



FREEDOM OF INFORMATION ACT 2000

PROCEDURES AND GUIDANCE RELATING TO PUBLIC RECORDS TRANSFERRED TO AND HELD BY PLACES OF DEPOSIT

December 2004

Pursuant to the Freedom of Information Act 2000 s.66, the Public Records Act 1958 ss.3(2) and 4(1) and the Lord Chancellor's Codes of Practice under ss.45 and 46 of the Freedom of Information Act 2000

Prepared by the Working Group on Freedom of Information Implementation

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PREFACE

i. Section 4(1) of the Public Records Act 1958 permits the Lord Chancellor to make arrangements with bodies other than The National Archives for the storage of and access to public records which are required for permanent preservation. These bodies are generally termed “places of deposit for public records”. Among the 235 places of deposit in the UK are local authority record offices, museums and galleries, libraries, universities, NHS trust record offices and a number of specialist repositories such as business archives and special media repositories.

ii. The implementation of the Freedom of Information (FOI) Act 2000 has a profound impact on places of deposit for public records. Public records are held by places of deposit on behalf of the Lord Chancellor, who expects The National Archives (TNA) to ensure that suitable arrangements are made by places of deposit for compliance with the FOI Act where it relates to information in these records. TNA must also work to help ensure that government bodies which transfer public records to places of deposit for permanent preservation are doing so in ways which ensure both their own compliance with the Act, and which support the places of deposit in their compliance efforts. This publication represents part of the support which TNA offers.

iii. Under sections 45 and 46 of the FOI Act the Lord Chancellor has a duty to issue Codes of Practice as a supplement to the provisions in the Act itself. The two Codes provide guidance to all public authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the discharge of their functions under the FOI Act. The Codes of Practice deal with the following two areas:

- The management of records, including (in Part 2 of the s.46 Code) the review and transfer of public records;
- Handling requests for information held in public records (s.45 Code)

The two Codes provide a framework of good practice. This guidance publication sets out in greater detail the procedures and principles which public record creating authorities and places of deposit should seek to follow within that good practice framework.

iv. This guidance publication is relevant to all public records bodies – that is, those bodies which create public records as defined by the Public Records

Act 1958.¹ This publication sets out the procedures which such bodies should seek to follow with regard to the review of public records which have been selected for transfer to places of deposit, and with regard to the transfer of those records. Much of the first section of this guidance relates to these review and transfer functions.

v. This guidance is also relevant to all places of deposit – those archive services which agree to receive deposited series of public records for permanent preservation on behalf of the Lord Chancellor, and which are responsible on his behalf for handling requests for information about those public records. Much of the second section of this guidance relates to this access handling function.

vi. Creating authorities and places of deposit should be equally aware of both sections of this guidance, as it is in both parties' interests that the business of reviewing, transferring, and managing deposited public records is carried out efficiently and to mutual agreement.

vii. In view of the range of differing circumstances which exist from one creating authority to the next, and from one place of deposit to the next, this guidance does not attempt to set out exact practices and procedures which should be followed. Instead, the guidance and advice in this publication should be seen as a steer, or as a pointer to best practice which will suit local circumstances while still helping to ensure compliance with the requirements of the FOI Act to which the Codes of Practice refer.

viii. This publication does not attempt to provide guidance on the application of specific exemptions in relation to requests for information. The application of exemptions is referred to throughout this guidance, but the appropriate sources of detailed information on the application of exemptions are those published by the Department for Constitutional Affairs² and by the Information Commissioner.³

ix. This guidance will be reviewed periodically and further editions may be issued as a result. TNA will publish any further editions on its website in the first instance.

¹ Public Records Act, first schedule: [Hhttp://www.nationalarchives.gov.uk/policy/act/](http://www.nationalarchives.gov.uk/policy/act/)H

² [Hwww.foi.gov.uk/guidance/index.htm](http://www.foi.gov.uk/guidance/index.htm)H

³ [Hwww.informationcommissioner.gov.uk/eventual.aspx?id=1024](http://www.informationcommissioner.gov.uk/eventual.aspx?id=1024)H

GLOSSARY AND ABBREVIATIONS

The following terms and abbreviations are used throughout this guidance publication.

Absolute exemption	An exemption in the FOI Act which does not have a public interest test element.
Archives	Records produced by central government and the chief courts of law for England and Wales that have been selected for permanent preservation and transferred to an archive service under the 1958 Public Records Act.
Closed record	A record which has been transferred but which is not open to the public.
Confirm or deny	Archives services must inform a requestor, in writing, whether or not the archives service holds the information unless to do so would reveal exempt information.
Cost limit	A limit set by regulations under the Act. Archives services do not have to process requests which would cost more than this set amount to respond to.
Creating authority	Also known as “public records bodies”, this term refers to any body which creates public records, from central government departments to courts, prisons, NHS authorities and a range of other local bodies.
Data Protection Act	The Data Protection Act 1998 gives all individuals the right to know whether information about them is being processed by any institution. It also sets out eight principles for the fair processing of personal data.
Data Protection subject access request	A request from any individual asking about their own personal data.
Data subject	An individual who is the subject of personal data.
DCA	The Department for Constitutional Affairs.
Deposited public records	Public records which have been selected for permanent preservation and transferred to an appropriate place of deposit under s.4(1) of the Public Records Act 1958.
Disclosure decision	The decision as to whether an exemption can and should be applied. In some cases, this decision includes a public interest test.
DRO	A Departmental Record Officer in a government department.
Environmental Information Regulations (EIRs)	A separate access regime governing access to environmental information, as required by European Directive 2003/04/EC. Regulations (to be) issued in 2004 replace the Regulations of 1992.
Environmental information requests	Requests for information about the environment or human interaction with the environment: landscape, land, soil, water, air, atmosphere, flora and fauna; emissions, pollution and smog; sewers and drainage;

	cultural sites; the food chain; pesticides; policies; and any plans and agreements affecting any of the above.
Exemptions and exceptions	Exemptions (FOI) and Exceptions (EIRs) are grounds for refusing access to information. They are for specific and limited reasons set out in the legislation. In this guidance the term “exemption” has been used for both unless otherwise stated.
Fees notice	Request for payment prior to undertaking research in a response to a request for information.
Finding aids	Any catalogue, list, database or other source of description or reference which enables information to be identified and retrieved. Finding aids can range from full catalogues to simpler lists or indexes.
Freedom of Information (FOI)	The Freedom of Information Act 2000 gives individuals rights of access to information held by public authorities. Information must be provided unless an exemption applies. FOI promotes greater openness, accountability and interaction between the citizen and public authorities.
ICO	The Information Commissioner’s Office.
Information Commissioner	An independent office-holder, reporting directly to Parliament, responsible for enforcing compliance with FOI and Data Protection laws, promoting good practice and providing a point of appeal for dissatisfied requestors.
Places of deposit (PoDs)	Archives services and other bodies which have been appointed by the Lord Chancellor to hold specified series of public records for permanent preservation under s.4(1) of the Public Records Act 1958.
Public interest test	A further decision making process attached to a number of FOI exemptions (qualified exemptions). The test must consider the balance of public interest; whether the public interest in disclosing the information requested outweighs the public interest in claiming the exemption. The public interest does not equate to what the public are interested in.
Publication scheme	Statements that list and define classes (types) of information that public authorities will make available on a regular basis. The statements include how the material will be available, when it will be released, and whether there is a charge to access the information. Publication schemes are a requirement of the FOI Act.
Public records	Defined in section 10 (1) of the Public Records Act 1958, and the First Schedule to that Act. ‘Records’ in general are defined as carriers of information in any format. As a broad rule of thumb, if the creator of a record was a central government department, agency or body, or predecessor to a modern department of state, funded from central Treasury funds granted through a

	parliamentary vote, then its records are likely to be public records falling within the definition and scope of the 1958 Act.
Public records bodies	See “creating authorities”.
Qualified exemption	When certain exemptions are applied to information in order to withhold it, a public interest test must be carried out.
Redaction	Redaction can be defined as the separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs, or the removal of whole pages, prior to the release of the document.
Unfit records	Those records which are considered to be too fragile or damaged to be handled.
Vexatious request	A request which is not a genuine endeavour to access information for its own sake, but is aimed at disrupting the work of an authority, or harassing individuals in it.

PART 1: TRANSFERS

1.1 Introduction

This part of the guidance sets out the responsibilities of authorities which create public records as regards the transfer of these records to places of deposit. This section includes commentary on obligations under Freedom of Information for creating authorities to make appropriate arrangements for the transfer of public records to places of deposit, and suggests some practical ways of complying with the Act.

This section follows the process of carrying out a transfer of public records to a place of deposit. This section is informed by the s.46 Code of Practice on the management of records⁴, the experience of The National Archives in setting out transfer procedures for its own accessions activities, and the advice of representatives of places of deposit and creating authorities. It covers the following aspects:

- 1.2 Functional responsibilities
- 1.3 Communications and relationships
- 1.4 Reviewing records to establish their accessibility
- 1.5 Transfer forms
- 1.6 Adequate description of transferred materials
- 1.7 Packaging and transfer arrangements
- 1.8 Responsibilities after information has been transferred
- 1.9 Other transfer and disposal issues

⁴ Available at <http://www.dca.gov.uk/foi/codesprac.htm>

1.2 Functional responsibilities

Key points:

- Managing the transfer of records is an essential part of the FOI process
- Creating authorities are responsible for transfer to PoDs
- Places of deposit and creating authorities must agree arrangements which suit their local circumstances

1.2.1 The Public Records Act 1958 makes provisions for the proper management of public records by their creating authorities. Among these provisions is the responsibility for authorities to ensure that records which have been selected for permanent preservation are prepared for transfer either to The National Archives or to another appropriate repository. These other repositories are known as “places of deposit for public records”. The Freedom of Information Act 2000 does not fundamentally change this basic responsibility.

1.2.2 It is essential that the arrangements under which public records are transferred to places of deposit are agreed and clearly understood by both the transferring authority and the recipient. For this reason, they must reach a framework agreement covering issues such as:

- the timing and frequency of the transfer of records
- preparation of records for transfer
- methods of transfer which will be used
- contact details and other communication arrangements

The relationship between creating authorities and places of deposit

1.2.3 Creating authorities are responsible for transferring public records to places of deposit in more or less the same way they are as for transferring them to The National Archives. In both scenarios the objective is to move public records which are worthy of permanent preservation from the place where they were created to a place where they can be properly preserved and made accessible to enquirers. The first part of this guidance publication deals with this basic function.

1.2.4 Public records which have been selected for permanent preservation in a place of deposit remain the legal responsibility of the Lord Chancellor. Places of deposit, acting on behalf of the Lord Chancellor with respect to the deposited public records which they hold, carry out storage and access responsibilities in broadly the same way as The National Archives does for the records for which it has legal responsibility. Both The National Archives and the places of deposit are reliant on creating authorities to ensure that records selected for permanent preservation are transferred in good time, appropriately packaged, with adequate descriptive information and with guidance on their accessibility.

1.2.5 None of these issues intrude on creating authorities' abilities to make information accessible themselves before transfer, to retain information for administrative purposes by agreement with the Lord Chancellor, or to destroy public records not worthy of permanent preservation. These functions are dealt with by other guidance issued by TNA's Records Management Department.⁵

What must creating authorities do?

1.2.6 The *Code of Practice on the management of records under s.46, Part 2* sets out the process for the transfer of public records. Under the FOI Act, places of deposit must be able to respond to enquiries which they receive in relation to information in deposited public records. If they are to do this, creating authorities must inform places of deposit of three things at the time of transfer:

- what records have been transferred to the place of deposit by the creating authority;
- which access conditions have been recommended;
- who to contact at the creating authority if help is required.

It is the responsibility of creating authorities to satisfy these requirements. Senior managers in creating authorities, and in departments or branches within creating authorities, must understand and take responsibility for the costs involved in transfers of records to a place of deposit and provide the necessary resources. A good deal of this work is already being done by creating authorities in partnership with places of deposit, and in such cases this guidance will simply be a commentary on existing procedures. Where this work is not ongoing this guidance should serve as a means of initiating it.

What must places of deposit do?

1.2.7 Places of deposit, like The National Archives, make agreements with creating authorities to receive public records for permanent preservation, and to make those records accessible to enquirers under terms and conditions agreed with the creating authorities and The National Archives. Under the FOI Act this basic responsibility remains in place.

1.2.8 Places of deposit are not obliged to accept public records if it is inappropriate for them to do so. Examples of circumstances in which acceptance of records might be inappropriate include: the records should more properly be transferred to a different place of deposit; the records are unsuitably packaged; the records are not accompanied by adequate descriptive information or finding aids; the place of deposit has not been appointed to receive particular types or series of public records.

What must The National Archives do?

1.2.9 The National Archives has responsibility, on behalf of the Lord Chancellor, for issuing and monitoring guidance on the transfer of public records to places of deposit. Additionally, TNA has a general duty to ensure

⁵ See <http://www.nationalarchives.gov.uk/recordsmanagement> and s.5.1.9 of this guide

that transfer procedures are adhered to by creating authorities and places of deposit, and to help ensure that uncertainties over records transfer issues are resolved to the mutual satisfaction of all parties. TNA also provides the first point of referral for any place of deposit or creating authority which may have queries about their responsibilities with regard to public records under the FOI Act.

What does the Information Commissioner do?

1.2.10 The Information Commissioner enforces and oversees the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2004 (EIRs). The Commissioner has overall responsibility for the promotion of records management, a role which overlaps with that of the Lord Chancellor where public records are concerned. Firstly, section 47(1) of the FOI Act requires the Commissioner to promote the observance of the two codes of practice issued by the Lord Chancellor under s.45 (on access enquiries) and s.46 (on records management). Section 47(5) of the FOI Act requires the Commissioner to consult the Keeper about the promotion of the records management code in relation to public records.

1.2.11 The Commissioner may, with the consent of the relevant public authority, carry out assessments of whether good practice is being followed by a particular authority (FOI section 47(3)). This audit role is described in greater detail in section 1.8.5 of this guidance.

What does the Advisory Council do?

1.2.12 The Advisory Council on National Records and Archives advises the Lord Chancellor about public access to the records and the care of archives and manuscripts. The council meets four times a year. Its main task is to consider proposals to withhold public records from public access beyond 30 years or requests from departments to retain records beyond 30 years. The Lord Chancellor never approves either course without advice from the Council.

Responsibilities at the point of transfer

1.2.13 Public records which have been selected for permanent preservation in places of deposit must be transferred there by the creating authority no later than 30 years after their date of creation, unless the Lord Chancellor agrees otherwise. At the time of transfer to places of deposit, creating authorities must state

- What information is being transferred
- What information can be available to the public on transfer
- What information should be withheld, and why, expressed in terms of exemptions and the reasons they apply, with details of when the exemptions expire or should be reviewed

Responsibilities for appropriate packaging and transit

1.2.14 Public records which are transferred by creating authorities to places of deposit must be appropriately packaged so that they can be taken

into storage by the place of deposit without undue delay. Records must also be transferred by an appropriate method, for example by courier, internal transit, or postal service. Both packaging and transfer are the responsibility of the creating authority, in the same way as for records which are selected for transfer to The National Archives. See section 1.7 of this guidance for further details.

Responsibilities for provision of finding aids

1.2.15 Public records which are transferred by creating authorities to places of deposit must also be accompanied by appropriate lists, catalogues or other descriptive data. The role of such “finding aids” is to make the transferred information identifiable and to ensure clarity over exactly what has been transferred. The absence of such finding aids will obstruct a place of deposit’s ability to respond to access enquiries relating to transferred records. The provision of adequate descriptive data is the responsibility of the creating authority, in the same way as for records which are selected for transfer to The National Archives. See section 1.6 of this guidance for further details.

Potential for provision of records management services

1.2.16 Places of deposit may provide a records management service on behalf of creating authorities for the storage and retrieval of public records which are less than 30 years old. Such arrangements may be subject to locally agreed management fees. Records held under such arrangements remain the responsibility of the creating authority until such time as they are destroyed or deposited for permanent preservation in a place of deposit. They do not count as having been transferred to a place of deposit under the Public Records Act.

Other responsibilities and issues

1.2.17 Creating authorities can transfer material to places of deposit sooner than 30 years, subject to the agreement of the place of deposit. In such cases the creating authority must clarify whether or not the information is intended for immediate release. See sections 1.9.4 - 1.9.5 for further details.

1.2.18 Creating authorities should ensure that their publication scheme is amended as necessary to reflect transfers of public records to a place of deposit. For example the authority might want to specify that information from a given date has been transferred to a place of deposit and is no longer held. Places of deposit should ensure that public records are included in their own authorities’ publication schemes. See section 1.5.7 for further details.

Action:

- Check that your responsibilities for records transfer or receipt are set out in corporate policies
- Do staff responsible for carrying out transfer or receipt of records understand their responsibilities in the context of the FOI Act?

1.3 Communications and relationships

Key points:

- Good communications are the key to successful transfers
- Sensitivity to each other's circumstances is essential
- The National Archives can help with communications issues

1.3.1 The successful transfer of records from creating authorities to places of deposit depends on good communications and relationships agreed by both parties. Creating authorities and places of deposit should be in regular or frequent contact with regard to records transfer issues, to ensure that each understands the other's position and that both parties know which records are to be transferred, when and by what method. In FOI terms it is vital that creating authorities communicate their wishes as regards the accessibility of the information being transferred, and remain contactable when access processes require consultation between places of deposit and creating authorities. These issues are dealt with in section 1.4 and part 2 of this publication.

Establishing a relationship

1.3.2 Staff in creating authorities should know which of their records are scheduled for transfer to places of deposit for permanent preservation. Creating authorities should contact the relevant places of deposit to establish a communicative relationship which will help to ensure that these records can be transferred at the appropriate time, to the appropriate location, in the appropriate manner, and with the necessary accompanying information such as descriptive information and access recommendations. As the transfer of records is the responsibility of the creating authority, staff in the creating authority should take the lead in ensuring that these communications links are established.

1.3.3 Many creating authorities and places of deposit already have such well-established relationships. Many other places of deposit are actually a part of their parent creating department, such as certain national museum archives and NHS archive services. In preparation for FOI implementation staff from creating authorities and places of deposit should meet or communicate to review existing relationships to ensure that they will be sufficient to enable transfers to take place properly in the FOI environment. In cases where contact and relationships have not been established, staff in creating authorities should contact the relevant place of deposit as soon as it is known that records are to be scheduled for transfer there. Early communication of the intention to transfer records is essential in helping places of deposit prepare for the receipt of records.

1.3.5 If a creating authority is uncertain of how to get in touch with staff at particular places of deposit, the Head of Archive Inspection Services at The National Archives should be contacted for assistance in the first instance. Contact details can be found in Appendix 3 of this guidance.

Reaching a framework agreement

1.3.4 A framework agreement should be reached to cover the responsibilities the creating authority and place of deposit will adhere to:

- the timing and frequency of the transfer of records
- methods of transfer which will be used
- preservation responsibilities
- contact details and other communication arrangements

The framework agreement should also confirm the creating authority's responsibility to ensure that the place of deposit is supplied with adequate information on how the records are to be managed and made accessible after transfer. In making a framework agreement between creating authorities and places of deposit it is vital that each party remain sensitive to each other's circumstances. No two creating authorities or places of deposit are exactly alike, and although some provisions may be applicable across the board each party must ensure that the other is aware of any particular circumstance which might affect the transfer process.

Maintaining contact

1.3.5 Circumstances at creating authorities and places of deposit will inevitably change from time to time. Staff will move posts, contact details will be altered, business practices will change, and so on. Good communications will ensure that the impact such changes might have on the transfer process are minimised. It is therefore the responsibility of each party to keep the other informed of any changes which might affect the transfer process.

1.3.6 The National Archives maintains direct contact with many creating authorities and with all places of deposit. In the event of any communications queries arising which cannot be dealt with by the creating authority and place of deposit working together, contact should be made with either the Head of Archive Inspection Services (for places of deposit) or the Head of Client Management (for creating authorities).⁶

Complaints

1.3.7 In the event that a place of deposit is the subject of a complaint relating to a request for information held in deposited public records, The National Archives should be the first point of contact for the approach to the resolution of that complaint. Contact should be made with the Head of Archive Inspection Services in the first instance.⁷

Action:

- Contact your places of deposit / creating authorities to establish or review communication arrangements
- Establish a framework agreement which sets out what each party will do to ensure the transfer process runs smoothly

⁶ See appendix 1

⁷ See appendix 1

1.4 Reviewing records to establish their accessibility

Key points:

- a review must take place before records are transferred
- details of exemptions which creating authorities would like to be applied must be communicated at the point of transfer
- requests for transferred material which is intended for closure for longer than 30 years are considered by the Advisory Council
- redaction of information prior to transfer may be appropriate in cases of sensitive information

1.4.1 The Code of Practice part 2 outlines the responsibility of creating authorities to carry out a review of records to establish whether or not the information which they contain can be released to the public.⁸ This section of this guidance publication is not intended to set out the procedures under which creating authorities carry out this review of public records. Instead, this section attempts to clarify a number of details regarding this review process. The review process applies only to records which have already been appraised and selected for transfer to a place of deposit.

1.4.2 Section 3(4) of the Public Records Act 1958 states that public records selected for permanent preservation in places of deposit “shall be transferred not later than thirty years after their creation”. Clearly the review of public records must therefore take place in creating authorities before 30 years, and in good time to allow the records to be transferred by the time they reach 30 years old. The exception to this rule is described in section 1.9.1.

The purpose of the review

1.4.3 Places of deposit must be equipped to handle requests for information from members of the public relating to transferred public records from the point at which the records are accepted. Creating authorities must therefore review their records with a view to establishing:

- What information is being transferred
- What information can be available to the public on transfer
- What information should be withheld, and why, expressed in terms of exemptions and the reasons they apply, with details of when the exemptions expire or should be reviewed

Information not available to the public immediately on transfer

1.4.4 Under the FOI Act the default 30-year access rule for public records will no longer apply and all records will be considered as open to the public on transfer to a place of deposit unless an exemption is identified. The reasons why records, or extracts from them, need to remain closed after transfer must be justified under the FOI Act, not the Public Records Act. Guidance on the application of exemptions has been issued by the

⁸ s.46 Code of Practice sections 11.6 to 11.8

Department for Constitutional Affairs⁹ and by the Information Commissioner.¹⁰ Creating authorities should also be aware of TNA's *Closure on Transfer Guidelines* which offer further guidance on this area of transfer procedures.¹¹

1.4.5 Section 11.7 of the Code of Practice requires that a creating authority prepares a schedule identifying any specified information which it considers ought not to be made immediately available to the public, citing each relevant exemption under the FOI Act and explaining why it applies. Again this relates only to records which have already been selected for transfer to a place of deposit (or to TNA). Section 11.8 of the s.46 Code requires that such schedules are submitted to TNA client managers for review and advice: local creating authorities which do not have direct contact with a TNA client manager – as is the case with many local creating authorities including NHS bodies – should submit their schedules to the relevant Departmental Record Officer in the first instance.

Information intended for protection for longer than 30 years

1.4.6 The Code also sets out a requirement that in instances where a creating authority considers that specified information should not be released on transfer a schedule should be prepared citing each relevant exemption under the Act and explaining why it applies.¹² Such schedules must be reviewed by TNA staff. When closure beyond 30 years is involved the schedules are passed to the Advisory Council on National Records and Archives for its consideration and approval. Creating authorities must therefore send such schedules to the relevant TNA Client Manager in the normal way. Where authorities do not have direct access to a TNA Client Manager the relevant Departmental Record Officer should be contacted for assistance with the preparation of a schedule.

Maintaining contact about the application of exemptions

1.4.7 It is vital that creating authorities make clear to places of deposit exactly who (or which post) in the authority the place of deposit should contact with regard to the application of exemptions when required to do so. Section 2 of this publication provides guidance on the use of exemptions when handling access enquiries about information held in deposited public records, including those relating to closed records.

Redaction of information prior to release

1.4.8 The Code of Practice states that where a complete document cannot be made available for access authorities should consider whether parts of records might be released if the sensitive information were blanked out.¹³ This serves as a general reminder of one of the basic features of the FOI Act, namely that the right of access is to information not records or documents. TNA has issued a guidance toolkit to assist all creating authorities

⁹ See [Hwww.foi.gov.uk/guidance/index.htm](http://www.foi.gov.uk/guidance/index.htm)H

¹⁰ See [Hwww.informationcommissioner.gov.uk/eventual.aspx?id=1024](http://www.informationcommissioner.gov.uk/eventual.aspx?id=1024)H

¹¹ See [Hwww.nationalarchives.gov.uk/recordsmanagement/advice/standards.htm](http://www.nationalarchives.gov.uk/recordsmanagement/advice/standards.htm)H

¹² s.46 Code of Practice s.11.8 and 11.11

¹³ s.46 Code of Practice s.11.7

in their understanding of redaction techniques and their use, but a few details on the redaction process may be found helpful here.

1.4.9 Redaction can be defined as the separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs, or the removal of whole pages, prior to the release of the document. Redaction should be performed or overseen by staff that are knowledgeable about the records and can determine what material is exempt. Redaction can be carried out as part of the records review process before the records are transferred to a place of deposit, so that a redacted version accompanies the complete record. Details of redactions must be passed to places of deposit at the point of transfer to ensure that places of deposit are fully informed as to the nature and accessibility of the information in question.

1.4.10 Forms which might be used when carrying out redaction, and further details on all these issues, can be found in TNA's redaction toolkit.¹⁴

Action:

- Ensure that staff understand the purpose of review
- Ensure that staff are familiar with the application of exemptions
- Ensure that staff are familiar with redaction guidelines
- Your DRO should be contacted if further guidance is required

¹⁴ See www.nationalarchives.gov.uk/recordsmanagement/advice/pdf/redactiontoolkit.pdf

1.5 Transfer forms

Key points:

- Transfer forms should communicate all the information a place of deposit needs to know about a transfer
- Standard forms exist which might be appropriate for use by creating authorities

1.5.1 Transfer forms should accompany any transfer of information to a place of deposit. Such forms are sources of reference, conveying details about the identity of the information and about the creating authority's wishes as regards the information's accessibility. Transfer forms must therefore provide all the information which a place of deposit might need in order to be able to store, manage and make accessible the information in the transferred records.

1.5.2 Places of deposit should refuse to accept any transfers of records from a creating authority unless they are accompanied by satisfactory forms providing them with enough information to be able to manage the records and handle access enquiries relating to them.

What information should go onto a transfer form?

1.5.3 Creating authorities should use transfer forms to state:

- What information is being transferred
- Which exemptions the authority considers should be applied¹⁵
- Who to contact at the authority in case of queries about the transfer¹⁶

Transfer forms should also provide any other detail which would help the place of deposit, and potentially the creating authority, to understand how to manage the records after transfer.

1.5.4 In addition to completed transfer forms the creating authority should also supply an inventory of the records which are being sent to the place of deposit. The place of deposit must check this against records received and alert the creating authority to any discrepancies at the earliest opportunity. Adequate description of the information being transferred should also be supplied: this issue is discussed in the next section of this guidance.

1.5.5 It will also be helpful if the creating authority draws attention to any transferred information which relates to environmental issues, in which case the place of deposit should be made aware that the Environmental Information Regulations (EIRs) are likely to apply rather than the FOI Act.¹⁷ The creating authority should use the transfer form to indicate whether or not

¹⁵ See sections 1.4.4 to 1.4.6 of this guide for further details

¹⁶ See section 1.3 of this guide for further details

¹⁷ See [Hwww.nationalarchives.gov.uk/policy/environmental.htm](http://www.nationalarchives.gov.uk/policy/environmental.htm)H for further information

any exception under the EIRs applies to the transferred information rather than exemptions under the FOI Act.

Is there a standard form which can be used?

1.5.6 Standard forms, agreed between creating authorities and places of deposit in accordance with local needs, will help to ensure that the right information consistently accompanies any transfer of public records to a place of deposit. A form which TNA asks authorities to use when transferring records to TNA is available on TNA's web site¹⁸ and you might wish to use or adapt this form for your own purposes. Whether you use this form or one of your own design, copies of completed transfer forms should be retained by both the creating authority and the place of deposit as a record of the transfer which has taken place.

Are there any other forms which should be used?

1.5.7 Creating authorities should maintain their publication scheme in order to indicate which records are no longer held by the authority, and for which enquirers should be redirected to the appropriate place of deposit. It might therefore be helpful for creating authorities to have a standard form by which they can flag the need to update their publication scheme as new transfers of records are made.

1.5.8 Every place of deposit's publication scheme should already include a general class for the deposited public records which they hold if the s.21 "reasonably accessible" exemption under the FOI Act is to be claimed.¹⁹ Note that publication schemes cannot be updated without approval by Information Commissioner, and so it is better and more flexible to keep the details of specific records holdings and acquisitions outside the publication scheme.²⁰

1.5.9 It will also be helpful for a receipt form to be used so that the place of deposit can confirm that it has received all the information which the creating authority intended to send.

Action:

- Review your existing transfer documentation to ensure that it can carry all the information required

¹⁸ See [Hwww.nationalarchives.gov.uk/recordsmanagement/advice/pdf/cat_aa2.rtf](http://www.nationalarchives.gov.uk/recordsmanagement/advice/pdf/cat_aa2.rtf)H

¹⁹ For further guidance on publication schemes for places of deposit see "FOI publication schemes, archives and finding aids" in the September 2002 issue of the *Places of Deposit Bulletin* at [Hhttp://www.nationalarchives.gov.uk/archives/advice/pdf/bulletin_sep02.pdf](http://www.nationalarchives.gov.uk/archives/advice/pdf/bulletin_sep02.pdf)H This guidance will be updated shortly. See also section 2.8 of this publication.

²⁰ See [Hwww.informationcommissioner.gov.uk/eventual.aspx?id=3783](http://www.informationcommissioner.gov.uk/eventual.aspx?id=3783)H for details

1.6 Adequate description of transferred materials

Key points:

- Creating authorities are responsible for providing adequate descriptions of information prior to transfer
- Local circumstances should be considered when making descriptions

1.6.1 In order that places of deposit can locate and identify information in transferred public records when called to do so, it is essential that records are provided with adequate descriptions of their content by creating authorities prior to their transfer. This position is the same as for records which have been selected for transfer to The National Archives. However, as places of deposit do not generally use the same system of cataloguing as The National Archives, creating authorities should liaise with places of deposit to determine what structure and format the such descriptions should take. In all cases it is essential that descriptions provided by creating authorities are adequate to enable places of deposit to construct catalogues and to understand proposed FOI access conditions.

1.6.2 The term “adequate description” should be understood to potentially include the full range of finding aids from catalogues to box lists and summary inventories to databases. It may be that the most appropriate descriptive guide will be a copy of whatever finding aid or retrieval tools the creating authority used in order to find information for its own business purposes. The transfer of a database, spreadsheet or other electronic finding aid might be possible, and this is to be encouraged as such lists can often more readily be manipulated and used by places of deposit than paper finding aids.

1.6.3 It may equally be, however, that places of deposit will prefer to carry out detailed cataloguing of transferred materials themselves, to ensure that such catalogues are produced in line with their own in-house needs and to formal archival cataloguing standards. In such cases the creating authority must still provide basic descriptions of the information in question to a level which enables such detailed cataloguing to be undertaken, as well as to provide clarity on exactly what has been transferred.

1.6.4 To a great extent, however, local circumstances will dictate the level of “adequate description” required, and creating authorities and places of deposit should communicate to reach agreement on this issue. The National Archives has produced a cataloguing guidance publication which creating authorities and places of deposit may wish to refer to, although it should be noted that this guidance has been prepared specifically with the aim of ensuring that records transferred to The National Archives are catalogued in

line with TNA's own on-line catalogue. The guidance is available on TNA's website.²¹

Action:

- Creating authorities should review their description processes and ensure that adequate resources are available for them to be carried out
- Places of deposit should liaise with creating authorities if levels of description are felt to be inadequate

²¹ See www.nationalarchives.gov.uk/recordsmanagement/advice/cataloguing.htm

1.7 Packaging and transfer arrangements

Key points:

- Creating authorities are responsible for the preparation of records for transfer to places of deposit
- TNA guidelines set out appropriate packaging practices
- Local circumstances may require special packaging arrangements to be made
- Records transfers should be carefully timetabled

1.7.1 In order that transferred records can swiftly be assimilated into repositories at places of deposit, creating authorities must ensure that records are properly packaged at the time of transfer. Records should also be transported to places of deposit by a method which guarantees their safe transit and arrival. These basic principles are identical to those established for the transfer of records to The National Archives, and as such this section of the publication summarises TNA's *Standard on the preparation of records for transfer to the PRO or approved places of deposit*.²² That standard states that creating authorities "are responsible for ensuring that records are prepared and packed to an acceptable standard prior to transfer".

1.7.2 It should not be assumed that TNA's packaging guidance is applicable in every local circumstance, however, and creating authorities and places of deposit should liaise to agree packaging arrangements which suit local needs. Dependant on local circumstances it might be more necessary for the receiving place of deposit to arrange for transferred records to be re-packaged on receipt, at the expense of the creating authority: this is equally acceptable. Some places of deposit may have their own systems of packaging which are particular to their own storage arrangements: such packaging systems should be followed by creating authorities as closely as possible.

1.7.3 Equivalent guidelines on the transfer of electronic records to The National Archives will soon be published on The National Archives web site²³ but note that this is not intended to refer specifically to arrangements for the transfer of such records to places of deposit. Places of deposit do not generally have facilities for the permanent preservation of digital records.

The purpose of packaging

1.7.4 The preparation and packaging of documents is a vital part of their preservation. The purpose of this is firstly to halt any existing deterioration and secondly to place the documents in a condition that will assist their continued survival and use. Documents which are appropriately packaged will better withstand variable environmental conditions, resist dust and other airborne particles, and be protected from water, light and general wear and tear. Another of the biggest threats to the continued survival of a record is physical handling. It is therefore vital that records are not just

²² See www.pro.gov.uk/recordsmanagement/standards/preparation.htm

²³ See www.pro.gov.uk/about/preservation/digital/transfer/default.htm

packaged appropriately, but also described accurately so that unnecessary use is minimised. Creating authorities' packaging activities should therefore be seen alongside descriptive activities (for which see section 1.6 of this publication).

1.7.5 The abovementioned *Standard on the preparation of records for transfer to the PRO or approved places of deposit* is a best practice benchmark aimed at creating authorities' records management staff who, usually with no specialist conservation skills, are responsible for preparing documents for permanent preservation. It provides advice and guidance on the preparation and packing of records and is supplementary to the relevant British Standards Institute publication BS 5454 (2000) *Storage and exhibition of archival documents*.

1.7.6 The packaging standard covers four main areas: preparation of documents, packing, labelling and documentation. The majority of the standard relates to paper records, as these continue to be the form most frequently transferred. There are separate sections on preparing records in microform and on records in electronic media, such as CD or magnetic tape, which may be found on paper files. The guidance also gives details of best practice as regards handling records to ensure that they are not damaged prior to or during transfer.

Specialist advice on preservation and conservation

1.7.7 The packaging standard is not intended to give technical conservation advice. If specialist conservation is required the creating authority should not undertake it: instead the need for conservation should be drawn to the attention of the place of deposit or The Head of Conservation at The National Archives, so that experienced conservation staff can assess necessary treatment. However, creating authorities can undertake basic preservation measures and these are set out in the standard. Lists of contact details of commercial preservation and conservation bureaux are also provided in the standard, as are links to other sources of guidance and information.

Packaging for specific places of deposit

1.7.8 It must be borne in mind that places of deposit will have differing storage requirements depending on the size of their repositories, their shelving arrangements, document transit equipment and so on. Places of deposit may or may not routinely use box labelling to identify records within boxes: where box labels are required efforts should be made to use labels which meet the place of deposit's needs. For these reasons it is vital that creating authorities and places of deposit liaise to confirm details of packaging arrangements prior to transfer, and that compliance with the place of deposit's requirements are met by the creating authority, as far as is practical and appropriate.

Transit arrangements

1.7.9 Arrangements for the physical transfer of records to places of deposit are the responsibility of creating authorities. Transfers should be

arranged with the agreement of places of deposit to ensure that records are delivered at a time when place of deposit staff are available to receive and process them. Most government departments have access to an approved inter-departmental courier or transit agent, and in most cases this carrier will be suitable for the transfer of records. Many commercial carriers can also be employed to transport records, subject to their staff being properly trained beforehand. Creating authorities which do not have access to in-house courier services should use such commercial services instead. Care should be taken to ensure that all courier staff are made aware of the delicate physical nature of records: handling guidelines, a service level agreement and handling training might all be called upon to ensure that records are not damaged during transit. Staff at places of deposit may be able to advise on these issues, or alternatively the Head of Archive Inspection Services at The National Archives may be able to offer guidance on request.

Transfer timetables

1.7.10 Whenever records are to be transferred to places of deposit by a creating authority, it is important that the creating authority consults the place of deposit in order to agree the most convenient time for delivery to take place. Whereas The National Archives is generally able to accommodate transfers of records from authorities on an ongoing basis, availability of space and other resources at places of deposit may require more formalised transfer timetables to help them plan ahead. Transferring records at set points each month, quarter or year may help places of deposit to prepare to receive and process these transfers. The agreement of a transfer timetable, as part of the wider framework agreement, should therefore be considered as a matter of importance.

1.7.11 The timing and frequency of records transfers will differ from one series of records to the next, and between authorities and places of deposit. In certain cases (such as Magistrate's Court records or records of NHS bodies, for example) there are formal retention guidelines which set out transfer timetables. A summary of all such guidelines is available from The National Archives.²⁴ Where such guidelines have not been prepared Departmental Record Officers will be able to advise on the appropriate frequency of transfers.

Action:

- Agree packaging and transit arrangements beforehand, on a case by case basis if necessary
- Establish a packaging and handling policy for use by staff and couriers

²⁴ See [Hwww.nationalarchives.gov.uk/recordsmanagement/advice/pdf/sched_public.pdf](http://www.nationalarchives.gov.uk/recordsmanagement/advice/pdf/sched_public.pdf)

1.8 Responsibilities after information has been transferred

Key points:

- Transfer should not be seen as the end of creating authorities' involvement
- Ongoing communications after transfer are essential
- Lord Chancellor and Information Commissioner have audit roles

Access to records by authorities after their transfer to places of deposit

1.8.1 Section 4(6) of the Public Records Act 1958 states that "Public records in the Public Record Office or other place of deposit appointed by the Lord Chancellor under this Act shall be temporarily returned at the request of the person by whom or department or office from which they were transferred." This provision is not altered by the introduction of the FOI Act.

1.8.2 Good communications between places of deposit and creating authorities are essential in ensuring that the temporary return of records takes place quickly and to mutual satisfaction. In most cases local circumstances will dictate the means by which records are conveyed back to the creating authority, but the rule of thumb should be that places of deposit should return records promptly once a request has been received. Creating authorities in turn should seek to return the records back to the place of deposit as soon as their use of the records has been completed. Courier services as set out in section 1.7.9 should be considered the best option for such loans and returns.

Creating authorities' role in being consulted over access enquiries

1.8.3 With regard to information requests relating to public records which are not yet open, under s.66 of the FOI Act the creating authority must be consulted about the application of exemptions and, when necessary, will undertake the public interest test. This aspect of post-transfer liaison is dealt with in part 2 of this guidance.

TNA and Information Commissioner's audit roles

1.8.4 The National Archives maintains a programme of inspections and advisory visits for archive services including places of deposit for public records. This programme of visits is carried out under powers delegated by the Lord Chancellor to the Keeper of Public Records. In time, consideration will be given as to whether or not a place of deposit's compliance with the FOI Act might form part of the criteria by which places of deposit assessments are made. At present compliance with FOI will not form a part of such assessments, although TNA staff will maintain its support for places of deposit in terms of offering advice and guidance on the FOI Act with respect to deposited public records.

1.8.5 Under section 51(1)(b)(ii) of the FOI Act the Information Commissioner can serve an Information Notice on a public authority requiring it to provide information relating to conformity with either code of practice. Section 48 enables the Commissioner to give to a public authority a "practice

recommendation” specifying the steps which he considers should be taken in order to conform with good practice as recommended by either code of practice. Where the practice recommendation relates to conformity with the records management code and the records in question are public records, section 48(3) requires the Commissioner to consult the Keeper of Public Records.

1.8.6 In support of this requirement a Memorandum of Understanding between the Keeper of Public Records and the Information Commissioner has been agreed to clarify the relationship between the Commissioner and the Keeper under the FOI Act to establish a working framework for the development of this relationship in practice. One of the tools which will be used in carrying out this audit work will be the model action plans which TNA has produced, or collaborated in the production of, to help different parts of the public sector achieve compliance with the s.46 code of practice.²⁵ TNA is also developing an audit methodology which will be designed to assist and document the pre-audit evaluation of the processes and procedures, and which is to be used within an authority for compliance with the records management code and the accompanying model action plans. When completed it will provide a statement of the extent to which the processes and procedures within an organisation comply with the guidance. Subject to the agreement of the Information Commissioner a draft of the methodology will be circulated to the records management and audit communities for comment and it is proposed to publish the revised methodology in its final form on TNA’s website in March 2004.²⁶

Action:

- Creating authorities and places of deposit should include temporary return procedures in their framework agreements
- Creating authorities and places of deposit should maintain awareness of the Information Commissioner’s audit role

²⁵ <http://www.nationalarchives.gov.uk/policy/foi/H>

²⁶ For more information on this subject contact Hrmadvisory@nationalarchives.gov.uk

1.9 Other transfer and disposal issues

Key points:

- Appropriate destruction of public records is still permitted
- Presentation of public records is still permitted
- Administrative retention of public records is still permitted

Under the Public Records Act creating authorities have a range of options for the disposal of public records following their appraisal. This section clarifies the position of these disposal options under the FOI Act.

Administrative retention

1.9.1 In addition to the transfer of records to The National Archives or to places of deposit, creating authorities will still be able to apply to the Lord Chancellor, through the Advisory Council on National Records and Archives, for approval to retain records for longer than 30 years for administrative purposes.²⁷

Destruction

1.9.2 Authorities can also still destroy public records following their appraisal, if they have not been selected for permanent preservation. The FOI Act does not ask that creating authorities keep or transfer more records than they would have previously, nor that places of deposit take more records than they would have previously. Creating authorities must ensure that destruction of unselected public records is done in accordance with agreed retention schedules.

Presentation as an alternative to destruction

1.9.3 Authorities can still apply to The National Archives if they wish to present records to other appropriate bodies as an alternative to their destruction.²⁸ Such records cease to be public records, and become the property of the recipient authority. Note that they will still be subject to FOI if the recipient is itself a public authority as defined by the FOI Act.

Transfer of records sooner than 30 years

1.9.4 In some cases the review process will identify records younger than 30 years old which have ceased to be of administrative use to the creating authority, and which will ultimately be transferred to a place of deposit. It could be seen as good practice to move such records into the appropriate place of deposit at the earliest possible time in order that they benefit from the high standards of preservation care found in places of deposit repositories. However, the right to make such early transfers of records to places of deposit should not be assumed. Places of deposit are not required to take in records before they reach 30 years old, and such requests can be refused.

²⁷ Code Part 2 s.11.12 and Public Records Act s.3(4)

²⁸ Public Records Act s.3(6)

1.9.5 If places of deposit do agree to early transfers of records, the basis on which the records are accepted must be clearly set out. Public records can legally be deposited at places of deposit before they reach 30 years old, and if the records are accepted as deposits then the place of deposit takes full responsibility for them. Note that for any deposit of records under the Public Records Act, whatever the age of the records, the creating authority must conduct the access review and identify exemptions it believes should be applied to records which are not open on transfer, as outlined above.

1.9.6 It may be preferable for places of deposit to hold such records on a records management basis until they are transferred for permanent preservation. See section 1.2.16 for further details of this.

PART 2. ENQUIRIES / ACCESS REQUESTS

2.1 Introduction

This part of the guidance explains what the responsibilities of Places of Deposit are when answering FOI requests for information in deposited public records. It is also relevant to requests for information in public records which fall under the Environmental Information Regulations (EIRs). It suggests some practical ways of complying with the FOI Act when dealing with enquiries.

Please note that this guidance specifically relates to deposited public records which are 30 years or older, held in Places of Deposit. Although many of the issues raised and the best practice described will be generic, this document should not be read as guidance which covers *all* records or information subject to FOI.

This part of the guidance roughly follows the process of dealing with an enquiry, from start to finish. It is strongly influenced by the s.45 Code of Practice on dealing with requests for information²⁹, The National Archives' own experience in preparing for dealing with FOI requests, and the experiences and advice of representatives from different types of Places of Deposit. It covers the following stages of an FOI enquiry:

- 2.2 An overview of the enquiry process
- 2.3 Preparation
- 2.4 Receiving the enquiry
- 2.5 Categorising and logging the enquiry
- 2.6 Requesting clarification or further information
- 2.7 Is the information likely to be held by our office?
- 2.8 Is the information already reasonably accessible (s.21) or shortly to be published (s.22)?
- 2.9 Cost exemptions and charging fees
- 2.10 Enquiries for information in public records which are not yet open to the public
- 2.11 Refusing a request
- 2.12 Providing the information
- 2.13 Enquiry closed, access decisions recorded.
- 2.14 Complaints/Appeals

Appendix 3 Summary of all suggested action points

Appendix 4 Frequently Asked Questions

This guidance will be updated or amended as necessary after FOI has come into force.

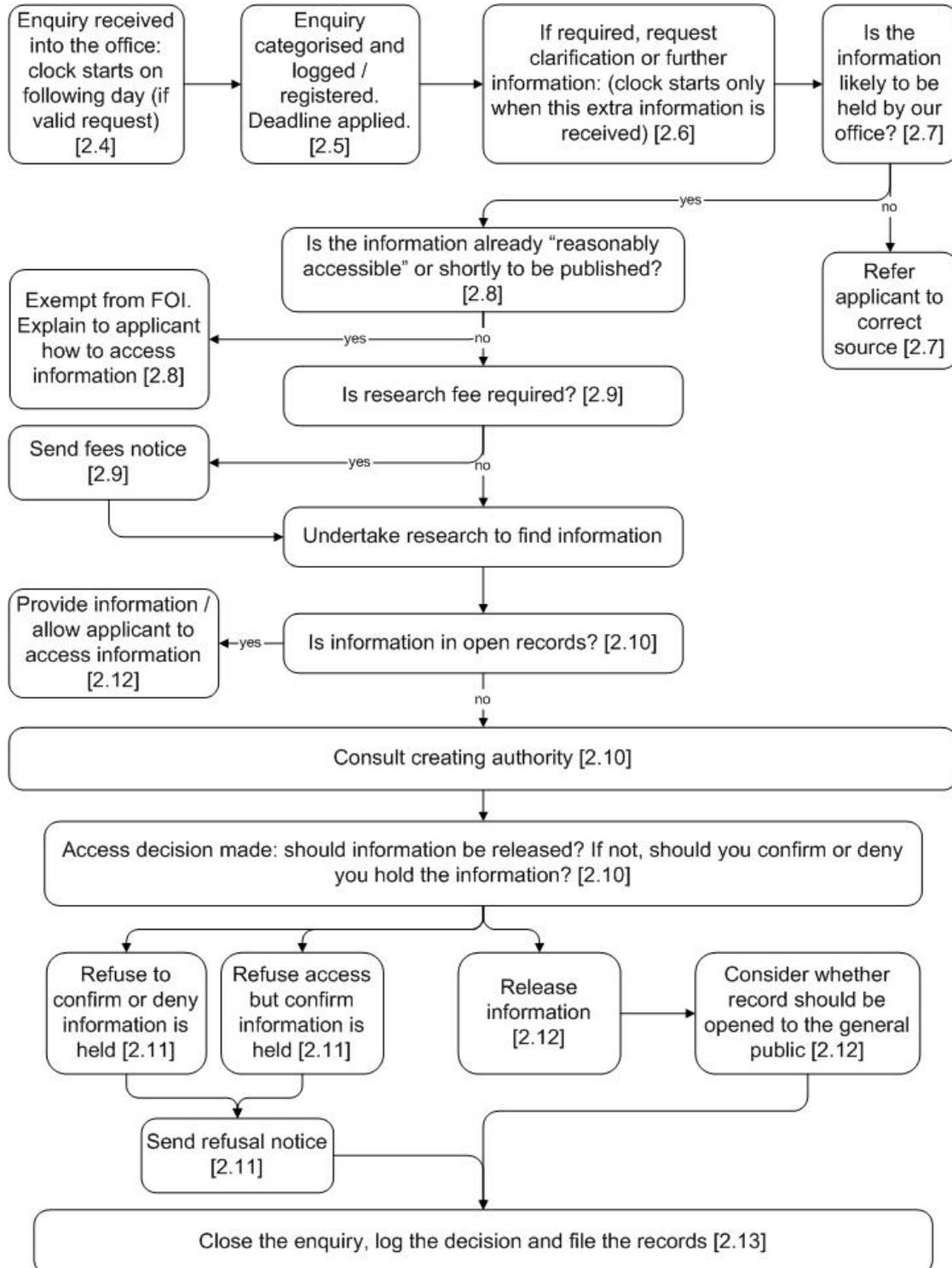
²⁹ See www.dca.gov.uk/foi/codesprac.htm Bear in mind that the Code of Practice relates to all records subject to FOI, not just public records. The Code is due to be periodically reviewed.

WHAT YOU NEED TO KNOW

- Places of Deposit for public records act on behalf of the Lord Chancellor, who is legally responsible for the application of FOI to public records.
- Any request for information a Place of Deposit holds could be an FOI request – including information in the archives.
- FOI is about access to *information* not necessarily access to complete records.
- If the information is in 'public records which are not yet open, there is a requirement to consult the creating authority in making a decision about releasing information.
- The general rule to be followed is to handle a request for information as you would expect it to be handled if it was you that submitted it. All deadlines should be met (FOI – 20 working days, EIRs – 20 working days and Data Protection – 40 calendar days). The requestor is to be informed of any issues there might be while handling the request. These procedures are an expansion of that general rule.
- You should keep good records of enquiry handling.

2.2 An overview of the enquiry process

2.2.1 This flowchart gives a very basic overview of the enquiry process from start to finish. The following sections of this guidance, indicated in brackets [], will look at each stage of the process in detail.



2.3 Preparation

Key points:

- Before FOI requests begin to arrive, you must ensure that procedures are in place to make it as easy as possible for people to make enquiries.

2.3.1 The Freedom of Information Act sets out a duty to provide advice and assistance to enquirers:

s16(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

In preparing for requests to arrive, this means that your office's enquiry process is easy to understand and that members of the public know what their rights are and what the procedure is for making an enquiry. The s45 Code of Practice sets out in detail exactly how your office can meet this requirement. Complying with the Code of Practice means that you are by definition providing advice and assistance. Check how far your office provides advice and assistance to potential enquirers by looking over this checklist taken from the s45 Code.

s.45 Code of Practice		
para.	Does your office provide advice and assistance to potential enquirers?	Met?
6	Public authorities should publish their procedures for dealing with requests for information.	
	The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance.	
	A telephone number should also be provided, where possible that of a named individual who can provide assistance.	
	The procedures should be referred to in the authority's publication scheme.	
	These procedures may include what the public authority's usual procedure will be where it does not hold the information requested.	
	It may also alert potential applicants to the fact that the public authority may need ³⁰ to consult other public authorities and/or third parties in order to reach a decision on whether the	

³⁰ If the request is for information in public records which are not yet open to the public, Places of Deposit are required by the Act to consult the creating authority. To comply with this section of the Code as far as public records are concerned, the Place of Deposit could therefore simply mention this fact alongside all the other information it makes available to potential enquirers.

	requested information can be released, and therefore alert potential applicants that they may wish to be notified before any transfer of request or consultation is made and if so, they should say so in their applications.	
7	Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need to draw these to the attention of potential applicants who appear unaware of them.	

Preparing for FOI

2.3.2 You may wish to start analysing your office's enquiries now, to help estimate the number of FOI enquiries your office is likely to receive from 2005. For example, try categorising requests as they come in, and marking them down on a chart. How many of them would be FOI enquiries? How many of them ask for information in closed records compared to open records? How many might be covered by the Environmental Information Regulations? This will also help you to practice identifying FOI requests and distinguishing them from DPA or EIR requests. It would also be worthwhile calculating how long enquiries generally take to answer, as this will help you to calculate fees estimates. If your office's charging regime is challenged, you can show that it is based it on real, quantifiable evidence of how much time enquiries generally take.

2.3.3 Remember that the number of FOI enquiries your office receives could increase from 2005 because of the publicity which the Act will receive. You might want to check now whether some questions are asked often enough for it to be worth putting them, and the answers, on your website as FAQs.

2.3.4 At some point your office will probably need to consult with the creating authority about access to information in public records which are not yet open. You may wish to start drawing up a list of contacts in creating authorities so that you are ready when this situation occurs.

ACTION:

- Check that you comply with the duty to provide advice and assistance to potential enquirers.
- Consider whether to do some preparatory work to help estimate the number of FOI enquiries you are likely to receive and the time it will take to answer them.
- Can popular enquiries be answered as FAQs on your website or in your publication scheme?
- Start collating a list of contacts within creating departments in case you need to consult with them.
- Network with colleagues in other Places of Deposit and Archives to discuss problems and solutions.

2.4 Receiving the enquiry

Enquiry received into the office: clock starts on following day (if valid request)

Key points:

- Freedom of Information requests must be dealt with promptly and no later than 20 working days. The clock starts ticking on the working day after the enquiry is received into the office.
- The date the enquiry is received should therefore be recorded.

The ticking clock

2.4.1 The deadline for replying to an enquiry depends upon which legislation the access request falls under. This will be explained in the next section of the guidance; the key point here is to ensure that when enquiries arrive (whichever legislation they fall under) that the date that they are received is recorded in some way. FOI requests must be dealt with within 20 working days, and the clock starts ticking on the day after the enquiry is “received” into the organisation³¹.

2.4.2 The clock starts ticking only if the request is a valid FOI request. Further explanation of how to identify a valid FOI request is given in section 2.5 of this guidance. At this stage, it might not be possible to know whether the enquiry is an FOI request or not, so it may make sense to treat all enquiries in the same way at this initial stage

What is a “working day”?

2.4.3 The FOI Act defines the “working day” in s.10(6) as being any day other than a Saturday, a Sunday or a public holiday. In other words, the FOI Act says that working days are Monday-Friday. This applies even if your office’s working week is, for example, Tuesday-Saturday, or whether your office is only open for a couple of days a week. Whatever your office’s particular situation, the FOI Act’s definition of a working day will still have to be followed. So, it follows that if correspondence arrives into the office on a Friday or Saturday, the clock will only start ticking on Monday because Saturday isn’t a working day under the Act. Any stocktaking closures, or any other temporary closures to the public are still counted as working days.

³¹ The Information Commissioner’s Guidance on what is a working day and when the clock starts ticking is available at:
[Hwww.informationcommissioner.gov.uk/cms/DocumentUploads/AG%2011%20Time%20for%20compliance.pdf](http://www.informationcommissioner.gov.uk/cms/DocumentUploads/AG%2011%20Time%20for%20compliance.pdf)H

2.4.4 The Act does not define what *hours* from Monday-Friday are considered to be working hours; this is something for each individual office to define. At The National Archives we are using 9-5 (the standard working day) as our working hours.

2.4.5 If there is no way of telling which day the correspondence was received (e.g. if your office is closed on Saturdays and Mondays and you collect the post on Tuesday), then you could assume it all arrived on the earliest possible day, or at least the “middle” day just to be on the safe side to ensure that the 20 working days is met as far as possible.

2.4.6 It is possible for public authorities to extend the 20 day deadline, but only by negotiation with the enquirer. If there is a particular problem in meeting the deadline (e.g. a single-staffed archive office which is only open a few days a week), the situation and the difficulties should be explained as clearly as possible to the enquirer, and you should aim to be as helpful as you possibly can. However, should the enquirer still wish the 20 day deadline to be met, you must comply.

Date stamp the post

2.4.7 Since the clock starts ticking on the first working day after the request is received by the organisation, it is important to obtain evidence of this by ensuring that all post is date stamped (or some other similar way of recording the information) when it comes into the organisation. However, remember that if the date on emails or faxes is a Saturday or Sunday, legally the clock will start ticking on the following Monday.

2.4.8 You may wish to consider whether it would be better if all post to your office were received via a centralised point, or whether it should be received by individual staff. At The National Archives, the post is opened by our facilities department who date stamp the correspondence and forward it on to the appropriate department for logging and reply. Would the date stamping be done by a centralised unit in your organisation? If not, will each individual staff member date stamp the post when it is received - or should one member of staff be appointed with responsibility for doing this, either permanently or on a rota system? The actual practicalities of how this is done are not important, as long as it is achieved. The main thing is to get evidence of the working day the enquiry was received by your office. Remember that the clock starts the day after it was received into your office, not necessarily the day the correspondence was opened or read.

Covering during absences

2.4.9 You also need to consider what will happen when a colleague is out of the office. What happens if an FOI request lands on their desk and stays there until they get back from holiday? Either post should be dealt with centrally so this situation wouldn't occur, or staff should always look out for post on their absent colleague's desk so that it can be dealt with. Similarly, what if an email enquiry arrives to an individual's inbox whilst they are away? Does your office have procedures to allow staff to check their colleague's email if they are absent?

2.4.10 At The National Archives, staff will be encouraged to authorise a trusted colleague to check on their external emails if they are absent for more than a week (any internal confidential emails will be marked as such in the subject heading and so will not be opened).

2.4.11 You should consider the effect staff absences would have on the FOI process. In a single staffed office, if no-one else can cover for the Archivist, an absence for 3 weeks could be a problem as there will only be one week left to deal with the enquiries and to undertake any consultation procedures.

2.4.12 All of this is obviously going to be a serious consideration for offices with part-time Archivists or sole Archivists who have to close the service when they are on leave, or because they only work part time. The key thing to bear in mind is to provide advice and assistance as much as you possibly can. Automatic replies and information on the website will help. Make sure that the fact that your office is not staffed on certain days is well publicised, so people are aware of this in advance. Be as helpful as you can, and hopefully problems will be avoided. As explained above, it is possible for public authorities to extend the 20 day deadline, but only by negotiation with the enquirer. Should the enquirer still wish the 20 day deadline to be met, you must comply.

2.4.13 It will be important for lone Archivists to reserve time to deal with enquiries when they return from leave. For example, try to avoid any meetings or other activities for a few days to ensure that you can concentrate on dealing with any enquiries that have come in while you were away. If you have been monitoring your enquiries over a few months, you will be able to make an educated guess of how many enquiries are likely to have arrived during your absence and how long you will need to deal with them on your return. Alternatively, you may be able to nominate a colleague to deal with simple written enquiries whilst you are away to help ease the burden.

2.4.14 It is particularly important, therefore, for smaller Places of Deposit to put procedures in place to ensure that the consultation with the creating authority (explained in section 2.9 of this guidance) is completed as quickly as possible. It could be a benefit that many single-staffed offices (such as Hospital Archivists) are situated within the creating authority, which would in theory make the consultation process quicker.

2.4.15 All Places of Deposit should instigate procedures to ensure that staff who are about to go on leave are not holding on to any FOI requests, and that if possible, FOI enquiries are not left lying on their desk or in their inbox whilst they are away. Single-staffed offices should aim to discuss this issue within their own organisation to try to find potential solutions to this issue. In particular, it might be a good idea to work closely with the colleague responsible for handling FOI requests for corporate information in current records.

Phone calls

2.4.16 We have so far looked at written enquiries, not enquiries which have come through by phone. But it is important to be aware of two things in relation to phone calls.

- An access request falling under the Environmental Information Regulations does NOT need to be received in a written form, and can be received orally. Section 2.5 of this guidance explains how to distinguish between the different types of request.
- FOI enquires DO need to be in a written form. However, this is not to say that an enquiry received over the phone should be ignored, as we have a duty to provide advice and assistance to potential FOI enquirers.

2.4.17 The s45 Code emphasises that people should be made aware of their rights, as they may not be aware that FOI requests must be written down.

para.	s.45 Code of Practice
7	Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need to draw these to the attention of potential applicants who appear unaware of them.

Staff should be able to explain that if the enquirer wishes their request to be dealt with under FOI legislation, it must be in a written form.

2.4.18 At The National Archives, a script will be issued to contact centre staff taking phone calls which alerts people to their rights and explains how to make an FOI request, or they will be referred to the relevant website pages which will include an electronic enquiry form. (be sure to remember that requests to be handled under the Environmental Information Regulations do not have to be written).

2.4.19 The s45 of the Code says that “in exceptional circumstances”, we can offer to write down enquiries for the applicant so that they become FOI requests. If the enquirer is unable to write in, a form will be available so that staff can take the relevant details over the phone. We do not expect this to be a common occurrence.

para.	s.45 Code of Practice
8	Where a person is unable to frame their request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, appropriate assistance might include: <ul style="list-style-type: none">▪ advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;

	<ul style="list-style-type: none"> ▪ in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received). <p>This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.</p>
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Each Place of Deposit should consider whether it will offer to write down enquiries themselves or refer the enquirer to another agency such as the Citizens Advice Bureau.

2.4.20 If an enquiry has been written down by staff on behalf of the enquirer, it needs to be checked over by the applicant to verify the request. The FOI clock starts ticking once the enquiry has been “approved” by the enquirer (this counts as being “received”), and not before. This can be done by reading the enquiry back to them and getting oral approval to the enquiry (and making a note of the fact that verification was sought and given). If the enquirer is on site they could sign the request. In exceptional circumstances, such as with a complex enquiry the written enquiry may need to be sent by post or email to the enquirer to approve and the enquirer should sign or make their mark on it and return it to the office.

2.4.21 Another way of submitting a written FOI request could be to have ready printed forms available on site, so that people can fill these in themselves. A similar form could even be adapted for online use.

Enquiries transferred within your own organisation

2.4.22 It is in everyone’s interest to ensure that enquiries are directed to the appropriate department as soon as possible, to avoid a situation whereby an enquiry comes into the organisation and only reaches your department with 5 working days left on the clock. Ask yourself whether everyone in your own organisation is aware of the types of information held by your office and the types of enquiries your office can answer. It is worth considering whether you will need to undertake some awareness raising within your own organisation to ensure enquiries received by other departments are passed on to your office as soon as possible. Try to think of the departments which are most likely to receive requests about information your office holds, and target them first.

2.4.23 If the request is received by your office late due to an internal delay, it may be helpful to send an acknowledgement to the enquirer. Consider whether the deadline will be met. If not, this acknowledgement could be used to secure an extension by agreement with the enquirer. It is open to you to negotiate an extension, but open to the enquirer to refuse and complain to the Information Commissioner if the deadline is not met. If the

deadline is not met - for whatever reason - you may wish to consider waiving any fees to help compensate for the failure.

ACTION:

- Do you understand how the FOI Act defines a “working day”?
- Do you know when the FOI clock starts ticking?
- Do you clearly publicise any office closures?
- Do you have a system in place for recording the date enquiries are received?
- Do you have procedures to cover for staff absences?
- Are you able to write down FOI enquiries received over the phone?
- Do you want to create forms for on-site or website use?
- Have you publicised your existence within your own organisation?

2.5 Categorising and logging the enquiry

Enquiry
categorised and
logged /
registered.
Deadline applied.

Key points:

- You have to know what kind of request it is in order to apply the correct deadline for response. Staff should therefore be able to identify FOI requests.
- Enquiries should be logged in order to keep track of how they are dealt with and to ensure deadlines are met
- You need to decide *how* this is going to happen and *what information* you are going to log/register.

What kind of request is it?

2.5.1 This depends on the type of information being requested.

Request	Format	Legislation	Deadline
Information about the applicant (or someone authorised to act on their behalf)	Must be written	Data Protection Act	40 calendar days
Information about someone else (a “third party”)	Must be written	Freedom of Information	20 working days
Information about the environment or human interaction with the environment (land, landscape, soil, water, air, atmosphere, flora and fauna; emissions, pollution and smog; sewers and drainage; cultural sites; the food chain, pesticides; policies, and any plans and agreements affecting any of the above).	Can be oral or written	Environmental Information Regulations	20 working days

Any other written information which may be found in the archives or in your own corporate records	Must be written	Freedom of Information	20 working days
General advice which can be answered from memory e.g. opening hours, how to get to the office, local knowledge, etc.	Any	None	None (but your office may have internal targets)

2.5.2 Note that the deadline for DPA is 40 *calendar* days while the deadline for FOI/EIR enquiries is in *working* days. Also note that requests for FOI need to be written whilst requests falling under the EIRs can be received over the phone or in person.

Aim to reply as soon as possible

2.5.3 The Freedom of Information Act requires that:

s.10(1) ...a public authority must [provide the information] promptly and in any event not later than the twentieth working day following the date of receipt.

The s.45 Code of Practice elaborates on this:

para.	s.45 Code of Practice
17	Public authorities are required to comply with all requests for information promptly and they should not delay responding until the end of the 20 working day period under section 10(1) if the information could reasonably have been provided earlier.

In other words, you shouldn't wait until the last minute if the enquiry can be answered any earlier.

Internal deadlines

2.5.4 Your office may already have a separate deadline for replying to correspondence, which may or may not correspond to the above targets. For example, at The National Archives we have a deadline to respond to (although not necessarily fully answer) all correspondence within 10 working days. If your office's deadline is similar, i.e. less than the 20 days required by FOI, then your office may need to clarify what constitutes meeting your internal target. Can internal targets be met by sending an automatic acknowledgement or a holding reply? Alternatively, your office may wish to treat FOI requests as separate from everything else and therefore apply internal targets only to non-FOI requests.

What makes it a valid FOI request?

2.5.5 The criteria for deciding whether an enquiry is a valid FOI request are set out in s.8 of the Act. To be an FOI request, the enquiry needs to be in writing, give a contact address (this can be an email), a contact name, and describe the information requested. Enquiries received by email, or any other legible format capable of being used for subsequent reference, count as “written.”

2.5.6 The general rule is that if you have to go away and look for the information to answer the question, it should probably be handled as an FOI request, but if you can answer the question straight away or if the information is already available elsewhere (e.g. on your website) then it should not be handled as an FOI request.

2.5.7 If the request is unclear because it does not describe the information requested, it is not a valid FOI request. If the request *is* clear but there is not enough information in the enquiry to supply the information requested, it is an FOI request. However, under s.1(3) of the Act you are not obliged to provide the information requested until any extra information necessary to answer the enquiry is received from the enquirer. Both of these points are discussed further in section 2.6 of this guidance.

What if the request falls under more than one legislation?

2.5.8 It is possible that one enquiry could contain several different requests which fall under different legislation. For example, one enquiry might contain a Data Protection request, an FOI request and a request which does not fall under any legislation. In this case, each piece of *information* should be dealt with by your office in whichever way the relevant legislation requires. At The National Archives, requests such as this will be logged onto the tracking system as one request but highlighted as having multi questions.

2.5.9 The Department for Constitutional Affairs will provide further advice on the issue of requests for information which are covered by more than one type of legislation³².

Why log it?

2.5.10 When the enquiry is received, it should be logged into some kind of tracking system (whether this be paper or electronic). Logging enquiries is not actually required by the Act, but it is an entirely sensible thing to do. It enables enquiries to be tracked and referenced again in future. It will provide essential information in case the applicant complains about the way the request has been handled. Aside from this, the information will also be useful in other ways. It can help produce statistics about what kinds of information people are regularly requesting – thereby providing helpful information for prioritising cataloguing work or a publications programme. Logging the enquiry will help your office to keep control over the requests and to know what

³² See [Hwww.foi.gov.uk](http://www.foi.gov.uk)H

deadlines are due. It will also help in the event of having to report on requests to the Information Commissioner or an external auditor.

Who logs it and when?

2.5.11 This raises similar questions as above, relating to who records the date the enquiry was received. The person who date stamps the post could be given responsibility for logging as well, or it could be given to a different person, depending on what suits your office. For example, in The National Archives, our facilities department will date stamp the post but the enquiry will be logged by the member of staff to whom it is forwarded.

2.5.12 The post should ideally be logged on the same day as it is received, but as long as it is date stamped – and so the date of receipt is recorded - then it might not cause any problems if the post was logged a couple of days later, perhaps once the enquiry has been looked at in more detail. In some cases (e.g. if the office is closed on certain working days) this will be inevitable, as the enquiry will have to be logged/registered day(s) after it was actually received into the office. However, in general terms enquiries should be logged as soon as practically possible.

How should requests be logged?

2.5.13 You need to consider how your office will log the requests. Will they be logged in a specially created electronic tracking system or will existing software (e.g. a database / spreadsheet) be used? Will your office purchase a specialist package, or can the FOI logging be integrated into the workflow part of your office's ERMS? Will your office have to rely on a paper system? You may wish to integrate your FOI log into any existing logging systems you currently operate, or you may prefer to have FOI requests logged separately from other non-FOI enquiries. Whichever method is not important, as long as it achieves what needs to be done and suits your office's way of working³³.

2.5.14 The main thing to consider about choosing a system is what exactly does your office need in order to a) track the progress of current enquiries and b) show how past requests were handled.

What needs to be logged?

2.5.15 Here are some suggestions of the elements which may need to be recorded on your office's logging system.

- Each enquiry could be given a unique reference number. The act of logging the information could automatically (if possible) create this number.
- Date enquiry received.
- Name, contact address of enquirer.
- Description of the enquiry.

³³ In April 2004 the Department for Constitutional Affairs published a "Generic User Requirements Specification for IT Systems to Manage Freedom of Information and Environmental Information Regulations Enquiries".
[Hhttp://www.dca.gov.uk/foi/map/gusv4contents.htm](http://www.dca.gov.uk/foi/map/gusv4contents.htm)H

- Format, whether post, email, fax, a form, or phone³⁴ (this information may be needed to help you know where to look for a detailed record of the enquiry).
- The type of enquiry, e.g. FOI, DPA, EIR, a mixture of legislation, or none. The system could be set up to automatically produce a deadline date depending upon the type of enquiry.
- Whether it relates to information in the archives or information about your own office or organisation
- Your system may be sophisticated enough to link the logging and registering of enquiries with the electronic record of the enquiry itself and any related correspondence.
- Who has logged it.
- Where it is being held or sent, or who is dealing with it.

A retention schedule may need to be set for the information in the system, because it is unlikely that each log entry will need to be kept permanently.³⁵

What if the request is vexatious or repeated?

2.5.16 There is provision set out in the Act to ensure that offices do not have to deal with requests that are “vexatious” or “repeated”. “Vexatious” covers requests that can be clearly demonstrated to have been made for an improper purpose, such as to disrupt your normal operations. If the enquirer continues to ask for the same information time and time again when a response has already been given³⁶ and your office has done all it can to offer advice and assistance (e.g. if the information being requested is exactly the same), then this would seem likely to fall into the category of a repeated request, or even a vexatious one.

2.5.17 If the enquiry falls into the category, the office is not obliged to answer it, and should reply giving a refusal notice³⁷ explaining that the enquiry has been classed as vexatious. Of course, you could still answer it if you want to, it is just that you are not *obliged* to.

The s45 Code also notes that:

para.	s.45 Code of Practice
15	An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act.

³⁴ Of course, an enquiry received only by phone does not count as a valid FOI request, but it may be a valid request under the Environmental Information Regulations.

³⁵ For advice on how long to keep actual records of enquiries themselves (as opposed to entries on the tracking system, see section 2.13 of this guidance.

³⁶ The Information Commissioner will provide guidance on the definition of a “reasonable time” between two identical requests.

³⁷ Guidance on what refusal notices should include can be found in section 2.11 of this guidance.

Requests which seem to be part of an organised campaign

2.5.18 The FOI Act says that:

12(1)...a public authority [is not obliged] to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

12(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority-

(a) by one person, or

(b) by different persons who appear to the public authority to be acting

in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

This means that if all the requests are using the same type of language and asking for the same thing, the requests might seem to fit into the category of appearing to be part of an organised campaign. The Act says that the Secretary of State may bring in regulations so that the cost of replying to one of these requests could be counted as the cost of replying to all, which may mean that the combined total of replying exceeds the cost threshold in the fees regulations.

2.5.19 For example, if ten people form a campaign and all send in requests for the same information, it would be possible to charge each person ten times the cost: i.e. if ten people write in requesting the same information and we estimate to search for that information it would cost £60 then each person could be charged $10 \times £60 = £600$. Two or more people can form a campaign. However, it is difficult to distinguish between a campaign request and a popular request, so any judgements like this should be taken carefully.

2.5.20 The s.45 code says that if the requests do exceed the cost limit in this way then the authority should consider releasing the info in a more "cost effective manner" e.g. on the web:

para.	s.45 Code of Practice
16	Where an authority is not required to comply with a number of related requests because, under section 12(1) and regulations made under section 12(4), the cumulative cost of complying with the requests would exceed the "appropriate limit" (i.e. cost threshold) prescribed in Fees Regulations, the authority should consider whether the information could be disclosed in another, more cost-effective, manner. For example, the authority should consider if the information is such that publication on the authority's website, and a brief notification of the website reference to each applicant, would bring the cost within the appropriate limit.

ACTION:

- Do you know how to distinguish between different requests?
- Do you know what constitutes a valid FOI request?
- Have you defined what you need to log?
- Do you have a system in place for logging enquiries?
- Do you understand the rules regarding vexatious requests?

2.6 Requesting clarification or further information

If required, request clarification or further information: (clock starts only when this extra information is received)

Key points:

- To be valid the request should explain clearly what information is required. If it does not, it is not a valid FOI request and clarification can be requested.
- You may also reasonably require further information from the enquirer in order to answer the request. You are not obliged to answer the enquiry until the extra information is received.

I don't understand what they're asking.

2.6.1 If it is not possible to understand what the enquirer is asking, then it is not a valid FOI request. You will need to ask for further clarification. You may wish to log the enquiry on your system anyway, but the 20 working day deadline does not have to be applied until the question is clarified. Remember that there is a requirement to provide advice and assistance to potential FOI applicants, so your office should offer as much help as it can.

2.6.2 Remember that when clarifying the request, the enquirer does not have to give the reason why they want the information, so this should not be asked. When trying to clarify the request, staff should be careful not to ask questions like "why do you want this information?" or "what are you going to do with this information?" It would be better to phrase the questions as "what exactly do you need to know?" or "what precisely do you want to find out?"

We need more information to be able to find it.

2.6.3 Another circumstance would be if the enquiry is clear, but more information is needed in order to identify and locate the information. Is there enough information for a search? Do you need more details to be able to find it? For example, if someone asks "I'm looking for any information on Robert Smith who was a Carpenter" then you'd be perfectly within your rights to ask for further information, such as in which century Mr Smith lived or from what part of the country he came.

2.6.4 Technically, such a request is an FOI request. However, section 1(3) of the Act says that if more details are needed to identify and locate the information requested by the enquirer, then the information does not have to be provided until those extra details are received.

1. - (3) *Where a public authority-*
 (a) *reasonably requires further information in order to identify and locate the information requested, and*
 (b) *has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1)³⁸ unless it is supplied with that further information.*

2.6.5 Section 10(6) of the Act says that the 20 working day deadline only begins when the extra details required in order to identify and locate the information are received – and this counts as “the date of receipt”:

10. – (6) *In this section-*
“the date of receipt” means-
 (a) *the day on which the public authority receives the request for information, or*
 (b) *if later, the day on which it receives the information referred to in section 1(3);*

At The National Archives, for practical purposes only, we will be treating all requests for information as if they were valid FOI requests and starting the clock when the request is received into the office, whether the request is technically valid at that point or not. If we need to clarify the request, the clock will be stopped while we wait for the clarification. It is planned that clarification will be requested on the first day the enquiry is received.

2.6.6 In effect, we are voluntarily starting the clock earlier than we are required under the Act. It is being done this way for practical purposes so that we can streamline and simplify the process as much as possible. This will enable us to link the original enquiry with the follow up request and enable us to keep track of our customer service provision.

The s45 Code of Practice has the following to say on this:

para.	s.45 Code of Practice
9	Where the applicant does not describe the information sought in a way which would enable the public authority to identify or locate it, or the request is ambiguous, the authority should, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested. Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest or that he or she will be treated differently if he or she does. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more

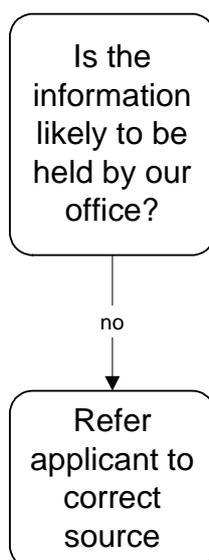
³⁸ I.e. be informed that information is held and have the information provided to them.

	information is needed to clarify what is sought.
10	<p>Appropriate assistance in this instance might include:</p> <ul style="list-style-type: none"> ▪ providing an outline of the different kinds of information which might meet the terms of the request; ▪ providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority; ▪ providing a general response to the request setting out options for further information which could be provided on request; <p>This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.</p>
11	<p>In seeking to clarify what is sought public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.</p>
12	<p>If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not wish to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act.</p>

ACTION:

- Are you ready to request clarification if necessary?
- Do you understand that you can't ask the reason they want the information?
- Do you want to prepare stock paragraphs or template letters for use when requesting clarification?
- Does your logging system allow you to stop and start the clock and move the FOI deadline?

2.7 Is the information likely to be held by our office?



Key points:

- An initial check should be done to determine whether it is likely or not that the office holds the information.
- If not, the enquirer should be referred to the most likely correct source.

2.7.1 Once it is clear exactly what the applicant wants, the next step is to consider whether your office is likely to hold the information. This is separate from actually finding and providing the information itself.

Is the information likely to be held by our office?

2.7.2 There is often no way of being 100% certain that the exact information someone requests is held by your office without spending hours searching for it yourself. What should be done at this stage, therefore, is to undertake an initial probability check, which is likely to involve quick consultation of catalogues, readers' guides, leaflets, and so on. If the information could be held in uncatalogued records, you should consult whatever basic lists are available. It is likely to be a limited search, e.g. 15 minutes work. At this point the staff member does not need to find the information itself, they just need to decide on the likelihood of your office holding it. This judgement may involve an element of risk assessment. If it turns out that the information is not likely to be held, then the enquirer should be directed to the likely correct source, and the enquirer should be given advice and assistance. The enquirer should also be informed which searches were done in order to demonstrate that all the relevant sources have been checked.

2.7.3 You may wish to undertake this check before logging the enquiry into your system; however bear in mind that the enquirer could still complain to the Information Commissioner about how your office handled their enquiry so it is probably best to log it anyway.

2.7.4 If the information is likely to be held, the opportunity could be taken to send a fees notice to cover searching for and retrieving the information.

2.7.5 Remember that there is no obligation to create new information to answer an enquiry. For example, if someone asks how many times a certain topic was discussed in a certain meeting, you would not be obliged to trawl through the minutes yourself to find out. What you could do instead is allow the enquirer access to the minutes to calculate the answer themselves.

Referring enquirer to the correct source

2.7.6 If the information is not held by your office the enquirer should be referred to the correct source of the information, if you can suggest an alternative. We would not recommend that the FOI request be actually forwarded onto the organisation (i.e. to “transfer” the request), because you have to be absolutely sure that the organisation has the exact information the enquirer wants before doing this; and In many cases this is impossible to know in advance.

2.7.7 You may wish to consider setting up a directory of external organisations’ contact details for quick staff reference if your office receives a lot of requests about information which your office does not hold.

2.7.8 Any response which does not provide the information sought technically counts as a ‘refusal’ and a stock letter should be used as the basis of the letter. It should include a detailed explanation of the sources checked, whether archives or corporate records, as well as complaint rights and so on.

2.7.9 There are certain types of information which are so sensitive that if asked, you would refuse to confirm or deny that the information is held. Your office should use the same form of words to reply to *all* enquiries about this type of information *whether it is actually held or not*. It is important to be consistent in this. If your office only issues refusals to confirm or deny when the information is held, and does not when the information is not held, your office would inadvertently reveal that the information was held. The National Archives intends to provide examples of the form of words that could be used when refusing to confirm or deny. It might be worth talking to other Archivists who receive similar enquiries to agree a consistent response.

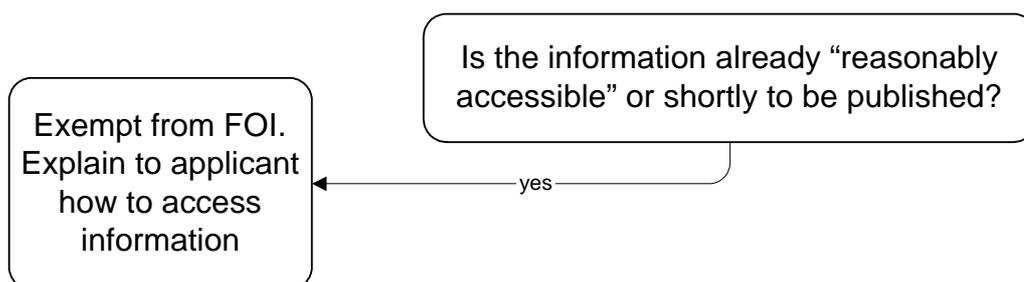
2.7.10 The s45 Code says that if your office holds some of the information but not others, then the enquirer should be redirected for the information which your office does not hold. You should also offer as much advice and assistance as you can³⁹.

³⁹ Paragraphs 21, 25-29 of the s45 Code of Practice discuss transferring the request from one public authority to another. We recommend that Places of Deposit refer the enquirer to the most likely source instead of directly transferring the request, so these sections of the Code have not been reproduced here.

para.	s.45 Code of Practice
22	Public authorities should bear in mind that "holding" information includes holding a copy of a record produced or supplied by another person or body (but does not extend to holding a record on behalf of another person or body as provided for in section 3(2)(a) of the Act).
23	The authority receiving the initial request must always process it in accordance with the Act in respect of such information relating to the request as it holds. The authority should also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. But before doing this, the authority must be certain as to the extent of the information relating to the request which it holds itself.
24	<p>If the authority to whom the original request was made believes that some or all of the information requested is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request. In most cases this is likely to involve:</p> <ul style="list-style-type: none"> • contacting the applicant and informing him or her that the information requested may be held by another public authority; • suggesting that the applicant re-applies to the authority which the original authority believes to hold the information; • providing him or her with contact details for that authority.
30	Where a public authority is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it should consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

<p>ACTION:</p> <ul style="list-style-type: none"> • Set out a list of the information resources which could be searched by staff in order to do this initial "probability check" • Compile directory of external organisations' contact details for quick staff reference. • Create stock paragraphs for use when referring enquirers to other sources. Ensure that they explain what sources you have searched. • Consider what types of information may be exempt from the duty to confirm or deny the information is held. Prepare to answer all enquiries for this type of information with the same form of words, whether it is held or not.

2.8 Reasonably accessible (s.21) or shortly to be published (s.22)?⁴⁰



Key points:

- The s.21 exemption could be claimed if the request seems likely to be satisfied from archives that have been catalogued, are open to inspection on-site and which are covered by the publication scheme.
- There is scope for the s.22 exemption to be claimed for uncatalogued records which are in a programme of cataloguing, and records which are unfit to be used but which are in a programme of conservation.
- It is very important therefore to be able to demonstrate that organised, structured efforts are being made to deal with any backlogs.

2.8.1 At this stage, the enquiry is clear, there is enough information to find what they want, and it is likely or possible that your office holds the information. The next step is to consider whether the information is already reasonably accessible to the applicant.

The s.21 exemption

2.8.2 The FOI Act has an exemption which says that information which is already “reasonably accessible to the applicant” is exempt from the requirements of FOI. Here is the relevant section of the Act:

21. - (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)-

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any

⁴⁰ This section will be revised to take account of recent developments with regard to the scope of publication schemes for archives services.

enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

2.8.3 What this means is that a) information may still be reasonably accessible even if there is a charge for it, b) if your office is obliged to provide the information because of other legislation then it counts as "reasonably accessible", and c) information can not be classed as reasonably accessible purely because the information is available if someone requests it, *unless* there is a corresponding class in the publication scheme.

2.8.4 In terms of information available in archive offices, the Information Commissioner's Office has confirmed that, as a general rule, the s.21 exemption can be claimed when archives are catalogued and open to research, and where the archives are included in the organisation's publication scheme. The Information Commissioner's Office considers that it is reasonable to expect enquirers to be specific in their requests, to search catalogues and indexes to identify for themselves the records likely to contain the information they seek, and to visit the archives office to examine those records. Where a personal visit is not practicable, ICO expect some alternative to be provided, such as a paid research service or the names of professional researchers. Online catalogues are preferable⁴¹.

2.8.5 However, the ICO has expectations about the level of service to be provided, e.g. opening hours and expert advice, and has noted the Standard on Access to Archives⁴² produced for the archives sector by the Public Services Quality Group, which The National Archives has suggested serve as a benchmark. It is recommended that Places of Deposit be able to demonstrate that they are making efforts to comply with this Standard.

2.8.6 When considering information in the archive catalogue it is important to ensure that finding aids do not breach the Data Protection Act.

The s.22 exemption

2.8.7 s.22 of the FOI Act says that:

⁴¹ This was agreed in a meeting with The National Archives on 10 June 2004. This was summarised in a "Freedom of Information Update" published by the National Archives in August 2004. The update is available at

[Hwww.nationalarchives.gov.uk/services/recordkeeping.htmH](http://www.nationalarchives.gov.uk/services/recordkeeping.htm)

⁴² [Hwww.nationalarchives.gov.uk/archives/psqg/access.htmH](http://www.nationalarchives.gov.uk/archives/psqg/access.htm)

- s.22-(1) Information is exempt information if –
- a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not)
 - b) the information was already held with a view to such publication at the time when the request for information was made, and
 - c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph a)

2.8.8 The Information Commissioner's Office recognises that it would not be possible to retrieve requested information from uncatalogued archives without diverting resources into protracted and speculative searches. It notes that eliminating backlogs will take some time but would wish to see some efforts to make progress in this area, such as a programme setting out priorities and targets on which action was being taken. The ICO has confirmed that although s.22 is not designed to deal with this issue, there is scope for it to be used by archive offices.⁴³

2.8.9 If a Place of Deposit attempts to claim this exemption, it should be able to demonstrate that reasonable steps are being taken to ensure that the archives in question will be available for inspection in due course.

Unfit records

2.8.10 "Unfit" records are those which are deemed too fragile to be accessed without some serious conservation work. Under Freedom of Information, the fact that the record is "unfit" is not a valid reason for refusing access to the information. It will be important to put in place strategies for dealing with requests for information in fragile records. Here are some suggestions:

- The Archivist may be able to allow the record to be seen but under close supervision and with the use of preservation equipment such as gloves, archival weights, and foam blocks and so on.
- If the Archivist is unsure, they should consult a conservator (where possible) for advice.
- If possible, you may be able to allow the record to be seen in the presence of a conservator
- If the record is so fragile that it cannot be used at all, try to let the reader at least see the state of the record so that they can understand the reason why access is not possible. The enquirer should be shown the actual document as proof that it is unusable.
- Provide the information in a transcription or summary.
- Prioritise the document for conservation.
- Make a copy or a photograph of the information

⁴³ As confirmed by The National Archives in "Freedom of Information Update" August 2004, [Hwww.nationalarchives.gov.uk/services/recordkeeping.htm](http://www.nationalarchives.gov.uk/services/recordkeeping.htm)

Remember that FOI relates to information as opposed to the record itself.

2.8.11 Unfortunately, it is highly unlikely that places of deposit will be able to include the cost of conservation work in the cost of “providing the information” because this is considered to be a core function of the office.

2.8.12 The main point here is to ensure that your office can demonstrate willingness to be as helpful as possible to the reader and to provide the information where you possibly can, as long as the document is not damaged by doing so.

2.8.13 At The National Archives we have changed our catalogues to include the following statement:

“Availability Condition: This document is very fragile and cannot be produced to you in the normal way. Please contact the Counter staff for further information.”

Previously the catalogue used to say: “This document is very fragile and cannot be produced”

Claiming these exemptions

2.8.14 If the records are subject to either of these exemptions, then your office does not have to deal with enquiry under FOI rules. The applicant should be contacted, explaining where and how the applicant can access the information and whether a charge applies.

2.8.15 Even though access is being given this response still counts as a “refusal notice” because you are refusing to handle the enquiry as an FOI request. The applicant should therefore be informed of their complaint and appeal rights. See section 2.10 for more information about what needs to be included in refusal notices.⁴⁴

2.8.16 When recording and logging FOI requests, the question arises of whether to log requests for information which is exempt under s.21 as “refusals” under FOI or to record them as FOI requests at all.

2.8.17 At the time of writing Central Government does not require the monitoring of this type of information, so it is up to each office to decide. However, bear in mind that any exemption claimed can be appealed by the enquirer. In the long-term it might be useful to be able to distinguish between:

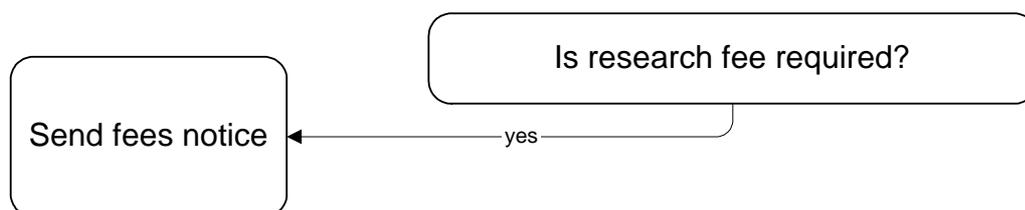
- Exemptions which prevent access to the information
- Exemptions which refuse to handle the enquiry as an FOI request but which allow the enquirer access to the information (i.e. s.21)

⁴⁴ The National Archives is developing various stock paragraphs and forms of words. One of these is a “refusal notice” when the s.21 exemption is being claimed. It is hoped that this will be shared with the archive community in due course.

ACTION:

-
- Investigate whether some or all of your catalogues can be made available online
- Mark catalogue data with the access status of the record so that records subject to s.21 can be identified
- Create a cataloguing and conservation programme, and ensure it is a publicised.
- Ensure you have a copy of the Access Standard and take steps to check your level of compliance

2.9 Cost exemptions and charging fees



Key points:

- Fees must be charged within 20 working days
- Once a fee has been charged, the clock stops ticking until you receive the fee
- If the cost of complying would exceed the cost limit, you are not obliged to comply with FOI

2.9.1 This section will give general guidance on charging fees as specific fees regimes and regulations may change. This section may be updated once the fees regime has been confirmed. Please refer to the DCA's website for the latest news and guidance.⁴⁵

Requirements of the Act

2.9.2 The FOI Act sets out the following rules for fees and costs.

s.9 of the Act:

- Once the fees notice has been issued (this must be within the 20 working days), the clock stops ticking until the fee is received. If no fee is received by the end of three months later, the enquiry can be considered closed.
- The fee must be in accordance with regulations under the Act. However, if the request is not an FOI request but is a DPA request, the fee should follow DPA regulations.

s.12 of the Act:

- Your office is not obliged to comply with providing the information if you estimate that the cost of complying would exceed the cost limit. The duty to confirm or deny whether the information is held may also be subject the cost limit, although this is likely to be very unusual.

s.13 of the Act:

- Your office can charge for the provision of information where the cost exceeds the relevant limit, or if the provision of information is not required by the law. Note that the cost limit exemption does not

⁴⁵ Fees regulations will be available on the DCA website, at: <http://www.foi.gov.uk/secleg.htm>

apply to information which is covered by the Environmental Information Regulations.

Estimating the cost of enquiries

2.9.3 It is important to ensure that the fees charged are justifiable and appropriate. In preparation for FOI, it is a good idea to keep track of how long it takes to find information in response to enquiries, how long it takes to retrieve the information, and how much it costs to provide the information. Once you have built up this knowledge over a period of time, you will be able to work out the cost of an average enquiry, and set out a charging regime which is justifiable as it would be based on actual experience.

Enquiries which exceed the cost limit

2.9.4 If it is estimated that the total cost of the enquiry will exceed the maximum cost limit set out by fee regulations then there is no obligation to comply with the request, but you must still provide advice and assistance. The applicant should be advised to reformulate their request, and advice and assistance should be provided as appropriate. You must still advise the applicant whether or not your office is holding the information (unless to do so would itself exceed the limit).

2.9.5 A stock letter should be sent to the applicant explaining that the cost limit is being claimed. It should also suggest how the request could be reduced so as to take it below the cost limit. It should include a stock paragraph setting out the applicant’s complaint and appeal rights.

2.9.6 Note that the cost limit exemption does not apply to information which is covered by the Environmental Information Regulations.

para.	s.45 Code of Practice	
13	Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.	
14	Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12(4), the cost of complying would exceed the "appropriate limit" (i.e. cost threshold), and where the public authority is not prepared to comply on a discretionary basis because of the cost of doing so, the authority should consider providing an indication of what information could be provided within the cost ceiling.	

Fees notice

2.9.7 There is no obligation to charge for access, but if you are going to, a “fees notice” must be provided to the applicant. The clock then stops for up to three months whilst you wait for the applicant to pay the fee. If enquirers dispute the fee, they can appeal via a three-stage process in the same way as

other complaints: 1) public authority's complaints procedure; 2) request decision from Information Commissioner, and finally, 3) appeal to Information Tribunal.

Fee received

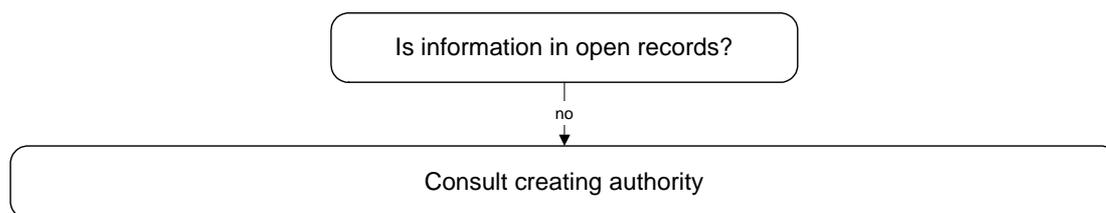
2.9.8 Once the fee has been received from the applicant, the request is resumed and the 20 working days target continues. It is possible that, when FOI is up and running, a customer may have already used the service, or heard of the fee already and sent it in with their enquiry. If this is the case, the Place of Deposit should acknowledge receipt of the fee and must say how much work can be done for the amount of money that has been paid. A fees notice might still need to be sent later on if more money is required.

This section may be updated once the fees regime has been confirmed.

ACTION:

- Gather evidence on the cost of handling average enquiries to support your charges.
- Prepare any stock letters you might need.

2.10 Enquiries for information in public records which are not yet open



Key points:

- The Place of Deposit must always consult the creating authority about releasing information in public records which are not yet open.
- The Place of Deposit has been appointed to act on behalf of the Lord Chancellor, who is legally responsible for deciding which exemptions (if any) apply.
- The creating authority is legally responsible for deciding whether the public interest lies in releasing or withholding information.

2.10.1 If the information being requested is in public records which are not yet open to the public, things get a bit more complicated.

The basics

- Archives should be automatically open to the public on request unless FOI exemptions apply to the information they contain.
- Public records already open or open at transfer should be assumed to continue to be open.

2.10.2 Public records which were subject to closure periods under the Public Records Act may contain information which is subject to FOI exemptions. Because of this, the records should not be made generally open but should be considered on a case-by-case basis in response to enquiries for access. It might be discovered that the whole record only contains information which should be open and nothing which is exempt. If this is the case, the whole record should be made open. Gradually this will lead to more records being made open than was the case previously.

2.10.3 The Place of Deposit must always consult the creating authority when making a decision on access to information in public records which are not yet open. The Environmental Information Regulations require an equivalent consultation process.

Legal responsibilities

2.10.4 Under the FOI Act, the Lord Chancellor is the “records authority” for public records in Places of Deposit and the record creating authority is the

“responsible authority”. However, under the terms of Place of Deposit appointment, Places of Deposit are authorised to act on his behalf. When an organisation maintains its own Place of Deposit, it holds its public records on behalf of the Lord Chancellor and acts on his behalf.

2.10.5 The process of considering whether to release information in records which are not yet open involves several different decisions. This table summarises the legal responsibilities of each public authority for making decisions, and who they must consult. The decisions and issues are explained more thoroughly further in this section. Places of Deposit should ensure that they are familiar with the different responsibilities.

Summary	Decision	Who makes this decision?	Who is consulted?
Initial question	1. Could exemptions ⁴⁶ be applied to the requested information? <i>Should</i> they be applied ⁴⁷ ?	The Place of Deposit, acting on behalf of the Lord Chancellor.	The creating authority must always be consulted.
If public interest test required (i.e. qualified not absolute exemption applies)	If public interest test is required: 2. Should the information be released in the public interest?	The creating authority.	If proposing to refuse access, the creating authority must consult the Lord Chancellor ⁴⁸ .
Duty to confirm or deny ⁴⁹	3. a) Is there an exemption from the duty to confirm or deny the information is held?	The Place of Deposit, acting on behalf of the Lord Chancellor.	The creating authority must be consulted.

⁴⁶ More than one exemption could apply to the information.

⁴⁷ It is not mandatory to apply exemptions just because they could be applied.

⁴⁸ The initial point of contact for the creating authority when consulting the Lord Chancellor should be the Departmental Record Officer, who will be able to advise further on the procedure. If the relevant Departmental Record Office is not known, contact The National Archives' Records Management Department for further guidance.

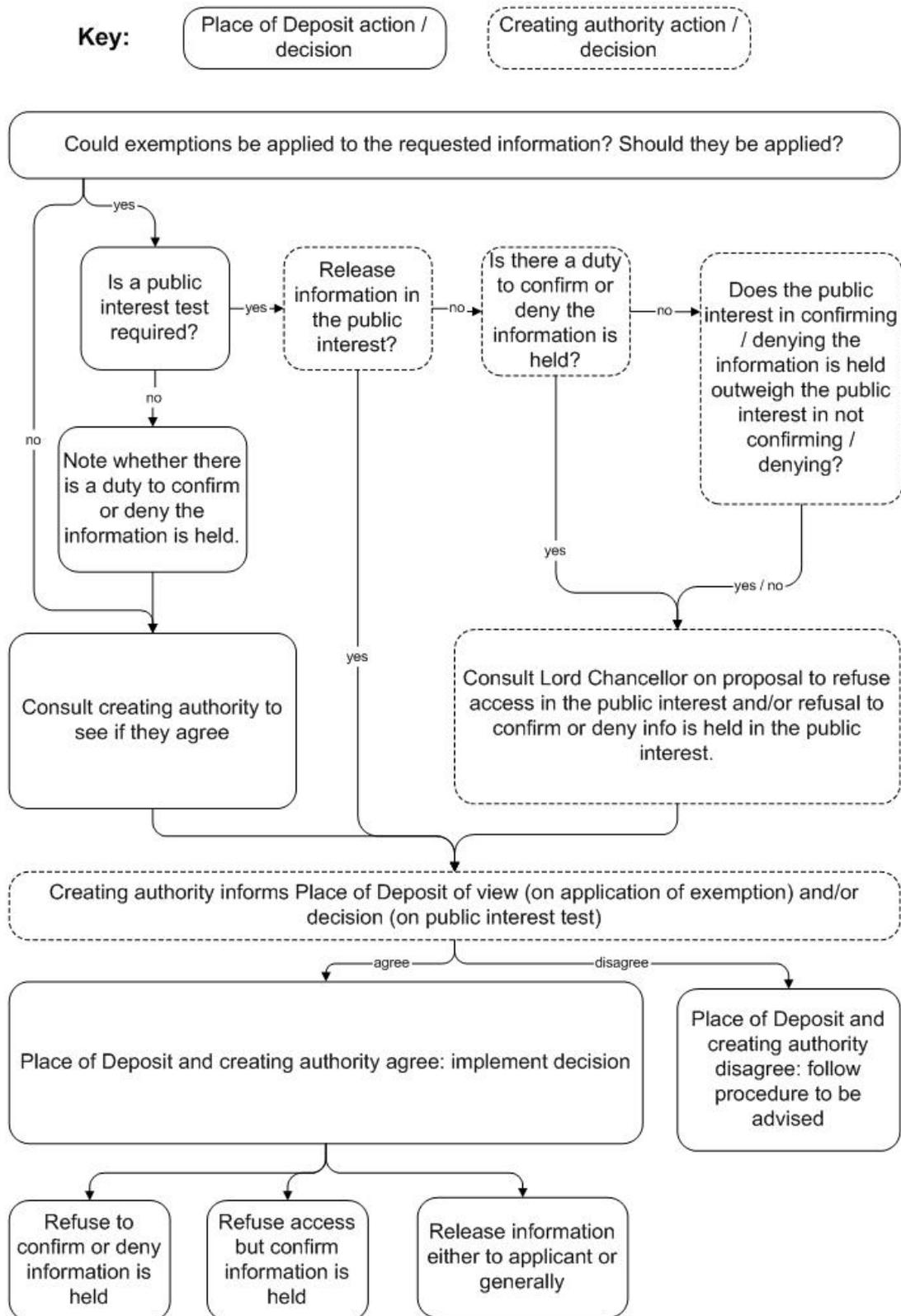
⁴⁹ This is only relevant if access to the information is being refused.

	<p>If public interest test is required:</p> <p>3. b) Does the public interest in confirming/denying override the public interest in refusing to do so?</p>	<p>The creating authority.</p>	<p>If proposing to refuse to confirm or deny information is held, the creating authority must consult the Lord Chancellor.</p>
Final question	<p>4. If the information is available to the applicant, should it be available to everyone?</p>	<p>In making Decisions 1-3 above, the Place of Deposit and creating authority should also decide whether access to one is also access to all</p>	<p>See left</p>

The flow chart on page 66 puts these decisions into context.

This covers the background and the legal responsibilities. What we will look at next is how this consultation process will actually work in practice.

Enquiries for information in public records which are not yet open to the public



Responsibilities

2.10.6 To cut down on the time the decision-making process takes, you may decide that all requests for information in public records which are not yet open will automatically be passed to the Head Archivist (or a nominated person) so that the process can begin as soon as possible. Remember, however, that the s. 45 Code recommends that complaints should be handled by someone other than the person who made the original decision.

Following the process as shown in the flowchart, we will now look at each step in turn.

Could exemptions be applied to the information? Should they be applied? Forming an initial view.

Could exemptions be applied to the requested information? Should they be applied?

Identifying exemptions

2.10.7 From 2005, the authority which creates the public record and transfers it to the Place of Deposit will be required by the s46 Code of Practice to identify and list the exemptions which they believe apply at the time of transfer. However, Places of Deposit contain many archives which have already been transferred and which were closed under the Public Records Act, either because the standard 30 year closure period had not expired or because they were considered to require a longer closure period.

2.10.8 Records which were closed under the Public Records Act may contain exempt information, or they may not. Because you can't be sure without analysing each record in detail, records which were closed under the Public Records Act should not be made automatically open to the public. This does not mean that the records are necessarily "closed", because if someone requests information contained in them, a decision will have to be made as to whether that information should be released. It may be that the information does not need to be kept closed. Alternatively, you may find that exemptions do apply to the information.

2.10.9 When a request for information in a 'closed' record comes into a Place of Deposit, the Place of Deposit must form a view as to:

- a) whether exemptions could be applied to the information being requested
- b) the reason why they could be applied to the information being requested
- c) whether the exemption(s) should be applied or waived in this case.

Detailed guidance on the interpretation and application of specific exemptions to specific types of records is beyond the scope of this guidance, but it will be provided by the Department of Constitutional Affairs⁵⁰ and the Information

⁵⁰ www.foi.gov.uk

Commissioner⁵¹ (DEFRA will provide guidance on the Environmental Information Regulations⁵²).

Information, not records

2.10.10 Remember that FOI relates to information, not records. One record might contain some bits of information which fall under various different exemptions and some bits of information which fall under no exemptions. So even though the whole record might be not open to the public on request, an enquirer could still legitimately be given some information from it.

2.10.11 In the previous system under the Public Records Act, records (not information) were either closed or open. They were closed under the Public Records Act either for 30 years as a matter of course, or longer by a Lord Chancellor's Instrument. Any request for information in closed records (apart from people wanting their own data: Data Protection Act requests) would have been simply refused, referred to the record creating authority to decide whether to grant "privileged access", or in some cases, an accelerated opening could have been applied for in order to release the record. Although perhaps not as straightforward, the new system under Freedom of Information is fairer as it allows decisions to be made on the nature of the information being requested rather than by which record the information happens to be contained in.

Terminology

2.10.12 Under FOI, the term "closed" to describe records which were closed under the Public Records Act will no longer be technically accurate. FOI is about information, not records, so we have to think in terms of exempt information or open information. However, for practical purposes in an archive service, terminology is often needed to refer to records as entities and to distinguish between records which are fully open and those which contain exempt information. "Open records" refers to records which contain no exempt information at all. They can be accessed by the public with no problems.

2.10.13 Records containing exempt information cannot be made generally open even if some of the information in them is not exempt. If you wish to avoid using the term "closed", alternatives could be "not fully open", "not yet open", "records containing exempt information", or "partly accessible records".

Forming an initial view

2.10.14 Before consulting the creating authority, the Place of Deposit should form a view as to which exemptions (if any) could be applied to the actual information being requested. Remember that more than one exemption could apply to the same information. You may be able to form a view based on the nature of the information being requested, or you may have to examine the record in some detail to be sure. It may help to ask yourself the following questions:

⁵¹ [Hwww.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)H

⁵² [Hwww.defra.gov.uk](http://www.defra.gov.uk)H

- Why was this record closed originally?
- Does the information being requested directly relate to the reason why it was closed? Perhaps the information being requested is very basic and harmless but just happens to be held within a record which was closed for another reason.
- Imagine if the information being requested was extracted from the record and printed onto a sheet of paper. Is it innocuous? Would it still be exempt? (Bear in mind that the inclusion of the record's title, dates and context may act to make the information sensitive).

Be sure also to refer to any guidance on exemptions produced by the Department for Constitutional Affairs and the Information Commissioner to inform your view.

There are two possible outcomes of this evaluation:

- The Place of Deposit forms a view that no exemptions can apply to the information and therefore the information should be released.
- The Place of Deposit forms a view that an exemption or exemptions apply.

If an exemption could be applied, the Place of Deposit should also form an initial view on:

- The reason why they could be applied to the information being requested.
- Whether the exemption(s) should be applied or waived.

2.10.15 In some cases, an exemption might apply to the information but the Place of Deposit may decide to waive it; either for the specific enquirer or even for general access. In other words, once the exemption has been identified, you need to ask: do we wish to claim the exemption? Most of the time, the answer will most likely be yes. But the situation may occur when you decided that even though the exemption is there, you have chosen to waive it. An example might be if an exemption were waived to allow a family member access to deceased patient records which would not be opened to the general public.

Conditional access

2.10.16 Under the Public Records Act section 5(4), individuals could be authorised to gain access to closed records, usually subject to certain conditions. This was known as "privileged access". This section of the Public Records Act was repealed by the FOI Act so no longer applies.

2.10.17 As a general rule, conditions cannot be imposed on access to information under FOI. The exception is where access to records containing information about living individuals is concerned. If the personal information is such that providing access would be in breach of the Data Protection Principles unless conditions were imposed on its use, then conditions should be imposed in order to make access fair and lawful. The most common condition is a bar on naming the individuals in the results of the research.

The next question is to ask what type of exemption relates to the information.

Two types of exemption

Is a public interest test required?

2.10.18 There are two types of exemption: absolute and qualified. The only difference is that qualified exemptions require a public interest test to be made. Places of Deposit are not responsible for making the public interest test decision for deposited public records; this is the responsibility of the creating authority.

2.10.19 We expect that "absolute" exemptions will be much more common in Places of Deposit, as the types of information that are subject to qualified exemptions are less likely to be found in the classes of public records held locally.

2.10.20 Whatever the outcome of the Place of Deposit's evaluation, when making decisions about access to information in public records which are not yet open, the creating authority must always be consulted. This is the case even if the creating authority identified exemptions at the time the record was transferred to the Place of Deposit, and even if the Place of Deposit believes that no exemptions apply.

2.10.21 The creating authority is responsible for making public interest test decisions. If there is no public interest test decision, the creating authority must still be consulted, but the Place of Deposit is still responsible for the identification of exemptions.

Consulting the creating authority

Consult creating authority to see if they agree

Why?

2.10.22 S.66(2) of the FOI Act says that the "records authority" (the Place of Deposit acting on behalf of the Lord Chancellor) must consult the record creating body (the "responsible authority") before making a decision on

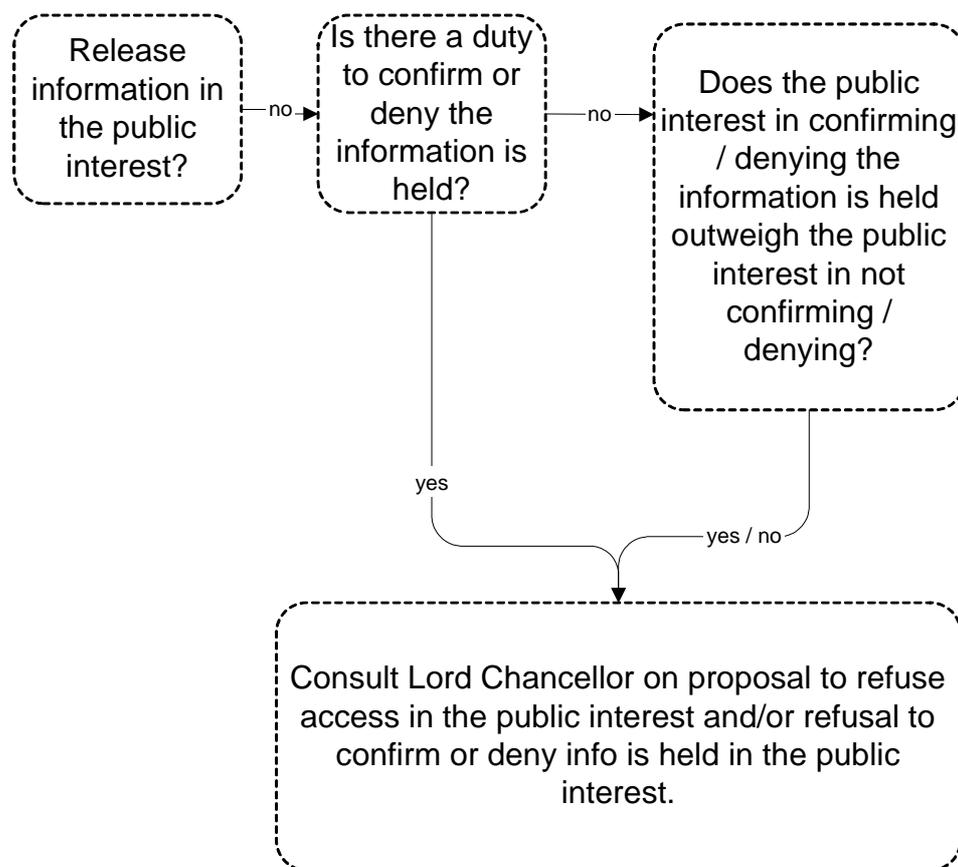
whether an exemption applies or whether to confirm or deny that the information is held. The reason for consultation is to get the creating authority's views and expertise about the information.

2.10.23 Remember that the Place of Deposit is delegated to act on behalf of the Lord Chancellor, who is legally responsible for deciding what exemptions apply. So the identification of exemptions rests with the Place of Deposit, after they have consulted the creating authority. Public interest tests are the responsibility of the creating authority. If the creating authority proposes to refuse access to the information in the public interest, it must consult with the Lord Chancellor⁵³.

The key points to remember are:

- The Place of Deposit must always consult the creating authority when making a decision on access to closed records.
- The Place of Deposit always decides if exemptions apply to the information, after consulting the creating authority.
- The creating authority always decides whether to release exempt information in the public interest.

More on public interest tests



⁵³ In the first instance the creating authority should contact the Departmental Record Officer for advice on how to take this forward. If it is not known which DRO is responsible, contact The National Archives' Records Management Department for further advice.

2.10.24 The creating authority is responsible for two decisions: A) does the public interest in providing the information outweigh the public interest in keeping it closed? B) if it should be kept closed, does the public interest in confirming or denying the information is held outweigh the public interest in refusing to do so?⁵⁴

Who should be consulted?

2.10.25 The Place of Deposit should ideally have a list of contacts within the creating authorities (or if they no longer exist, their successors) so it knows who to contact as quickly as possible. It would make sense to begin making such contacts in advance of FOI, and perhaps checking them annually to ensure that they are up to date.

2.10.26 We realise, however, that often it is difficult to get a named contact within the creating organisation. If the organisation is defunct, the Place of Deposit should contact the relevant Government Department for advice on who to consult. For example if an NHS organisation is defunct and has no obvious successor, the Place of Deposit could ask Department of Health for advice on who should be consult.

How should the consultation take place?

2.10.27 The consultation should ideally be done in writing (email, letter or fax) so that a record of the consultation is available. If it is done by phone a note should be taken of the phone call in case the decision is later challenged.

2.10.28 When contacting creating authorities, it would be a good idea to include the following elements:

- Details of the enquiry.
- A description of the information requested, a copy of the record if relevant or feasible, or provision to view the original record.
- A reminder of the two parties' (i.e. the Place of Deposit and the creating authority) responsibilities under the Act.
- An explanation of the view of the Place of Deposit as to whether a) if exemptions could be applied, b) why they could be applied to the information being requested and c) whether exemptions should be applied or waived in this case. If the Place of Deposit considers that no exemptions apply, this should also be explained.
- A request for the creating authority's view. Do they agree or disagree?
- If a public interest test is required, confirm that the creating authority is responsible for the public interest test decision. You may wish to

⁵⁴ The Information Commissioner has released guidance on public interest test decisions. This is available at [Hwww.informationcommissioner.gov.ukH](http://www.informationcommissioner.gov.uk), in the section "FOI – Legal Obligations for Public Authorities"

mention that if they propose to refuse access in the public interest, they must first consult the Lord Chancellor⁵⁵.

- Any particular constraints on the time available to deal with the enquiry, e.g. how many days are left on the clock. Note that the Act says that the time for making public interest test decisions can extend beyond 20 days (in fact there is no limit imposed), although the s.45 Code says 20 working days should always be the aim. Ask that the creating authority let you know if you the 20 working days is not going to be met⁵⁶. *However*, if it seems possible that you may have to refuse to confirm or deny that the information is held because it is so sensitive, note that the creating department must reply within 20 working days⁵⁷.

Keeping a record of the consultation.

2.10.29 It is very important that a record is kept of the consultation process. This can be in the form of an email, a fax, a letter, or a written note of a telephone call; it doesn't matter, as long as the information is recorded and can be found again in future. It may be needed as evidence if the decision is challenged. The Place of Deposit should be able to prove that it acted in accordance with the Act to consult with the creating authority.

Extension of 20 working day deadline for public interest tests

2.10.30 As explained above, the Act allows for the 20 working day deadline to be extended if a public interest test decision has to be made. The s.45 Code elaborates on this:

para.	s.45 Code of Practice
18	Public authorities should aim to make <i>all</i> decisions within 20 working days, including in cases where a public authority needs to consider where the public interest lies in respect of an application for exempt information. However, it is recognised there will be some instances where it will not be possible to deal with such an application within 20 working days. Although there is no statutory time limit on the length of time the authority may take to reach a decision where the public interest must be considered, it must, under section 17(2), give an estimate of the date by which it expects to reach such a decision. In these instances, authorities are expected to give estimates which are realistic and reasonable

⁵⁵ Initially the creating authority should contact their Departmental Record Officer for advice on how to take this forward. If the DRO is not known, contact The National Archives' Records Management Department for further advice.

⁵⁶ Applicants must always be contacted within the 20 working days. Therefore if the public interest test decision-making process is going to extend beyond 20 working days, they should be given an initial "holding" response.

⁵⁷ As explained in the previous footnote, the enquirer must always be contacted within 20 working days, even if a public interest test decision is being made; if not with the decision, at least with some kind of initial response. If there is any prospect that it will be necessary to refuse to confirm or deny the information is held, the decision must be made within 20 working days because an initial response to the effect that the matter was under consideration would reveal that the information was held.

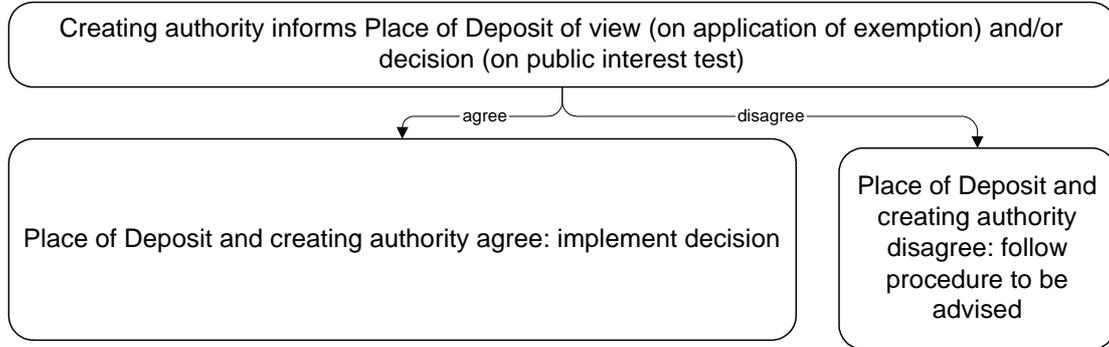
	<p>in the circumstances of the particular case, taking account, for example, of the need to consult third parties where this is necessary. Public authorities are expected to comply with their estimates unless there are good reasons not to. If the public authority exceeds its estimate, it should apologise to the applicant and explain the reason(s) for the delay. If a public authority finds, while considering the public interest, that the estimate given is proving unrealistic, it should keep the applicant informed. Public authorities should keep a record of instances where estimates are exceeded, and where this happens more than occasionally, take steps to identify the problem and rectify it.</p>
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However, remember that if you are going to refuse to confirm or deny that the information is held, the 20 working day deadline should be met so that you don't inadvertently give away that the information is held. This reasoning for this is explained at footnote 32.

What if almost identical enquiries are regularly made?

2.10.31 If an almost identical enquiry has arisen beforehand, as part of the consultation it would make sense to remind the creating authority of the previous decision. It would also be helpful to keep a note of the type of information provided from particular classes of records so that if a similar enquiry comes up in future you can compare it to previous decisions (your tracking system may be useful in this regard). Besides saving time and effort in future, this would also provide for consistency in approach.

Reply from the creating authority



2.10.32 The creating authority should provide an explanation of what exemptions it believes apply (if any) and why. If the Place of Deposit has already identified the exemptions and justifications, it should indicate whether it agrees or disagrees with the Place of Deposit's view. The creating authority must provide a view on exemptions and justification data and must indicate whether the justification itself can also be released. Even if a public interest test has been made by the creating authority, which the creating authority is legally responsible for, the Place of Deposit will be responsible for writing back to the enquirer. The Place of Deposit therefore needs to receive enough information from the creating authority to be able to give an appropriate response.

2.10.33 If the creating authority has decided to refuse access to the information in the public interest, they should confirm with the Place of Deposit that they have consulted the Lord Chancellor.

What if the creating authority does not reply?

2.10.34 The Place of Deposit is responsible for meeting the statutory deadline and should follow up after a certain amount of time has passed (e.g. on day 15). We will provide further guidance on this in due course.

What if the Place of Deposit and creating authority do not agree?

2.10.35 For public interest test decisions, the creating authority is legally responsible and the Place of Deposit should comply with the creating authority's decision. For all other decisions, Places of Deposit are acting on behalf of the Lord Chancellor, who is legally responsible. We recommend that the view of the creating authority be given great weight, as the authority may be more aware of specific statute bars, other relevant legislation, or the operational impact of releasing information. In the final analysis however the Place of Deposit should be convinced of the justification and arguments for the access decision. We hope to provide further guidance in due course on what should happen if the creating authority and the Place of Deposit can not agree. In the interim Places of Deposit should contact The National Archives and the creating authority should contact their Departmental Record Officer.

2.10.36 At The National Archives, the Advisory Council will advise on any disagreements between The National Archives and government departments. The Advisory Council is not legally responsible for the decisions, but is being used in this way as an independent source of guidance for difficult decisions. However, the exemption decision will still be made by the National Archives.

2.10.37 A Memorandum of Understanding between The National Archives and public record creating bodies (the 'responsible authority') has been agreed, which sets out how The National Archives (TNA) will consult creating authorities. Although not technically applicable to Places of Deposit, the same general principles will apply to Places of Deposit, and it is worth quoting a section here:

Consultation process

5. The consultation will allow the responsible authority to assess the implications of disclosure of the information and assist TNA in determining what exemptions may be relevant and whether the duty to confirm or deny applies or if the information is exempt. TNA will attach great weight to the views of the responsible authority (see also paragraph 7).... Any advice to TNA to neither confirm nor deny holding information needs to be given before 20 working days from the date on which the request was received by TNA.

7. Where consultation in accordance with paragraph 5 takes place, TNA will endeavour to reach agreement with the responsible authority

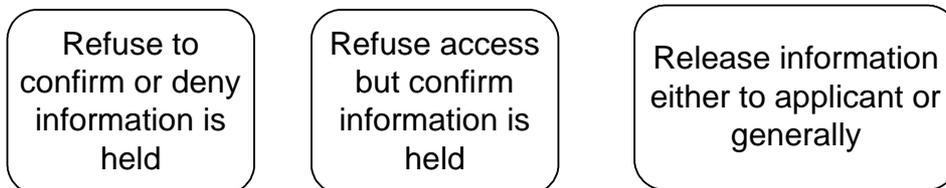
in relation to identifying exempt information. If no agreement can be reached TNA and the responsible authority agree jointly to seek the views of the Advisory Council on National Records and Archives before reaching a final decision. TNA will attach great weight to the Council's views. As legal holder of the records concerned, TNA is finally responsible for exempt information being identified in response to a request.

Places of Deposit which are part of the creating authority

2.10.38 In situations where the Place of Deposit is part of the creating authority (i.e. it holds public records created by its own organisation) the consultation process will be slightly different. In this case, the organisation is both the "responsible authority" and it is also acting on behalf of the Lord Chancellor, who is the "record holding authority." In effect, the authority will be consulting itself.

2.10.39 It is up to each authority as to how it handles the consultation process internally. Archivists should agree a policy within their organisation as to whether they should consult with another member of staff such as an FOI Officer, a Lawyer, a records manager, or whether responsibility for decision making will be completely delegated to one person, the Archivist. Remember that if the organisation is proposing to refuse access to information in deposited public records as part of a public interest test, it must consult the Lord Chancellor⁵⁸. It will still be important to keep a full record of the decision making process in case the decision needs to be audited.

Decision is made



2.10.40 Once a response has been received from the creating authority, a decision can be made on whether the information should be released or not. Below is a summary of the options available.

1. **Refuse to confirm or deny information is held.** . If this is the case, a careful form of words should be used⁵⁹

⁵⁸ In the first instance the creating authority should contact the Departmental Record Officer.

⁵⁹ Note that you should always use the same form of words to reply to *all* enquiries about this type of information *whether you actually do hold it or not*. It is important to be consistent in this. If you only issue refusals to confirm or deny when you hold the information and do not when the information is not held, you would inadvertently reveal that the information was held. Further guidance on the form of words to use when refusing to confirm or deny will be provided.

2. **Refuse access but confirm information is held.** If refusing access to information, a “refusal notice” should be sent. The next section of this guidance explains what refusal notices should contain.
3. **Release the information.** If no exemptions apply to the entire record, there is no justification for keeping it closed. It should be opened, and the access information (e.g. on your catalogue) should be changed so that it shows the records as open.

In some cases your decision may be a mixture of the above choices: for example you may be able to release some of the information requested, but not others. If this is the case, it may be necessary to provide the information in such a way as to protect nearby exempt information, e.g. by redaction⁶⁰, or providing a summary or transcript.

Recording the decision

2.10.41 Once the enquiry has been dealt with, a record should be kept of the decisions made. The s.45 Code says this is especially important when refusing access.

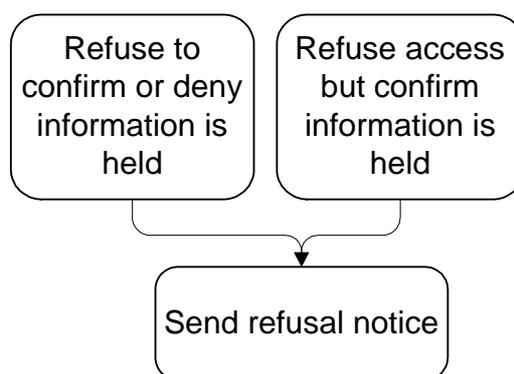
para.	s.45 Code of Practice
51	For monitoring purposes public authorities should keep a record of all applications where either all or part of the requested information is withheld. In addition to a record of the numbers of applications involved where information is withheld, senior managers in each public authority need information on each case to determine whether cases are being properly considered, and whether the reasons for refusals are sound. This could be done by requiring all staff who refuse a request for information to forward the details to a central point in the organisation for collation. Details of information on complaints about applications which have been refused [...] could be collected at the same central point.

ACTION:

- Are you clear about your legal responsibilities?
- Do you have contacts in creating authorities with whom you will need to consult?
- Are you familiar with the exemptions?
- Do you have a stock letter to use as a holding reply?
- Do you have a stock letter to send to creating authorities for consultation purposes?
- Consider what types of information may be exempt from the duty to confirm or deny the information is held. Prepare to answer all enquiries for this type of information with the same form of words, whether it is held or not.

⁶⁰ For further guidance on redaction see sections 1.4.8 and 2.12 of this guidance.

2.11 Refusing a request



Key points:

- When refusing access to information, you must give a written “refusal notice”
- The refusal notice must contain certain information.

2.11.1 When refusing a request, the applicant must be informed in writing. This is technically known as a “Refusal Notice”. Section 17 of the FOI Act explains what refusal notices should contain. The Place of Deposit should always write the refusal notice, even if the decision was a public interest test made by the creating authority, because the Place of Deposit is the authority which holds the information.

Refusal notices

2.11.2 If an exemption applies, the refusal notice must contain the following information⁶¹, unless the information is such that you must refuse to confirm or deny it is held.:

- A statement that the information is exempt
- Exactly which exemption(s) are being applied
- An explanation (if it is not otherwise apparent) of why the exemption applies

In all cases, the refusal notice should also contain⁶²:

- details of your organisation’s complaints handling procedures
- details of the applicant’s right to apply to the Information Commissioner for a decision as to whether the request has been dealt with in accordance with the Act

Apart from this, you can also include any advice and assistance you see fit.

⁶¹ Freedom of Information Act, s.17(1)

⁶² Freedom of Information Act, s.17(7)

Refusal after public interest test

2.11.3 If a public interest decision has been made by the creating authority, the refusal notice should state the reason why either a) the public interest in refusing to confirm or deny the information is held outweighs the public interest in disclosing whether or not the information is held, or b) that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.⁶³ The creating authority should provide this information to the Place of Deposit when they reply. *However*, if such a statement would mean that the exempt information itself is revealed, the Place of Deposit is not obliged to make the statement.⁶⁴

2.11.4 The s45 Code of Practice emphasises that when requests are refused, there must be an explanation why, unless it is impossible to do so because the information is so sensitive:

para.	s.45 Code of Practice
50	Where a request for information is refused in reliance on an exemption, the Act requires that the authority notifies the applicant which exemption has been claimed, and if it would otherwise not be apparent, why that exemption applies. Public authorities should not (subject to the proviso in section 17(4) i.e. if the statement would involve the disclosure of information which would itself be exempt information) merely paraphrase the wording of the exemption. The Act also requires authorities, when withholding information (other than under an "absolute" exemption), to state the reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosure. Public authorities should specify the public interest factors (for and against disclosure) which they have taken into account before reaching the decision (again, subject to the proviso in section 17(4)).

Refusal because cost limit exceeded or vexatious

2.11.5 If the reason for refusal is that the cost limit would be exceeded or the request is vexatious, the refusal notice should explain this⁶⁵. If refusing because the request exceeds the cost limit, it would be a good idea to explain the basis of your calculation. If the vexatious enquirer has already been given a refusal notice to this effect there is no obligation to do it again.⁶⁶

2.11.6 There are several reasons why a request for information may be refused. The table below explains various reasons why you might be refusing a request and what action should be taken as a result.

⁶³ Freedom of Information Act, s.17(3)

⁶⁴ Freedom of Information Act, s.17(4)

⁶⁵ Freedom of Information Act, s.17(5)

⁶⁶ Freedom of Information Act, s.17(6)

	Reason why refusing request	Action	Notes
1.	The information is not held by the organisation	Advise the applicant of the appropriate source.	This is not actually counted as a “refusal” but as a “negative response.” However, note that in the Environmental Information Regulations, it does count as a refusal.
2.	Vexatious or repeated requests (unless a reasonable interval has elapsed)	Issue a “refusal notice” stating that relying on the exemption s14(1) (if vexatious) or s14(2) (if repeated). If you’ve already issued a refusal notice in relation to a previous request and it would be unreasonable to serve another notice in relation to the current request, no response is required, but the decision should be documented ⁶⁷	You are not required to provide advice and assistance in relation to vexatious requests.
3.	The cost of locating and retrieving the information exceeds the limit	Issue refusal notice stating the fact that the cost of locating and retrieving the information would exceed the limit ⁶⁸ Explain the basis of the calculation. You must provide this notice within 20 working days ⁶⁹ .	You should provide “advice and assistance” to the applicant in re-scoping the request.
4.	The aggregated costs of two or more similar requests exceed the limit.	Issue refusal notice stating that the cost of locating the information would exceed the limit ⁷⁰ . You must provide this notice within 20 working days ⁷¹ .	This applies where two or more requests are made by one person, or by different people who appear to be acting together (i.e. an organised campaign).
5.	The information is already available through the	Reply to applicant explaining how to access the information.	

⁶⁷ FOI Act s17(6)

⁶⁸ FOI Act s12(1)

⁶⁹ FOI Act s17(5)

⁷⁰ FOI Act s12(4)

⁷¹ FOI Act s17(5)

	Reason why refusing request	Action	Notes
	publication scheme.		
6.	The information is in open access archives and catalogues are available	The information is exempt from the requirements of FOI under section 21 (“reasonably accessible”). Reply to the applicant giving advice and assistance on how to access the information.	
7.	The information is exempt from the requirement to confirm or deny whether the information is held.	Issue refusal notice saying authority does not have to confirm or deny by virtue of an exemption, specify the relevant exemption, and state why exemption applies ⁷² . You are not required to say why the exemption applies, if to do so would mean revealing the exempt information ⁷³ . Careful wording will be needed if refusing to confirm or deny information is held so as not to reveal it is, in fact, held	Use stock paragraphs each time a request for this type of information is made, whether you hold the information or not.
8.	The information is exempt from the requirement to disclose information.	Issue refusal notice saying authority does not have to disclose the information by virtue of an exemption, specify the relevant exemption, and state why the exemption applies ⁷⁴ . You are not required to say why the exemption applies, if to do so would mean revealing the exempt information ⁷⁵ . Where the exemption is subject to a public interest test, state in the refusal notice if the decision has not yet been made and give an estimate of date by which you expect the decision to have been made ⁷⁶ .	Unless the exemption actually prohibits disclosure (e.g. a statute bar), the authority could still exercise its discretion and choose to disclose the information, having first consulted the creating authority.
9.	The exemption has been	After making the decision, issue a refusal notice. Two possible situations might apply:	This refusal notice may be issued outside the 20 day

⁷² FOI ACT s17(1)

⁷³ FOI Act s17(4)

⁷⁴ FOI Act s17(1)

⁷⁵ FOI Act s17(4)

⁷⁶ FOI Act s17(2)

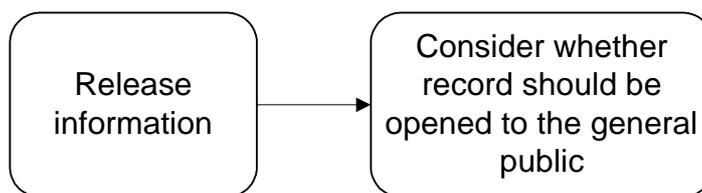
	Reason why refusing request	Action	Notes
	subject to a public interest test and the decision has been taken not to disclose.	<p>A) It would not be in the public interest to disclose the information⁷⁷. Give reasons for this decision in the refusal notice⁷⁸ or in a separate 'public interest' refusal notice within a reasonable time⁷⁹. Bear in mind whether giving the reasons would reveal the exempt information.</p> <p>B) It would not be in the public interest to disclose fact that the information is held⁸⁰. Give reasons for this decision in the refusal notice⁸¹ or in a separate 'public interest' refusal notice within a reasonable time⁸². Bear in mind whether giving the reasons would reveal the exempt information.</p> <p>The creating authority should supply the reason.</p>	limit - but the s.45 Code says you should aim to make all decisions within 20 working days.

ACTION:

- Do you know what should be in a refusal notice?
- Do you have a complaints procedure?
- Do you have a stock letter or stock paragraphs ready to use?

⁷⁷ FOI Act s17(3)
⁷⁸ FOI Act s17(1)
⁷⁹ FOI Act s17(3)
⁸⁰ FOI Act s17(3)
⁸¹ FOI Act s17(1)
⁸² FOI Act s17(3)

2.12 Providing the information



Key points:

- Try to accommodate applicants preferences for how they wish to access the information
- If a record contains both closed and open information, make sure the closed information is protected
- If a record is opened to one person, consider whether it should be opened to all.

Communicating the information

2.12.1 The FOI Act states that, within reason, public authorities should try to accommodate applicant's requirements as to how they wish to access the information. Examples given are a) a copy of the information in permanent form or in another form acceptable to the applicant, b) an opportunity to inspect the record containing the information, or c) a digest or summary of the information. However, it also says that you can consider the cost implications when deciding whether a particular request is reasonable.

S.11(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely-

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.

(3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.

(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.

Protecting information which is not yet open

2.12.2 If information is being released from a record which also contains information which remains closed, it will be necessary to take steps to protect the closed information. This can be achieved by:

- Transcribing the relevant sections
- Providing a photocopy of the open information, blanking out anything which is not to be released
- Allowing the enquirer to see the original document, but binding/taping up the “closed” pages and supervising very closely.

Redaction

2.12.3 If the information is held on paper, the pages affected should be photocopied, the text to be withheld should be removed either by deleting with a thick black felt pen, using correction fluid, or by cutting it out⁸³. The redacted version should then be photocopied again and the photocopy sent to the applicant. Check first that the sensitive text is not visible against light.

2.12.4 To remove any possibility of doubt as to what was actually released, in case the applicant complains to the Information Commissioner and the case has to be reviewed, it would be a good idea to make two copies and keep one with the case papers of the enquiry. Alternatively, if there is likely to be general public interest in the information, keep a public access copy of the part-record and amend the catalogue accordingly. The National Archives has provided further guidance on redaction, including advice on how to redact information from electronic records.

Open to one, open to all?

2.12.5 In some cases it may be that the record was previously closed, but after examination it was discovered that there were no exemptions applying. Unless there is any exempt information in the record, it should be made open to the public generally. The creating authority should be consulted about this; see section 2.10 for further guidance on consulting the record creators. This is especially important if the original enquiry related to one small section of the record, as different issues may need to be considered.

ACTION:

- Look into the various options available for providing access, and consider whether they offer a reasonable variety of methods. For example, if the applicant wished to have an electronic copy of the information, could this be provided?

⁸³ It almost goes without saying that this should never be done to the original document, only to a copy of the original.

2.13 Enquiry closed, access decisions recorded.

Close the enquiry, log the decision and file the records

Key points:

- It is important to record what happened in case there is a complaint.

Record the outcome

2.13.1 Once the enquiry is completed, make sure that a record is made of the enquiry, and that all the relevant sources of data are amended accordingly. This may include your enquiry logging/tracking system and the archival catalogue itself (which may contain access data).

para.	s.45 Code of Practice
51	For monitoring purposes public authorities should keep a record of all applications where either all or part of the requested information is withheld. In addition to a record of the numbers of applications involved where information is withheld, senior managers in each public authority need information on each case to determine whether cases are being properly considered, and whether the reasons for refusals are sound. This could be done by requiring all staff who refuse a request for information to forward the details to a central point in the organisation for collation. Details of information on complaints about applications which have been refused ... could be collected at the same central point.

Retention of records of FOI enquiries

2.13.2 The National Archives' guidance on this is included in the Retention Scheduling guidance document No. 9: Information management records⁸⁴. It recommends that records of FOI enquires should be kept as follows:

FOI requests:

- | | |
|-------------------------------------------------|----------|
| a) for information already open | 1 year |
| b) for information which is subsequently opened | 2 years |
| c) for information which remains exempt | 10 years |

ACTION:

- When an enquiry is complete, where are you going to file the information?
- Do you have the facility to link notes of access decisions to the catalogue entry and vice-versa?

⁸⁴ [Hwww.nationalarchives.gov.uk/recordsmanagement/advice/schedules.htm](http://www.nationalarchives.gov.uk/recordsmanagement/advice/schedules.htm)H

2.14 Complaints / appeals

Key points:

- You should have a complaints procedure.
- Your complaints procedure should be well publicised
- The applicant's rights of complaint should be included in refusal notices and other FOI-related correspondence.
- If the complaint cannot be resolved, the applicant should be provided with contact details for the Information Commissioner.
- The creating department should be involved in any review of a decision to refuse access

2.14.1 If an applicant wishes to complain, they should follow a three step procedure.

1. The public authority's internal complaints procedure
2. Information Commissioner
3. Information Tribunal

If the complaint is against a refusal to provide the information, repeat the consultation process set out in 2.10. In the case of a complaint of this nature, please contact The National Archives⁸⁵ as soon as possible to keep us informed.

2.14.2 The main points made by the s.45 Code of Practice (paragraphs 52-63) on this issue are:

Complaints procedure in place

- Each public authority should have a complaints procedure.
- It should be a "fair and impartial means of dealing with handling problems and reviewing decisions... It should be possible to reverse or amend decisions previously taken." They should provide a prompt response.
- If a public authority has not introduced a complaints procedure, applicants can complain to the Information Commissioner.
- "Where the complaint concerns a request for information under the general right of access, the review should be handled by a person who was not a party to the original decision, where this is practicable. . If this is not possible (for example in a very small public authority), the circumstances should be explained to the applicant."⁸⁶

Publicise complaints procedure

- The applicant's rights of complaint should be included in refusal notices and other FOI-related correspondence. They should explain

⁸⁵ The National Advisory Services Department

⁸⁶ s.45 Code of Practice, paragraph 57.

how to make a complaint and inform the applicant of the right to complain to the Information Commissioner under section 50 if s/he is not satisfied.

Count dissatisfaction as a complaint

- Any written reply expressing dissatisfaction with the authority's response to a valid FOI request should be treated as a complaint.

Inform complainants of right to contact the Information Commissioner is dissatisfied

- If it cannot be resolved, the public authority should explain how applicants can contact the Information Commissioner, who may investigate the matter at his discretion.

Targets set for dealing with complaints

- Complaints should always be acknowledged and complainants should be informed of the authority's target date for determining the complaint. "Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint."⁸⁷ Target times should be reasonable, defensible, and subject to regular review. "Each public authority should publish its target times for determining complaints and information as to how successful it is with meeting those targets."⁸⁸

Keep records and review procedures

- Records should be kept of all complaints and their outcome. Complaints should be monitored and procedures for dealing with requests reviewed and amended if necessary.

Outcome of complaint

- "Where the outcome of a complaint is that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be."⁸⁹ Note that Places of Deposit should always consult with the creating authority in the same way as they would for the original enquiry.
- "Where the outcome of a complaint is that the procedures within an authority have not been properly followed by the authority's staff, the authority should apologise to the applicant. The authority should also take appropriate steps to prevent similar errors occurring in future."⁹⁰
- "Where the outcome of a complaint is that an initial decision to withhold information is upheld, or is otherwise in the authority's

⁸⁷ S.45 Code of Practice, paragraph 58.

⁸⁸ S.45 Code of Practice, paragraph 59.

⁸⁹ S.45 Code of Practice, paragraph 61

⁹⁰ S.45 Code of Practice, paragraph 62

favour, the applicant should be informed of his or her right to apply to the Commissioner, and be given details of how to make an application, for a decision on whether the request for information has been dealt with in accordance with the requirements of Part I of the Act.”⁹¹

ACTION:

- Do you have a complaints procedure?
- Is it well publicised?
- Is it included in refusal notices and other FOI-related correspondence?
- Does it comply with the requirements of the s.45 Code?
- Does it make provision for consulting the creating department if the complaint is against a refusal?

⁹¹ S.45 Code of Practice, paragraph 63

APPENDIXES

Appendix 1: Further contacts

Appendix 2: Summary of action points (transfer procedures)

Appendix 3: Summary of all Action Points (handling enquiries)

Appendix 4: Frequently Asked Questions

Appendix 1: **Contacts**

1. For general enquiries relating to this guidance publication contact:

Steven Jones
Head of Archive Inspection Services
National Advisory Services Department
The National Archives
Kew
Surrey
TW 9 4DU

e-mail: steven.jones@nationalarchives.gov.uk

2. Places of deposit seeking advice on the use of this publication should also contact the Head of Archive Inspection Services, as above.

3. Creating authorities seeking advice on the use of this publication should either contact the relevant Departmental Record Officer or:

Howard Davies
Acting Head of Client Management Unit
Records Management Department
The National Archives
Kew
Surrey
TW 9 4DU

e-mail: howard.davies@nationalarchives.gov.uk

4. Guidance on the FOI Act from the Office of the Information Commissioner can be found at:

<http://www.informationcommissioner.gov.uk>

5. Guidance on the FOI Act from the Department for Constitutional Affairs can be found at:

<http://www.foi.gov.uk/>

6. General guidance on the management of records and archives from The National Archives can be found at:

<http://www.nationalarchives.gov.uk/services/>

Appendix 2: Summary of Action Points (transfer procedures)

Section	Action	✓
1.2	Functional responsibilities	
	Check that your responsibilities for records transfer or receipt are set out in corporate policies	
	Do staff responsible for carrying out transfer or receipt of public records understand their responsibilities in the context of the FOI Act?	
1.3	Communications and relationships	
	Contact your places of deposit / creating authorities to establish or review communications arrangements	
	Establish a framework agreement which sets out what each party will do to ensure the transfer process runs smoothly	
1.4	Reviewing records to establish their accessibility	
	Ensure that staff understand the purpose of review	
	Ensure that staff are familiar with the application of exemptions	
	Ensure that staff are familiar with redaction guidelines	
	Contact the relevant DRO if further guidance is required	
1.5	Transfer forms	
	Review your existing transfer documentation to ensure that it can carry all the information required	
1.6	Adequate description of transferred materials	
	Creating authorities should review their description processes and ensure that adequate resources are available for them to be carried out	
	Places of deposit should liaise with creating authorities if levels of description are felt to be inadequate	
1.7	Packaging and transfer arrangements	
	Agree packaging and transit arrangement beforehand, on a case by case basis if necessary	
	Establish a packaging and handling policy for use by creating authority staff and couriers	

1.8	Responsibilities after information has been transferred	
	Creating authorities and places of deposit should include temporary return procedures in their framework agreements	
	Creating authorities and places of deposit should maintain awareness of the Information Commissioner's audit role	

Appendix 3: Summary of all Action Points (handling enquiries)

Section	Action	✓
2.3	Preparation	
	Check that you comply with the duty to provide advice and assistance to potential enquirers.	
	Consider whether to do some preparatory work to help estimate the number of FOI enquiries you are likely to receive and the time it will take to answer them.	
	Can popular enquiries be answered as FAQs on your website or in your publication scheme?	
	Start collating a list of contacts within creating departments in case you need to consult with them.	
	Network with colleagues in other Places of Deposit and Archives to discuss problems and solutions.	
2.4	Receiving the enquiry	
	Do you understand how the FOI Act defines a “working day”?	
	Do you know when the FOI clock starts ticking?	
	Do you clearly publicise any office closures?	
	Do you have a system in place for recording the date enquiries are received?	
	Do you have procedures to cover for staff absences?	
	Are you able to write down FOI enquiries received over the phone?	
	Do you want to create forms for on-site or website use?	
	Have you publicised your existence within your own organisation?	
2.5	Categorising and logging the enquiry	
	Do you know how to distinguish between different requests?	
	Do you know what constitutes a valid FOI request?	
	Have you defined what you need to log?	
	Do you have a system in place for logging enquiries?	
	Do you understand the rules regarding vexatious requests?	
2.6	Requesting clarification of further information	
	Are you ready to request clarification if necessary?	
	Do you understand that you can't ask the reason they want the information?	
	Do you want to prepare stock paragraphs or template letters for use when requesting clarification?	

	Does your logging system allow you to stop and start the clock and move the FOI deadline?	
2.7	Is the information likely to be held by our office?	
	Set out a list of the information resources which could be searched by staff in order to do this initial “probability check”	
	Compile directory of external organisations’ contact details for quick staff reference.	
	Create stock paragraphs for use when referring enquirers to other sources. Ensure that they explain what sources you have searched.	
	Consider what types of information may be exempt from the duty to confirm or deny the information is held. Prepare to answer all enquiries for this type of information with the same form of words, whether it is held or not.	
2.8	Is the information already reasonably accessible (s.21) or shortly to be published? (s.22)	
	Investigate whether some or all of your catalogues can be made available online	
	Mark catalogue data with the access status of the record so that records subject to s.21 can be identified	
	Create a cataloguing and conservation programme, and ensure it is publicised.	
	Ensure you have a copy of the Access Standard and take steps to check your level of compliance	
2.9	Cost exemptions and charging fees	
	Gather evidence on the cost of handling average enquiries to support your charges.	
	Prepare any stock letters you might need.	
2.10	Enquiries for information in public records which are not yet open to the public	
	Are you clear about your legal responsibilities?	
	Do you have contacts in creating authorities with whom you will need to consult?	
	Are you familiar with the exemptions?	
	Do you have a stock letter to use as a holding reply?	
	Do you have a stock letter to send to creating authorities for consultation purposes?	
	Consider what types of information may be exempt from the duty to confirm or deny the information is held. Prepare to answer all enquiries for this type of information with the same form of words, whether it is held or not.	
2.11	Refusing a request	
	Do you know what should be in a refusal notice?	

	Do you have a complaints procedure?	
	Do you have a stock letter or stock paragraphs ready to use?	
2.12	Providing the information	
	Look into the various options available for providing access, and consider whether they offer a reasonable variety of methods. For example, if the applicant wished to have an electronic copy of the information, could this be provided?	
2.13	Enquiry closed, access decisions recorded	
	When an enquiry is complete, where are you going to file the information?	
	Do you have the facility to link notes of access decisions to the catalogue entry and vice-versa?	
2.14	Complaints / Appeals	
	Do you have a complaints procedure?	
	Is it well publicised?	
	Is it included in refusal notices and other FOI-related correspondence?	
	Does it comply with the requirements of the s.45 Code?	
	Does it make provision for consulting the creating department if the complaint is against a refusal?	

Appendix 4: Frequently Asked Questions: handling enquiries

Question	Section
Overview of the whole enquiry process	2.2
What can I be doing to prepare ?	Appendix 3 2.3
How do we comply with the requirement to provide advice and assistance ?	2.3
What is the deadline for answering FOI requests?	2.4
When does the clock start ticking?	2.4
What is a “ working day ”?	2.4
Recording the date enquiry was received	2.4
Covering during absences / leave	2.4
What about single-staffed archive offices?	2.4
How should we handle phone calls ?	2.4
Should we offer to write down requests for enquirers?	2.4
What kind of request is it?	2.5
How do I identify an FOI request ?	2.5
What is a valid FOI request?	2.5
What if the request falls under more than one legislation ?	2.5
Why should we log requests?	2.5
How should requests be logged ?	2.5
What information should be logged ?	2.5
Vexatious requests	2.5
Repeated requests	2.5
Requests which seem to be part of an organised campaign	2.5
What if I don't understand the enquiry?	2.6
What if I need more information in order to answer the enquiry?	2.6
How do I request clarification or further information?	2.6
Can I ask them why they want the information ?	2.6
Does the clock stop when I ask for clarification or further information?	2.6
What initial checks should we do to identify whether we hold the information ?	2.7
What should I do first if the enquiry is valid?	2.7
What if we don't hold the information ?	2.7
Can I transfer the enquiry to another organisation?	2.7
How do I respond to enquiries about information which is so sensitive that I can't confirm or deny we hold it?	2.7
Do we have to create new information to answer an enquiry?	2.7

Can we claim the s.21 (reasonably accessible) exemption?	2.8
Can we claim the s.22 (shortly to be published) exemption?	2.8
What about uncatalogued records?	2.8
What about records which are unfit to be used? (conservation backlog)	2.8
What level of access should we be providing?	2.8
How can we claim exemptions when we are allowing access to the information (s.21 / s.22)?	2.8
What are the requirements of the Act regarding fees and charging ?	2.9
What should we do if an enquiry exceeds the cost limit ?	2.9
What is a fees notice ?	2.9
Does the clock stop when I send a fees notice?	2.9
Are records still “ closed ” or not?	2.10
Does FOI relate to information or records ?	2.10
In terms of access decisions, what are my legal responsibilities ?	2.10
Why and when do we have to consult the record creators ?	2.10
Flowchart of the consultation process	2.10
What is the process for enquiries for information which is in records which aren't open ?	2.10
Who identifies exemptions ?	2.10
How can I make a decision on whether exemptions apply ?	2.10
Does privileged access still exist?	2.10
What is an absolute exemption?	2.10
What is a qualified exemption?	2.10
What is a public interest test and who does it?	2.10
When and how should the Lord Chancellor be consulted?	2.10
Can the 20-day deadline ever be extended ?	2.4, 2.10
What if the creating authority does not reply ?	2.10
What if the creating authority and the place of deposit disagree ?	2.10
What if the place of deposit is part of the creating authority ?	2.10
What is a refusal notice and what must it contain?	2.11
What if the enquirer specifies a certain format for receiving the information?	2.12
What if we need to do a redaction ?	2.12
How long should we retain records of FOI enquiries?	2.13
What do we do if we get a complaint ?	2.14