence with the complainant will also be crucial. The Commissioner expects PAs to take appropriate steps to ensure that complainants are given full and clear explanations as to how requests are handled. In addition, the internal review provides a further opportunity for PAs to check that their handling is correct. Therefore the Commissioner expects that PAs should be in a position to explore early resolution in the more straightforward cases.
- 4.4 Telephone contact can be useful for progressing a case more quickly, especially where we have dealt with the complainant before

and they understand the ICO's remit. However the case officer will need to ensure that appropriate records are kept.

- 4.5 In some cases it will be preferable to communicate solely by email, for example to ensure that there is a clear record of what has been agreed. Again, this will be dependent on the judgement of the case officer, including their knowledge or experience of the parties involved.
- 4.6 The case officer will scope the case according to the indicators above. The level of scoping will be proportionate to the matters raised by the complainant, and the case officer's judgement as to what is required.

#### Progressing complaints by early resolution (after initial assessment)

- 4.7 The case officer will decide whether it is necessary to contact the complainant before proceeding. The case officer may contact the complainant by phone or email to discuss the complaint. They should outline how the case has been assessed for early resolution and explain the process.
- 4.8 The case officer will offer a pre-investigation assessment if appropriate – eg if the requested information is clearly exempt, or if a section 12 estimate is obviously reasonable. The case officer will explain to the complainant why their complaint is unlikely to be upheld, and will provide details of precedents or other relevant cases. Template letters are available on [Sharepoint](#).
- 4.9 The case officer may explore whether the complainant needs a formal outcome, for example whether they require a DN to appeal, or if an email would suffice. In some cases the case may be closed on the basis of the telephone call, in which case the outcome will be noted on the case file.
- 4.10 If the PA has failed to handle the request properly, the case officer may offer to write to the PA with good practice advice and copy this letter to the complainant. This may be more useful to the PA and the complainant in practical terms.
- 4.11 The complainant may agree that their complaint can be resolved without a DN, ie on the basis of the case officer's explanation. Alternatively the complainant may request that a DN be issued to confirm the case officer's view.

#### Deciding whether to contact the PA

- 4.12 The case officer may inform the PA that a complaint has been received and the complainant is willing to explore early resolution. They may decide to telephone the PA to discuss the complaint, for example, if we regularly deal with the PA and have a named contact.
- 4.13 The case officer will set out their understanding of the complaint. If the case officer has a view on how the case could be resolved they may put this to the PA.
- 4.14 If the case officer requires further information they will request this from the PA. Bearing in mind that the case has been selected for early resolution, the case officer may decide to set a short deadline for response, depending on the information required.
- 4.15 For example, if the case officer needs to see the withheld information but does not require explanatory information, they may set a deadline of 5-10 working days. The PA may not be willing to engage in early resolution, for example if they are unwilling to negotiate or wish to provide a detailed submission on several exemptions, etc.
- 4.16 The case officer will give the PA one opportunity to provide a submission in support of its position. On receipt of this submission the case officer may choose to move to a decision notice if they have enough information to make a decision. For example, it may be clear that compliance would exceed the cost limit and the PA has provided appropriate advice and assistance. No further correspondence is required.
- 4.17 The case officer may decide at any point that the case requires a full investigation. This may be after the case officer has assessed the case, or after receiving a response from the public authority or the complainant. The case officer will therefore end early resolution and will proceed to full investigation.

#### Closing cases following ER

- 4.18 If the complainant agrees to withdraw the complaint, for example as a result of the case officer's assessment, then the case officer will close the case. They will confirm this with the complainant and, if necessary, will inform the PA that the case has been closed. The case officer may consider it useful to provide the PA with a copy of our closure letter to the complainant for reference.

- 4.19 If they fail to respond to the case officer's assessment within a reasonable period of time, the complainant will be considered to have withdrawn their complaint and the case officer should inform the PA that the case has been closed. The case officer may consider it useful to provide the PA with a copy of our closure letter to the complainant for reference.
- 4.20 If the complainant initially agrees to early resolution but subsequently refuses to withdraw their complaint, the case officer will consider issuing a DN on the basis of the preliminary view.
- 4.21 If the complainant does not agree with the case officer's view, they may provide further, relevant information in support of their complaint. The case officer will decide whether this indicates that further investigation is required, or may proceed to issue a DN.
- 4.22 If a DN is required, the case officer does not need to contact the PA unless further information is required.
- 4.23 If the complaint raises good practice issues the case officer may also log the relevant issues on the sectoral database. This is not limited to request handling concerns or issues of poor practice. Case officers may also wish to record examples of good practice on the part of a PA.

## **Appendix 7: [Closure letter to PA after ER](#)**

### **5. Scoping and progressing full investigation complaints**

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- 5.1 If early resolution has been attempted unsuccessfully, or an eligible complaint is not suitable for early resolution, the case officer should proceed to a full investigation.
- 5.2 Standard letters issued to both parties should contain a link to information published on the ICO website which explains [how we deal with complaints under FOIA and the EIR](#).

#### Scoping the complaint

- 5.4 Before proceeding the case officer should ensure they are clear about the scope of the request, and the scope of the complaint. The case officer must be clear about what has actually been requested,

what a PA has done with the request and what the complainant is complaining to the ICO about.

- 5.5 Proper scoping will support the Commissioner's preferred "right first time" approach and reduce the need for several rounds of correspondence.
- 5.6 The case officer may need to ask the complainant for clarification or further information.

What is the complainant unhappy about?

- 5.7 The self-service portal and eligibility check should ensure that only valid complaints with clear grounds for complaint are allocated for investigation.

Establish the facts of the case (chronology of the request)

*The request*

- Was the request clear or was it ambiguous?
- Was there more than one request?
- Did the complainant amend or modify the request, eg at the internal review stage?

*The PA's handling of the request*

- Was the request interpreted properly by the PA?
- Was clarification necessary?
- If so, was clarification provided?
- Did the PA identify the correct access regime?
- Did the PA respond within the time limit?
- Did it identify whether part or all of the request is for the complainant's personal data?
- Did the PA refuse the request as vexatious, repeated or manifestly unreasonable? Did it fail to respond on the basis of a previous section 17(6) notice?
- Did the PA refuse the request on the basis of the cost limit?
- Did the PA identify and examine requested information/conduct appropriate searches to ascertain what info is held?

*The PA's response to the request*

- Did the PA disclose any information?
- If so, is it clear what was disclosed and what was withheld?

- Has the PA explained how exemptions/exceptions have been engaged? Have technical requirements been met? Has the prejudice test been explained?
- Has the PA conducted an adequate public interest test (PIT)?

#### *The internal review*

- Did the complainant make representations to the PA?
- How long did the internal review take?
- Did the PA address the complainant's representations?
- Did the PA disclose any further information?
- Did the PA offer a better explanation?

#### Identify the issues outstanding after the internal review

- Poor quality response
- Interpretation of request
- Refusal under s12/14/12(4)(b)
- Information not held
- Information withheld
- Information provided

5.8 The scope will usually be limited to issues raised by the complainant. For example, if the complainant has accepted that third party personal data can be redacted then this will be excluded from the investigation. If a complainant does not raise an issue then we will not usually consider it, eg timeliness.

5.9 It is important to remember that the Commissioner can only make a decision on matters falling under Part I of FOIA or Parts 2 and 3 of the EIR. We may consider relevant information rights issues outside of the section 50 complaint but we cannot investigate issues that fall outside of our remit. The case officer should ensure that they manage the complainant's expectations at the start of the investigation.

5.10 If the case officer identifies issues that have not been raised by the complainant they should consider whether it is necessary and proportionate to include these in the investigation. It may be more appropriate just to mention such issues in 'Other matters' at the end of any DN.

#### Initial contact with the complainant

5.11 If the scope is clear from the correspondence then there is no need to clarify or confirm with the complainant. If the scope is not clear

the case officer will contact the complainant before proceeding to investigate. This will be a matter of judgement for the case officer.

#### Initial contact with the PA

- 5.12 The case officer will advise the PA that the case has been allocated. They may decide to clarify their understanding of the complaint by telephone before drafting the investigatory letter.
- 5.13 The case officer may consider it necessary to share information provided by the complainant with the PA. The PA does not routinely receive a copy of the complaint form submitted via the portal.
- 5.14 The case officer will issue an initial investigatory letter to the PA. They will confirm the scope of the investigation and the information required, and will ask the PA to contact them as soon as possible if it anticipates any problems.

#### Clarifying the scope

- 5.15 The case officer will inform the complainant that the case has been allocated and set out the scope. To avoid delay, the case officer should only ask the complainant to confirm the scope of the case if necessary (eg it is unclear or disputed). However the case officer should consider whether the complainant may wish to provide further arguments or submissions (fairness v expectation, more likely with s1, s14 and PIT).
- 5.16 If the case officer needs to clarify the scope they should consider whether this should be done by phone or by email. This will depend on the complexity of the complaint, the approach being adopted by the complainant and the case officer's judgement. It might be necessary to follow up a phone call with an email for confirmation.
- 5.17 The case officer will focus on issues raised by the complainant that fall within the ICO's remit. They cannot investigate other issues, or become involved in wider disputes. However the case officer may progress relevant compliance matters that have not been raised by the complainant.
- 5.18 If the complainant is unable to provide sufficient clarification then the case officer may close the case as ineligible.

## **6. Obtaining information and assessing the PA's response**

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- 6.1 Before contacting the PA, the case officer must have a clear understanding of the scope of the case. They will consider what information they need to draft a DN or recommend informal resolution. This will help ensure that investigations are proportionate and efficient.
- 6.2 In most cases the PA will be given one opportunity to provide a submission in support of its position. The case officer will use their experience and judgement to decide whether a second round of correspondence is necessary and proportionate.
- 6.3 The Commissioner expects that PAs will keep an appropriate record of how a request is handled, so that if a complaint is received it can provide a prompt response to the case officer. If the PA fails to explain its position, the Commissioner is more likely to uphold a complaint.

#### Initial investigatory letter to PA

- 6.4 The case officer will set out the scope of the complaint and will specify the information required to complete the investigation / make a decision.
  - Technical – searches, cost limit, class based exemptions
  - Judgement – prejudice based exemptions, PIT
- 6.5 Template letters relating to common scenarios have been developed to assist case officers, accessible on [Sharepoint](#). However, the case officer should tailor the letter to the specific circumstances of the case. They will not ask all the ICO's standard questions if they are not relevant, but they will ask for additional information if required.
- 6.6 The case officer's aim is to understand how the PA handled the request, and how its response was determined. The case officer will generally include standard paragraphs to explain why they need the information, and to provide reassurance regarding the security of information provided to the ICO.
- 6.7 In cases involving voluminous information, or where multiple exemptions are applied, the case officer should consider asking the PA to produce a schedule of the information held which is relevant to the request.
- 6.8 Standard letters contain a reminder that the ICO is subject to all of the laws that we deal with, including FOIA, the EIR, UK GDPR and the DPA. We are often asked for copies of the correspondence we exchange with third parties. We therefore ask PAs to specify

whether they consider any of the information they send us is confidential, and why. We emphasise that we will only withhold information where there is good reason to do so.

## **Appendix 6: [Schedule of information held or withheld](#)**

- 6.9 The case officer may need to ask the PA to describe how it searched for the requested information, or how it calculated its cost estimate, etc. The case officer will encourage the PA to provide explanation or clarification, as opposed to yes or no answers.
- 6.10 In most cases the case officer will request a copy of the withheld information if an exemption or exception is applied. This may not be needed if it is absolutely obvious, from the wording of the request and the PA's response, that the information is held and the exemption or exception is engaged.
- 6.11 The PA should include a marked up copy of the withheld information, specifying clearly which exemption/exception applies to which information.
- 6.12 If the request is multi-part, the PA should provide the information in the order of the request, specifying what part of the withheld information applies to which aspect of the request.
- 6.13 If the PA is maintaining a refusal to confirm or deny that information is held, the case officer will not usually need to ask whether or not it holds the information.
- 6.14 The case officer will usually invite the PA to provide any further information that it wants the Commissioner to take into account. They will emphasise that they expect to be able to make a decision/explore informal resolution based on the PA's response. The case officer may also explain that they may issue an information notice (IN) or proceed straight to DN if no response is received in the timescale set.
- 6.15 The case officer will encourage the PA to engage with them and/or the complainant to resolve the matter as quickly as possible.

### Deadline for response

- 6.16 Case officers will set an appropriate deadline for response using their judgement and knowledge of the case. They will consider the volume and complexity of information required against the size/resources of the PA.

- 6.17 In early resolution cases the case officer is more likely to set a shorter deadline, for example 10 working days.
- 6.18 A short deadline may also be appropriate where minimal work is required from the PA, for example where the case officer requests a copy of the withheld information but does not require a detailed submission.
- 6.19 In more complex cases the case officer will generally set a deadline of 20 working days. If the PA requests a further extension it will be for the case officer to decide whether this is appropriate, taking into account the circumstances of the case. The PA will need to have a good reason for requesting any extension. The case officer will always diarise and act on deadlines they have set.
- 6.20 If the PA does not respond within the deadline set, the case officer will ascertain the reason for the delay, and the PA's estimated time for response. If the PA is unable to satisfy the case officer that a response is forthcoming then the case officer may decide to issue an IN to obtain the information they need.
- 6.21 Alternatively, the case officer may decide to issue a decision notice on the basis of the information provided to date. For example, this may be appropriate where information is not held or where the PA has relied on the cost limit. It may also be appropriate if the Commissioner is satisfied that the PA needs to take remedial action, for example issuing a response under a different access regime.
- Receiving information from the PA
- 6.22 Most public authorities will provide information by email, or by post if the information is not held electronically. ICE has a maximum file size so if the information is voluminous the PA may need to use a file transfer method. The process is set out on [Sharepoint](#).
- 6.23 Withheld information must be recorded on the departmental asset register. Case officers may wish to seek advice from a manager or LIMO (Local Information Management Officer).

#### Assessing the PA's response

- 6.24 On receipt of the PA's response the case officer will consider whether they have sufficient information to make a decision, draft a DN or negotiate an informal resolution. This will depend on the issues under investigation. The onus is on the PA to demonstrate that it

has handled the request properly and explained reliance on any exemptions or exception.

- 6.25 For example, if the PA is relying on section 12 then the case officer must be satisfied that the PA has only taken the permitted activities into account, and that the cost estimate is sufficiently detailed to satisfy the Commissioner that it is reasonable.
- 6.26 Similarly, the PA is required to demonstrate how any exemption or exception applied is engaged. This is likely to be more straightforward with class-based exemptions. In the case of prejudice-based exemptions the PA must explain how it has considered the three-part prejudice test, including the level of prejudice.
- 6.27 If the PA has applied a multi-limbed exemption or exception (eg section 36(2)(b)(i) and (ii) it must provide separate arguments to demonstrate how each limb is engaged before going on to the public interest test.
- 6.28 If the PA has applied a qualified exemption or exception it must provide arguments in favour of disclosure and arguments in favour of maintaining each exemption or exception applied. It must also provide details of the balancing exercise rather than just stating that the public interest lies in maintaining the exemption or exception.
- 6.29 The case officer will consider the risk in proceeding on the basis of the information they have to date – would further information change their view, clarify their view or confirm their view? Is the case officer satisfied that the ICO could defend its position if the DN was challenged at the FTT?
- 6.30 If the PA has applied more than one exemption or exception to the withheld information then the case officer generally only needs to decide whether one exemption or exception applies, unless these have been applied to different pieces of withheld information. Therefore in such circumstances the case officer may focus on any absolute exemptions that have been applied.
- 6.31 Alternatively it may be clear that one exemption is engaged and the PIT favours maintaining it, as opposed to an absolute exemption for which the grounds are less clear.

- 6.32 If the case officer decides that they do have enough information they will proceed to explore informal resolution or draft a DN. If the case officer is not sure whether they have enough information they should seek advice from their line manager as soon as possible to avoid delays. The case officer may also seek legal advice.
- 6.33 If the case officer considers that the Commissioner would not order disclosure of the requested information, but the PA has not provided sufficient explanation, the case officer should consider exploring informal resolution.
- 6.34 The case officer may explain to the complainant that the PA's correspondence was poor but that the Commissioner would be unlikely to order disclosure, given his understanding of the requested information. The case officer may offer to send a good practice letter to the PA on this basis.
- 6.35 The case officer will explain clearly how the Commissioner has reached this view and may offer advice as to what the PA ought to have done.

If the case officer decides that they need more information

- 6.36 A PA should provide the case officer with sufficient information at the first time of asking. However, smaller or less experienced PAs are more likely to require additional engagement. In more complex or novel cases the case officer may require clarification of the PA's position.
- 6.37 If the case officer does not have enough information to reach a view, they should ask the PA focused questions in order to obtain the specific information they feel is missing. For example, if the PA has failed to explain how the prejudice test has been conducted, it may be necessary to set out the specific requirements of the test.
- 6.38 If the PA's response is of insufficient detail or quality, the case officer will consider telephoning the PA to discuss the matter before sending a further letter/email. It is essential to ensure that the PA understands what information it needs to provide to the case officer.
- 6.39 If the case officer does need to request further information from the PA, they will usually set a deadline of 5-10 working days. The deadline should reflect the fact that the PA has already had one opportunity to provide a full and final submission.

6.40 If the PA does not respond, or provides a further poor quality response, the case officer will consider whether further contact is reasonable, or if it is appropriate to proceed to an IN or DN.

#### Information notices

6.41 Information notices are issued under section 51 of FOIA (or regulation 18 of the EIR).

6.42 An IN is used when the case officer needs information from the PA. The case officer may require copies of the withheld information, as well as details of how the request was handled:

- Explanation of any searches undertaken
- Copies of consultation with third parties
- Submissions regarding exemptions or exceptions

6.43 If the PA fails to respond to the Commissioner's correspondence, or keeps requesting further time, the case officer should consider issuing an IN.

6.44 If the case officer is dealing with a PA that has failed to meet deadlines in previous cases it may be appropriate to issue an IN in the first instance.

6.45 The case officer will take other intelligence into account (eg have we had to issue INs in the past? How many cases do we have with the PA at present?).

6.46 It may be more appropriate to proceed to issue a DN rather than an IN, eg if there is no withheld information or if the case officer does not need to see the withheld information. The DN should explain why the Commissioner did not consider it appropriate to issue an IN.

6.47 An IN may not be appropriate if the PA has changed its position and needs additional time to respond. In these cases it may be better to allow some flexibility in order to obtain a full and final response. The case officer may seek legal advice before proceeding.

#### Issuing an IN

6.48 The case officer should check that the IN correctly names the PA, for example the sponsor department of an executive agency, or the governing body of a school, as this is important if that IN needs to be enforced for non-compliance.

- 6.49 The case officer will ensure that the IN clearly describes the information and explanation required. This is important in case the PA appeals or fails to comply with the IN. If the PA has engaged poorly the case officer may include details of this in the chronology.
- 6.50 The IN is issued on the PA only since it is an information gathering tool rather than a decision.
- 6.51 Following review and consultation with the group/team manager the IN will be issued.

#### Enforcing the IN

- 6.52 The standard time for compliance with an IN is 30 calendar days.
- 6.53 If the PA does not respond to the IN the case officer should contact the PA promptly to ascertain the reason for non-compliance.
- 6.54 The case officer should also contact FOI appeals team to check whether the IN has been appealed.
- 6.55 If the PA has partially complied with the IN the case officer should check whether further information is required in order to make a decision or explore informal resolution.
- 6.56 If the PA fails to respond, or the case officer requires a full response, the case officer will send a formal letter requiring that the PA respond. The case officer will liaise with the appeals team as required. Further details of the process are on [Sharepoint](#).

#### Publishing the IN

- 6.57 INs will usually be made publicly available after the case is closed. Where published, if the IN contains references to the disputed information, or personal information, it should be redacted in the same way as a DN.

#### Contact with the parties

- 6.58 The case officer will ensure that the complainant is kept up to date as far as possible regarding the progress of the investigation. However the case officer may not be able to provide detailed

updates outside of a DN depending on the complexity and sensitivity of the case.

- 6.59 The case officer may change their view during the course of the investigation, depending on the information and evidence provided to them. It is important to explain this to both parties as required.

## **7. Informal resolution**

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- 7.1 Informal resolution (IR) is the process by which a case is closed without a decision notice being issued. This is usually because the complainant has withdrawn their complaint.
- 7.2 The complainant may withdraw their complaint because some or all of the requested information has been disclosed, or the complainant may accept the case officer's assessment that, if the Commissioner made a decision, their complaint would not be upheld.
- 7.3 Where the case officer proposes to close the case by IR they will explain the reasons for this to the complainant, either by phone or in writing. If the complainant does not challenge the proposal the case will be closed by IR.
- 7.4 The key is that the complainant accepts that a DN will not be issued. The PA can suggest IR but only the complainant can decide to withdraw their complaint.
- 7.5 The Commissioner will encourage complaints to be resolved informally where possible. This is often a better use of resources, and offers a better outcome for all parties.
- 7.6 Case officers may encourage complainants to withdraw their complaints if the public authority discloses the requested information, either before or during the Commissioner's investigation. If the complainant insists that a DN be issued, it will normally record a breach of the time for compliance. The DN may refer to the PA's previous refusal but is unlikely to make a formal decision on that issue. This approach is proportionate to the complaint and will help ensure that resources are used in the most effective way.
- 7.7 The case officer will adopt a similar approach if the PA discloses some of the requested information. The complainant may agree that the disclosed information can be excluded from the scope of the DN,

or the DN can record a breach of the time for compliance in respect of that information.

- 7.8 In any case the case officer should set a reasonable deadline for the complainant to respond. If the complainant does not respond within that time then the case officer will close the case.

#### When is informal resolution appropriate?

- 7.9 The case officer may recommend informal resolution as a possibility at various stages:

- Eligibility screening (if request isn't valid or the body isn't a PA)
- Assessment of correspondence (especially in early resolution)
- Following receipt of PA submissions or inspection of the withheld information

- 7.10 If the case officer believes that the complaint is unlikely to be upheld, they should contact the complainant at the earliest stage and explain why in their view the case should be resolved informally.

- 7.11 The case officer should manage the complainant's expectations, for example where the PA has explained how it is satisfied that information is not held, but the complainant believes that the information ought to be held. The case officer should ensure that the complainant is made aware of the limitations of FOIA/EIR and the Commissioner's role.

- 7.12 If the case officer believes that the PA should have disclosed some or all of the withheld information they should contact the PA at the earliest stage. This could be on consideration of the correspondence, ie before any information is obtained from the PA, or it could follow examination of the withheld information and/or the PA's submissions.

#### Negotiating informal resolution with the parties

- 7.13 If the PA agrees to disclose information to the complainant, the case officer should confirm this in writing and agree a deadline for disclosure. This should make it easier to negotiate IR with the complainant. If the PA is unable/unwilling to commit to a clear timescale then the case officer should proceed to draft a DN.

- 7.14 The case officer should use their judgement and knowledge of the PA to decide whether any extension should be permitted, and how

long any extension should be. It is also important to bear in mind that the complainant should normally be kept informed of the reasons for any extensions.

- 7.15 The case officer should ensure that both parties are clear about what IR means. If the PA is willing to disclose some but not all of the requested information, the case officer should explore with the complainant whether this would satisfy their complaint.
- 7.16 If the complainant receives the partial disclosure but remains dissatisfied the case officer will usually draft a decision notice regarding the remaining withheld information.
- 7.17 Whilst informal resolution is often a valuable option, it should not result in delays to the investigation. If the case officer considers that the PA is unduly prolonging the investigation by offering vague or numerous extended deadlines, they will proceed to draft a DN.

#### If the PA changes its position during the investigation

- 7.18 The PA is entitled to change its position at any stage of the investigation. The PA may decide to disclose some or all of the withheld information, in which case the complainant may agree to withdraw their complaint.
- 7.19 If the PA discloses all of the requested information, but the complainant insists on a DN, the Commissioner may issue a DN finding that the information was disclosed outside the statutory time for compliance.
- 7.20 However this should not be used as a tactic to delay resolution. Again, the case officer may proceed to draft a DN in order to minimise such delay.

#### Exemptions/exceptions not previously claimed

- 7.21 The PA may also seek to rely on an exemption or exception not previously claimed. The Commissioner is obliged to consider the PA's arguments but the PA is still required to demonstrate that it is entitled to rely on the exemption or exception.
- 7.22 It is usually the PA's responsibility to advise the complainant of any substantive change in position. If a new exemption or exception is claimed the PA should usually issue a fresh refusal notice to the

complainant. This allows the complainant to understand the revised position.

- 7.23 The PA must also provide the Commissioner with its full and final arguments in respect of its changed position. The case officer will normally allow one submission before exploring IR or issuing a DN.
- 7.24 The case officer may consider it necessary or otherwise appropriate to invite the complainant to provide further arguments in response to the PA's new position.
- 7.25 The case officer should use their judgement to balance the need to progress the case promptly, with the need to ensure that the complainant is given a reasonable opportunity to provide a considered response to the changed position.

## **8. Decision notices and appeals**

- 8.1 A decision notice (DN) will be issued where the case cannot be resolved informally. Its purpose is to record the Commissioner's decision and to set out any steps required to ensure compliance.
- 8.2 DNs are primarily written for the complainant and the public authority in a particular case. However, we may use a DN to promote good practice in line with our duty under section 47 of FOIA. DNs are often useful indicators of the Commissioner's approach to particular provisions or topics.

### Drafting the DN

- 8.3 The case officer will draft the DN, ensuring that it meets internal quality standards. The DN should be written in plain language, avoiding jargon as far as possible, but citing accurately statutory provisions or legal tests. The case officer will determine the level of detail required in the DN: generally, the more straightforward the complaint, the shorter the DN will be.
- 8.4 The case officer should check that the DN correctly names the PA, for example the sponsor department of an executive agency, or the governing body of a school, as this is important if the DN needs to be enforced for non-compliance.
- 8.5 The case officer may include a more detailed chronology of the case where required, for example where the Commissioner's intervention was required in order to obtain a response.

- 8.6 The case officer will ensure that the scope of the DN is clear, for example if the complainant has agreed to exclude personal data from the request.
- 8.7 The DN will set out the reasons for the Commissioner's decision. This should be proportionate in terms of detail and length, but should clearly explain how the Commissioner considered the complaint and reached a decision. It does not need to include every argument advanced by the PA or the complainant, only those that are relevant to the decision.
- 8.8 As set out above, if the PA has disclosed some or all of the requested information but a DN is required, the DN will record a breach of section 10(1) or regulation 5(2) in respect of that information.
- 8.9 In exceptional circumstances the case officer may produce a confidential annex to a DN. This will only be appropriate where the DN needs to discuss the withheld information, or arguments that would be likely to defeat the purpose of the exemption. The case officer may seek guidance from a manager as to whether a confidential annexe is necessary.
- 8.10 If a confidential annex is produced the case officer will ensure that the DN contains the following explanations:
- a) That there is a confidential annex to the DN;
  - b) The type of material it contains in so far as this can be disclosed (ie if anything can be said about the contents of the annex without disclosing its content or damaging an exemption or public interest which supports non-disclosure);
  - c) The open reasons, in fact and law, why the annex must be kept confidential (if anything can be said about the contents of the annex without disclosing the annex's content or damaging an exemption or public interest which supports non-disclosure).
- 8.11 It is important to bear in mind that if the DN is appealed the information contained within a confidential annex can only be withheld from the other parties/another party to the appeal and provided to the Tribunal if the ICO (or joined PA) makes an application under the Tribunal Rules and the Tribunal grants that application. The Tribunal will scrutinise the content of the information in the annex and will only grant the application if the information is truly confidential (ie in most cases this will mean is

the disputed information or is so closely connected to it or any arguments for non-disclosure).

- 8.12 The confidential annex will be produced in a separate document and must be clearly marked to avoid inappropriate disclosure. It will be issued with the main body of the DN to the public authority only. The complainant will receive the DN without the confidential annex.
- 8.13 The case officer will ensure that any steps required are clearly described in the DN that is provided to both parties. However, if a more detailed description is required in order to identify the specific information to be disclosed, this may be provided only to the PA in a confidential annex.
- 8.14 The Commissioner's decision relates only to matters that fall within the scope of section 50 or regulation 18. However the case officer may choose to comment on issues that fall outside the scope of the decision itself, in the Other Matters section at the end of the DN. These comments do not form part of the decision but can provide a useful opportunity to provide general advice or comments on issues of concern. This could include issues relating to the section 45 or section 46 codes of practice, such as the quality of the internal review or general matters of records management.
- 8.15 The case officer may also make recommendations, such as encouraging a PA to consider making information proactively available. Such recommendations are not enforceable through the DN, but may provide intelligence for future insight and compliance purposes.

#### Quality checks

- 8.16 DNs are reviewed to ensure consistency and quality of decision making. The reviewer will provide comments based on their experience and judgement, especially on areas that are novel, unclear or inconsistent with previous cases.
- 8.17 The reviewer also checks the decision notice for clarity and readability, bearing in mind that it is aimed at an external audience that may not be familiar with the legislation or legal terminology.
- 8.18 The review process will be dependent on the complexity of the DN, but in most cases an initial review should take no longer than three working days.

- 8.19 Following the initial review, the reviewer will assign a signatory. More senior signatories may be assigned to the most complex and sensitive cases.

#### Issuing the DN

- 8.20 The DN will normally be issued by email to both parties. It will subsequently be published on the ICO website. If either party requests a hard copy decision notice, a copy will be sent by post. If a confidential annex is produced it will be provided to the public authority but will not be provided to the complainant.
- 8.21 The complainant's contact details will be redacted from the published DN. If the DN contains any other personal information the case officer will consider whether it should be redacted. For example, information that would identify private individuals is more likely to be redacted than the names of senior PA staff.
- 8.22 Once the DN is issued the Commissioner's obligation under section 50 of FOIA is concluded. The Commissioner's decision, and the basis for that decision, cannot be changed or amended. The correct route to challenge the DN is through the appeals process and not a case review.

#### Appeals

- 8.23 Every DN advises the complainant and the public authority that they may appeal the decision to the First-tier Tribunal (Information Rights). Any notice of appeal should be served on the Tribunal within 28 calendar days of the date on which the DN is sent.
- 8.24 Occasionally both parties will appeal different elements of the same DN, for example where the Commissioner orders some of the requested information to be disclosed but finds that the remainder may be withheld.
- 8.25 Appeals are submitted directly to the Tribunal, who will advise the Commissioner and provide a copy of the appeal documentation.
- 8.26 When the Commissioner is notified of an appeal, a lawyer from the FOI appeals team will be allocated to the case and they will defend the appeal on the basis of the ICO's standing instructions. The legal team will provide the case officer with details of the appeal and any other relevant information.

- 8.27 However, in some cases and as required, case officers and signatories will be required to liaise with the Commissioner's lawyers who are defending a DN that they have been involved in or have signed. Where instructions are sought the case officer may need to consult with their line manager or another senior colleague.
- 8.28 If correspondence comes into ICE regarding an appeal case the case officer will contact the assigned lawyer or the FOI appeals team for advice.
- 8.29 Similarly if correspondence is added to a case that indicates a judicial review may be brought, the case officer will contact the FOI appeals team as soon as possible.

#### Enforcing the DN

- 8.30 The standard time for compliance with steps specified in a DN is 35 calendar days from the date the DN is issued. DNs are issued with a standard letter advising the complainant that they should contact the case officer if the PA fails to take the required steps within this time. This letter also advises the complainant that the Commissioner is not obliged to take enforcement action and will do so at his discretion.
- 8.31 If the case officer becomes aware that the PA has not complied with a DN they should contact the PA promptly to ascertain the reason for non-compliance. They should also contact the appeals team to check whether the DN has been appealed.
- 8.32 If the PA has failed to comply with the required steps, either fully or partially, the case officer will consider whether enforcement action is appropriate. The case officer will consult their manager, and the FOI appeals team if appropriate.
- 8.33 If necessary the case officer will send a formal letter requiring that the PA comply with the steps specified in the DN. The case officer will liaise with the FOI appeals team as required. Further details of the process are on [Sharepoint](#).

#### Marking cases for preservation

- 8.34 When a case is closed the case officer will consider whether it should be preserved. Cases should be preserved if they meet The National Archives criteria for FOIA/EIR casework:
- All s.77 FOIA cases that led to prosecution.

- All cases appealed to the Upper Tribunal
- Any high profile complaints handled externally about the ICO
- High profile cases – these could be any type of case but the definition is:

The case has featured prominently in the public domain – media or political – and there is widespread awareness that an ICO decision is awaited. The prominence will usually need to be national, though exceptionally a local or regional case may qualify. Examples will include cases of national media interest and those involving high profile individuals.

- IICSA (Goddard Inquiry)
- Scottish Child Abuse Inquiry (same requirements as IICSA (Goddard))
- Gosport Independent Panel
- Covid-19 activity
- Ongoing information request
- 'Path-finder' cases. Resolution of the case clearly involves some sort of important principle or precedent which would impact on other cases (for example, by giving a clear and awaited message internally and externally about the ICO's approach; allowing early or easy resolution of other cases. This will include path-finder cases where no DN has been issued, such as when a body is not a PA).
- High-profile cases. The case has featured prominently in the public domain – media or political – and there is widespread awareness that an ICO decision is awaited. The prominence will usually need to be national, though exceptionally a local or regional case may qualify. Examples will include cases of national media interest and those involving high profile individuals.
- Appealed cases. The case has been appealed to the First-tier Tribunal or a higher court.
- Policy in action cases. Good examples of information rights policy as practically applied and recorded in case files.
- Business requirements. Where the retention of a case will further the prompt resolution of future cases. For example, by providing an insight into the ICO's previous handling of a particular complainant or PA.

8.35 If in any doubt case officers should seek advice from a manager.

8.36 The preservation marking process is on [Sharepoint](#).

## **9. Using insights from complaints and other sources**

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- 9.1 We aim to improve public confidence in information rights by encouraging and promoting compliance with the law as outlined in the Commissioner's [Information Rights Strategic Plan](#).
- 9.2 Case officers will log issues of concern to monitor trends and patterns. These may include the following:
- Advice and assistance offered
  - Interpretation of the request
  - Timeliness of response and internal review
  - Quality of response and explanation provided
  - Non-compliance with publication scheme
  - Engagement with ICO case officers
- 9.3 Sectoral databases/folders are stored on [Sharepoint](#).
- 9.4 Case officers are responsible for progressing good practice matters in individual complaints.
- 9.5 Case officers may liaise with departmental colleagues or other departments where this touches on other work, for example working with FOI policy colleagues to capture learning for guidance reviews.

## **10. Service compliments and complaints**

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- 10.1 Parties may appeal a DN if they disagree with the Commissioner's decision. Dissatisfaction with the service they have received is not a matter that can be decided by an appeal. In such cases the complainant may submit a service complaint. Equally, either party may wish to record that they are especially happy with the way a complaint has been handled.
- 10.2 It is important to remember that a service complaint will only consider the way a complaint is handled. It cannot consider the outcome of the complaint, and cannot change the Commissioner's decision.

- 10.3 If a complainant indicates dissatisfaction with the way a complaint has been handled the case officer should consider whether further explanation would be helpful. If not, or if this does not resolve the issue, the case officer will explain how the complainant can make a service complaint via the [ICO website](#).
- 10.4 Service complaints may be made via our service complaints form, or less commonly, in separate correspondence. Case officers will record service complaints and compliments on the case management system.
- 10.5 On receipt of a service complaint the case officer will issue an acknowledgement, advising that the complaint will be considered by a manager. The case officer will then transfer the service complaint to a manager for a response. The complainant will be updated if it is likely to take longer than 30 calendar days to respond.
- 10.6 Service compliments will also be acknowledged by the case officer. Managers will determine whether further correspondence or action is required.
- 10.7 Information from service compliments and complaints will be considered and used to improve the service we provide, even if we do not uphold the complaint.

## 11. Glossary

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Access regime	The legislation applicable to the request (usually FOIA or EIR)
Complainant	The person making a complaint to the ICO
DN	Decision notice
DPA	Data Protection Act 2018
ER	Early resolution
EIR	Environmental Information Regulations 2004
Eligible complaint	A complaint that is eligible for investigation
EN	Enforcement notice
FOIA	Freedom of Information Act 2000
FTT	First-tier Tribunal (Information Rights)
UK GDPR	UK General Data Protection Regulation
ICO	Information Commissioner's Office
IN	Information notice
IR	Informal resolution
LIMO	Local information management officer

LTT	Line to take
PA	Public authority
PADPCS	Public Advice and Data Protection Complaints Service
PHSO Ombudsman	Parliamentary and Health Service
PIT	Public interest test
UT	Upper Tribunal

## **Appendix 1: Departmental principles of case handling**

The FOIA/EIR Casework Service Guide has been developed in alignment with the ICO's [Service Standards](#) and [Service Charter](#).

In implementing the FOIA/EIR Casework Service Guide within the Department we will also take the following principles into account.

### We let you know what to expect

1. We will make it easy to submit a complaint.
2. We will tell you what information we need for your complaint to be accepted as valid.
3. We will explain what we can and can't investigate.
4. We will publish the ICO's service standards.
5. If we cannot help you we will try to advise you who might be able to help.

### We aim to provide an excellent service

1. We will ensure that everyone is able to access our services as easily as possible.
2. We will treat everyone with courtesy and respect, and we expect the same from you.
3. We will protect our staff by imposing restrictions to our services when necessary, in line with the ICO's policies.
4. We will give you a final decision on your complaint as soon as we can.
5. We will proactively publish general information about complaints and how we handle them.
6. We will deal with complaints about our service (not the decision itself).

### We are independent and transparent in decision-making

1. We will be impartial, proportionate and consistent in the way we investigate.
2. We will encourage early and informal resolution where possible.
3. We will ensure that we explain our decisions as clearly and plainly as possible.
4. We will publish decision notices and information notices on our website.
5. We will explain your right of appeal.

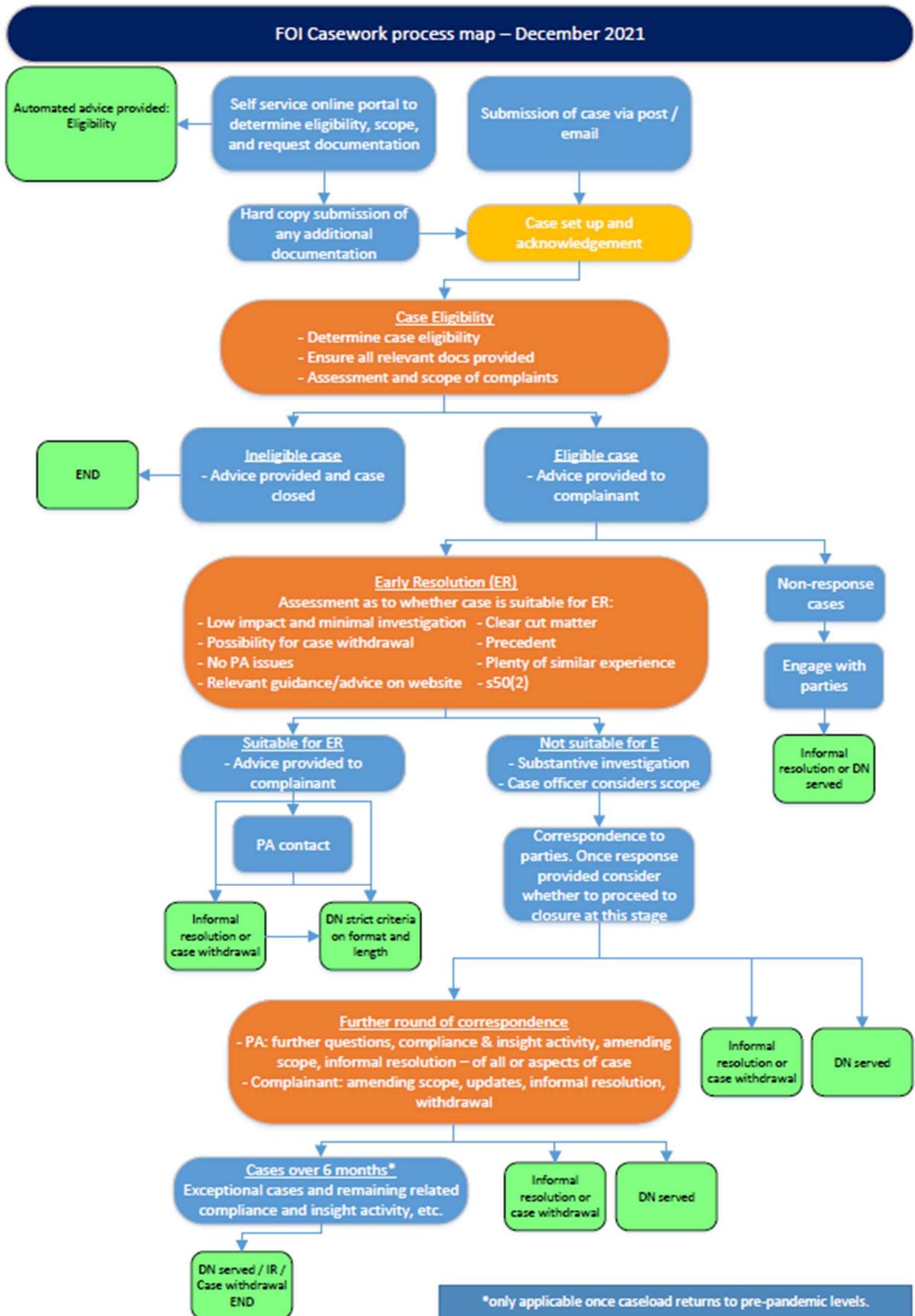
### We live up to our commitments

1. We will listen to your feedback and use it to improve our service.
2. We will apologise if we make mistakes, and put things right.
3. We will proactively publish general information about our work.
4. We will respond to requests for information made to us in line with the legislation.
5. We will look after the information you give us and personal information will be handled in line with the ICO privacy notice.

#### We improve access to official information for everyone

1. We will monitor outcomes and gather insight from complaints.
2. We will proactively work with organisations to improve compliance and enforce our decisions to uphold access to information rights.
3. We will publish good practice advice and share opportunities to learn from complaints.
4. We will report to Parliament on information rights issues of concern.

## Appendix 2: process map





<p>3. I've requested information but I'm not happy</p> <p>a. I haven't received a response</p> <p>b. I don't understand the response</p> <p>c. I don't agree with the response</p>	<ul style="list-style-type: none"> <li>- Has the PA acknowledged receipt of your request? If not, you need to check that it has been received.</li> <li>- Have you checked the correct time for response? Extensions for PIT, EIR, clarification, schools, archives, public holidays, etc.</li> <li>- You should send the PA a reminder. You can tell the PA that you will complain to the ICO if you don't get a response within a reasonable time frame (eg 10 working days)</li> <li>- Contact the public authority. They have a duty to provide reasonable advice and assistance, and they should be able to explain the response to you.</li> <li>- Check the ICO website. We have published guidance on all aspects of FOIA and EIR, including why a public authority might refuse a request, and why it might need more information from you.</li> <li>- You should complain to the public authority first.</li> <li>- Don't just say you want an internal review: explain <u>why</u> you are not happy with the response and what you would like the public authority to do to put it right.</li> <li>- You might find it easier to discuss your complaint with the public authority over the phone.</li> <li>- The public authority should consider your complaint and decide whether or not to change its original response. Or it</li> </ul>
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	might provide you with a more detailed explanation of its reasoning.
<p>4. I want to complain to the ICO about my request</p> <p>a. I haven't received a response</p> <p>b. I don't agree with the response</p> <p>c. I'm not sure if I need to complain</p>	<ul style="list-style-type: none"> <li>- If the public authority has failed to meet the time for response <u>and</u> you have sent the authority a reminder, you can complain to the ICO. You do not need to request an internal review.</li> <li>- If you have complained to the public authority and you are still not happy, the Commissioner might be able to investigate.</li> <li>- You can use our self-service tool to check whether you have an eligible complaint.</li> <li>- You might not need to submit a formal complaint. We can often deal with straightforward enquiries more quickly. For example, if your request is similar to information that we have previously considered we can let you know how the Commissioner is likely to approach a complaint.</li> </ul>
<p>5. I want to let the ICO know about my experience</p> <p>a. Proactive publication</p>	<ul style="list-style-type: none"> <li>- We want to know if you've had problems using your rights under FOIA and the EIR. For example, you can tell us if</li> </ul>

<p>b. Poor practice</p> <p>c. Good practice</p>	<p>you've had problems accessing information that is supposed to be proactively available.</p> <ul style="list-style-type: none"> <li>- You can tell us if you have received a response but it was well outside the 20 day time for response.</li> <li>- We also want to hear about good practice. Have you had a great experience with a public authority? Has someone gone the extra mile? Has a public authority made it easy for you to access the information you want?</li> </ul>
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## Check whether we can investigate

### Outcomes:

Complaint is eligible – you can provide us with the correspondence.

Complaint is not eligible - we'll tell you why and give you advice.

We need more information to assess eligibility (separate process – flag as query)

<p>1. Did you make a valid request for information? (You will need to provide us with a copy of the specific request, unless it is set out in full in other correspondence).</p>	<p>Is the organisation a public authority under FOIA or the EIR?</p> <p>Was the request for recorded information rather than comment or opinion?</p>	<p>If <b>Yes</b> to <b>all</b> questions, go to Q2.</p> <p>If <b>No</b> to any of these questions, your complaint is not eligible. Link to advice (section 2 of the portal) If you are <b>not sure</b>, provide us with more information (separate</p>
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	Did you provide your real name and an address for correspondence?	complaint form). Or telephone our <b>helpline</b> .
2. Did the public authority respond to your request?	Yes – Q3 No – Q4	If you are satisfied with the response but want to tell us about the handling of the request go to <b>[link]</b>
3. Have you completed the public authority’s complaints procedure?	Yes – Q5 No  I have complained, but the PA has not told me the outcome.	If <b>No</b> , your complaint is unlikely to be eligible. Please tell us if you think we should still investigate. <b>(text box for complainant to explain reasons)</b>  If you have complained but have waited more than 20 working days for the outcome then you can complain to the ICO. <b>(Require reminder)</b>
4. Have you contacted the public authority to check that it received the request or to remind it to respond?	Yes – it sent an acknowledgement or it has confirmed receipt, and I have sent a reminder.  Yes, but it said it didn’t receive the request.  No, I haven’t checked.	If <b>Yes</b> , complaint is likely to be eligible.  If the PA says it didn’t receive the request then you should re-submit the request to the PA and confirm receipt.  If <b>No</b> , you need to check with the PA that it received your request.

<p>5. What do you want to complain about? We need you to tell us why you are complaining, and how your complaint could be resolved.</p>	<p>The PA hasn't addressed what I asked for, or it's not clear whether the PA holds the specific information I want.</p> <p>I disagree with the PA's reasons for refusing my request.</p> <p>I'm unhappy with the handling of the request (time for response, quality of explanation, etc).</p> <p>Something else</p>	<p>Your complaint is likely to be eligible, but we may need further information before it can be allocated for investigation.</p> <p>If you are <b>not sure</b> what your complaint is about, check what we can and can't investigate [link] before sending us anything. Or telephone our <b>helpline</b>.</p>
<p>6. Is your complaint in time?</p>	<p>Yes – the last contact with the PA was less than three months ago.</p> <p>No – the last contact with the PA was more than three months ago.</p>	<p>If <b>Yes</b>, complaint is likely to be eligible.</p> <p>If <b>No</b>, complaint is out of time. Consider submitting a fresh request.</p>

## Appendix 4: [Screening tool](#)

Case ref:	Complainant: (Query pseudonym?)
Public authority:	Date of request
Date of PA response	Date of request for review
Date of review outcome	Date of complaint to ICO: Undue delay?
Access regime <b>[drop down boxes FOIA / EIR / DPA / RPSI / Query]</b>	
Query status of PA? <b>[drop down boxes yes/no]</b>	
Is the correspondence clear? <b>[drop down boxes to select option]</b>	
Yes Request is not clear PA's position is not clear Complaint to ICO is not clear	
What is the complaint about? <b>[drop down boxes to select option]</b>	
Non-response / PIT / IR PA says some / all requested info not held PA has provided info but not what was requested PA has refused all or part of the request S12 S14 Other	
Eligibility <b>[drop down boxes to select option]</b>	
Yes Further info required No (drop down box for reason- no IR, undue delay, insufficient evidence, etc)	
Does the complaint require escalation or fast-tracking? <b>[drop down boxes to select option]</b>	
Advice needed re eligibility High priority High complexity Fast-track	
Is the complaint suitable for early resolution? <b>[drop down boxes to select option]</b>	
Yes No Further information/steer required	
Notes for case officer	
Eg if already aware of linked cases or other info that might be useful.	

## **Appendix 5: [Pre-allocation letter to PA](#)**

**ICO case ref:**

Date

Dear

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Complainant:**

**Date of request:**

**Your ref:**

The Information Commissioner has received a complaint about the above request. It has been accepted as eligible and will shortly be allocated for investigation.

**This letter contains important information which you need to read before the complaint is allocated to a case officer.**

The case officer will contact you to confirm what information the Commissioner needs to make a decision. We will expect you to be able to explain how the public authority handled the request with specific reference to the requirements of FOIA or the EIR.

We will consider relevant issues raised by the complainant and depending on the circumstances we may ask you (the public authority) for the following:

- How you interpreted the request and whether you hold the requested information.
- How you decided whether the request should be handled under FOIA or the EIR.
- How you decided whether to disclose or withhold the requested information, and how you applied exemptions or exceptions.
- A copy of the information withheld from the complainant. Please note that this information will be held securely.
- How you considered the public interest.
- How you decided that the request was vexatious.
- How you estimated that compliance would exceed the cost limit.
- How you addressed the complainant's reasons for dissatisfaction in the internal review.

We will ask you detailed questions, but you need to bear in mind that it is for the public authority to satisfy the Commissioner that it has complied with the requirements of FOIA or the EIR. If you fail to do so, the Commissioner is more likely to uphold the complaint and may require the public authority to take remedial steps. The Commissioner cannot make assumptions or construct arguments for the authority.

In order to avoid unnecessary delay, please now make sure that you are ready to explain to the case officer how the public authority handled the request. We will give you up to 20 working days to respond to our initial enquiries, but if required we will issue an information notice legally requiring you to provide the Commissioner with the information we require.

If you have not already done so, you should consult the ICO website. The Commissioner has published detailed guidance on all aspects of FOIA and EIR, and the public authority needs to be able to explain how it has complied with the legislation.

The Commissioner encourages informal resolution, and the public authority may choose to disclose some or all of the requested information during the course of the investigation. Similarly, the complainant may choose to withdraw the complaint. The case officer will let you know if they consider that the case may be suitable for informal resolution.

The Commissioner expects public authorities to engage promptly and effectively, so that unnecessary delay can be avoided. The case officer will contact you when the case is allocated, and will be happy to discuss any queries or concerns you may have about providing a response. You can also find more information about how we handle complaints on the ICO website [add link].

Yours sincerely  
Information Commissioner's Office

**For information about what we do with personal data see our [Privacy Notice](#)**

**Appendix 6: [Schedule of information held or withheld](#)**

<b>Public Authority:</b>				<b>Complainant:</b>	
<b>Public Authority ref:</b>				<b>ICO case ref:</b>	
<b>No.</b>	<b>Document</b>	<b>Description of information held/withheld</b>	<b>Which part of the request does this relate to (where relevant)?</b>	<b>Which information in the document is being withheld?</b>	<b>Exemption or exception applied (where relevant)</b>

## **Appendix 7: [Closure letter to PA following ER](#)**

### **ICO case ref:**

[Date]

Dear

### **Freedom of Information Act 2000 (FOIA) Environmental Information Regulations 2004 (EIR)**

#### **Complainant:**

#### **Your ref:**

Further to our letter of [date], the Commissioner has dealt with this complaint [under our early resolution process].

[Summary of outcome]

The case is now closed and we do not require any further information from you.

[ If appropriate

In assessing this case we have identified some areas of concern and have set out some good practice advice...

Details of issues and links to guidance, etc]

Kind regards

**The Information Commissioner's Office**