

# Freedom of Information Procedure Manual

**Including: Environmental Information Regulations**

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## 1. Introduction

The aim of this manual is to provide guidance to ensure Invest NI remains compliant with legislative requirements. It will promote consistency and best practice in response to Freedom of Information and Environmental Information Regulations requests, collectively known as Access to Information requests.

The manual sets out Invest NI's approach to managing Information requests made under either the Freedom of Information Act 2000 (FOIA/FOI) or the Environmental Information Regulations 2004 (EIRs).

It does not deal with the management of Subject Access Requests under Data Protection law which is covered separately in the **Subject Access Request Procedures Manual**.

The manual is not a guide to FOI legislation and this can be found on the Invest NI intranet site. Periodic mandatory training will also be provided to all staff on this topic, including at induction. Guidance on specific requests can be sought from the Information Governance Team [IGT] via the mailbox [foi@investni.com](mailto:foi@investni.com).

## 2. FOI Policy Statement

Invest Northern Ireland will –

- Comply with the Freedom of Information Act 2000 and the EIRs.
- Continue to protect the personal data entrusted to it, by disclosing information only in accordance with the provisions of the General Data Protection Regulation (GDPR) & the Data Protection Act 2018.
- Seek to respond to all FOI requests promptly and within 20 working days.
- Work with its partners, service providers and contractors to ensure that they assist Invest NI in meeting its FOI obligations, including the disclosure of any information that they hold on Invest NI's behalf.
- Apply the exemptions provided in the FOIA where necessary and, where qualified exemptions apply, disclose the information unless the balance of public interest lies in withholding it.
- Consult with third parties before disclosing information that could affect their rights and interests bearing in mind that in accordance with the Act, the final decision on disclosure rests with Invest NI.
- Record all FOI requests and responses and monitor its performance in handling requests and complaints.
- Maintain a comprehensive publication scheme that provides information which is readily accessible without the need for a formal FOI request.
- Ensure that all staff are aware of their obligations under FOI and include FOI training in the induction of all new staff and then at periodic intervals.

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### 3. Recognising a FOI or EIR request

An information request can be treated as a formal FOI request and processed under this procedure where:

- It has been received in writing (including email, *text*, *social media post*); and
- It states the name of the Applicant and an address for correspondence (including email address); and
- It describes the information requested.

#### EIR requests

Requests for environmental information may be made either in writing **or orally**.

Applicants do **not** have to quote or reference either the FOI Act or the EIRs to have a request treated as such.

#### Business as Usual

Where the information requested would normally be provided within 20 working days as standard business practice, it will be processed as 'business as usual' and not recorded as an access to information request. This principle will only apply where information is being provided without any redactions.

### 4. Processing a Request

#### The Information Governance Team [IGT]

Those responding to requests are encouraged to seek guidance and advice from IGT throughout the handling of the request, particularly in respect of the application of exemptions/exceptions. It is prudent for teams to engage with IGT as early in the process as possible.

#### Tracking System

IMG tracks all Access to Information requests using the FOI monitoring log. This is used to produce statistics required to comply with reporting requirements of the publication scheme within FOIA; including the FOI Annual Report (available on [investni.com](http://investni.com)).

#### Template Letters

A series of template letters have been developed to be used for the purposes of handling requests under FOI and EIRs. The use of the template letters is essential to promote corporate consistency and ensure that all aspects of a request are fully addressed. Templates are available on the FOI section of the intranet.

#### Timescale

All requests must be responded to as soon as possible but no later than 20 working days from the day after receipt of the request. To allow full consideration of all responses, the internal process within Invest NI allows a maximum of **15 working days** for teams to provide a response to each request.

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## Logging & Allocating the Request

All non 'business as usual' written requests, should be notified to IGT immediately via [foi@investni.com](mailto:foi@investni.com). This is to enable request details to be tracked. The recipient of the request should advise IGT who will log, allocate a reference number and then pass it to the most appropriate Director(s) or Head(s) of Division in Invest NI to process.

The Director(s) or Head(s) of Division will pass the request to a Decision Maker within their team. A 'Decision Maker' is the person within the team (generally between SO and Grade 7 level) holding the requested information and charged with responding to the request. They are responsible for the coordination of the response and the decision to disclose or withhold information under the legislation.

### Step 1: Acknowledgement

An acknowledgement letter/email must be sent to the Applicant [the person who is making the request for information] using Template Letter 1. This should be completed no later than 5:00 pm on the day following receipt of the request. This is usually issued by IGT, however if it is issued by the team handling the request, a copy must be emailed / scanned to [foi@investni.com](mailto:foi@investni.com).

*Timescale: Every request must be acknowledged within 1 working day of receipt.*

### Step 2: Accessible by other means

The Decision Maker should carry out an initial review to determine if the information is accessible by other means (e.g. already published on the Publication Scheme). If the information is available by other means, the Applicant should be informed where it can be accessed (see Template Letter 8).

*Timescale: Between day 1 and day 4 of receipt*

### Step 3: Clarify nature of request if necessary

If the request is unclear or ambiguous (for example when a team cannot agree on the interpretation of the request) the Decision Maker must contact the Applicant to seek clarification. [Telephone call and/or Template letter 2 via email].

*Timescale: Between day 1 and day 4 of receipt*

### Step 4: Fees Regulations (FOI only)

Invest NI makes no charge for answering FOI requests. However, if a request will cost the organisation more than £450 (equivalent to 18 hours) to locate, retrieve and extract information, it is not obliged to supply the information.

If a request is likely to exceed the appropriate limit [**see Part 5**], the responding team must provide IGT with a calculation of the estimated time scale and associated cost. The draft letter [using Template Letter 3] will need to be approved by a Director or Head of Division as well as by IGT, Communications and ELT as appropriate.

Once any redefined request, falling within the scope of the fees regulations, has

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been received then proceed to the next step. If no clarification has been received within 2 months close the request by notifying IGT so that the FOI monitoring log can be updated.

*Timescale: Within 4 working days of receipt.*

#### **Step 5: Retrieve records and Prepare Release Schedule**

The Decision Maker must, **as soon as possible**, arrange for the search and retrieval of the relevant records. This search should cover **all** information storage areas across the organisation; for example the *EDRMS, CRM and OaMCS, OneDrive, Office 365 collaboration sites, paper files including offsite storage, PC and Network drives*). *It should be noted that social media posts, texts and Instant Messages should be included where relevant.*

This search may involve contacting other teams/divisions to establish if they have records pertinent to the request.

A Release Schedule containing an index and a brief description of the records covered by the request, must be prepared [Use Template on intranet]. Its purpose at this stage is to assist Decision Makers by:

- providing a means of summarising the records under consideration;
- setting out the consideration of exemptions/exceptions relevant to each record; and
- providing an essential reference for an internal reviewer or the Information Commissioner, if a complaint is later made by the applicant.

The Release Schedule is eventually disclosed to the applicant to enable them to see the information considered for disclosure under the request, and what exemptions have been applied (if any).

At this stage it may be useful to create two full copies of all documents falling within the scope of the request, one to be kept clean for reference and another to be highlighted for proposed exemptions.

*Timescale: Between day 1 and day 10 of receipt.*

#### **Step 6: Review Release Schedule considering possible exemptions/exceptions**

Each record listed on the Release Schedule will be examined to evaluate whether any of the FOI exemptions and/or EIR exceptions apply (“Exemptions”). See Part 6 below.

The Decision Maker will carry out this evaluation seeking guidance from the Information Governance Team

If no Exemptions apply the record is considered disclosable.

An exemption may apply to all or part of a record. If one or more Exemptions apply

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the Decision Maker should establish whether the exemption is subject to a public interest test. If the Exemption is absolute, or the public interest test favours applying the exemption, then the information will be withheld. The Decision Maker will review which Exemption is being used and, if appropriate, consult with IGT on whether the duty to confirm or deny that the information is held by Invest NI applies.

One version of the documents referred above should be highlighted with the proposed exemptions. Any information contained within the documents that fall outside the scope of the request should be blanked out in white to differentiate from redactions.

*Timescale: Between day 1 and day 10 of receipt.*

#### **Step 7: Consult any third parties**

The Decision Maker should consult other public authorities or other parties who are likely to be affected by disclosure of the information [See Template Letters 4-6]. If the consulted organisations wish Invest NI to withhold any information this will need to be considered within the scope of the Exemptions and any relevant public interest test.

The decision to release information always rests with Invest NI but the decision can be informed by the third party, especially if they can demonstrate potential detriment caused by the release.

If Invest NI is considering applying the exemption for commercial detriment to a third party then in the vast majority of cases it must always consult with that party to ensure that they agree with the predicted commercial detriment.

*Timescale: At the very latest within 10 working days to allow 5 working days for response.*

#### **Step 8: Response is drafted, reviewed & approved by Divisional Head**

A response will be drafted by the Decision Maker using the applicable template letter [7 to 10]. If **any** information is being withheld the applicant must be advised which Exemption applies within the response. The response letter will set out which Exemptions, if any, apply and explain why it is in the public interest to withhold the information not being released.

The response should also include the Release Schedule. If requests are made for information where the duty to neither confirm or deny is applicable, there is no need to refer to these records in the schedule.

The draft response and highlighted documents for redaction/ release must be reviewed and approved by the Divisional Director / Head of Division from an accuracy and quality perspective. Directors / Heads of Divisions are advised to confirm with the Decision Maker that any guidance provided by IGT has been incorporated into the response prior to their review.

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The review by Directors / Head of Divisions should take into account:

- the quality of the response
- the accuracy of the information provided
- how it sits in a corporate context (e.g. has the division released similar information under AQs etc)
- review of the rationale for any decisions based on information release or the application of an Exemption

Once approved by the Director, a version of the records for release should be redacted prior to sending to the IGT. It is vital that any information to which an exemption applies cannot be read by an applicant. Therefore whichever method is chosen for doing the redactions (electronic using adobe or physical using a special redaction marker) that it cannot be seen or undone.

*Timescale: At the very latest within 15 working days*

### **Step 9: Consideration by IMG, Communications & ELT**

When approval is received by the Divisional Director / Head of Division, the final draft response will be sent to IGT via [foi@investni.com](mailto:foi@investni.com) on or before day 15. This timescale is to provide sufficient time for full consideration of all the facts of each case by IGT, Communications and if necessary ELT, and allow time for feedback.

This consideration is an assurance that all requirements of the response are made in line with the legislation, including application of exemptions, and to review the response from a corporate communications perspective. The final draft response may also be sent to ELT for consideration depending on the nature of the FOI request.

*Timescale: Final draft to be received on or before day 15. Feedback to be provided on or before day 18*

### **Step 10: Response is issued**

If any changes are recommended by IGT or Communications, IGT will return the draft response to the Division by close of play on or before day 18, to enable feedback to be incorporated by the responding Division.

All changes must be made and returned to IGT for issue to the applicant by **no later than MIDDAY on day 20**.

A full copy of all issued responses will be stored on behalf of the organisation by IGT. Divisions will ensure that a copy of any redacted information, the related unredacted source of the information, details of any decision making process and any correspondence with the applicant are provided to IGT to ensure a full record of the processing of the request is held.

*Timescale: At the very latest 20 working days after receipt of request.*

## **5. Fees Regulations**

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The 'appropriate limit' for Invest NI in processing FOI requests is £450 (equivalent to 18 hours). If the cost of finding the information relating to a FOI request will exceed the Appropriate Limit then the requested information does not need to be provided.

### **Working out the Appropriate Limit i.e. the £450 limit**

Upon receiving the request, estimate the staff time that would be taken to complete the following and cost the time at £25 per hour:

- Determining whether the information is held
- Locating the information or a document which may contain the information
- Retrieving the information, or a document, which may contain the information
- Extracting the information from a document containing it

The time limit of 18 hours does not include the time needed to review the information for applying exemptions, redacting the information, or compiling the response.

### **Cumulative or Campaign Requests:**

These are: Two or more requests made by one person or different persons acting together or in pursuance of a campaign.

The Rule: When calculating whether the Appropriate Limit has/may be reached in complying with any one request, the cost of complying with all of the requests can be aggregated. However, the responding team must have received:

- two or more requests relating to same or similar information and
- these must have been received within any 60 consecutive working day period

A record must be kept of the calculation of the estimated time it would take to locate, retrieve and extract requested information that is being refused under the fee regulations. Any estimation should be "sensible, realistic and supported by cogent evidence". It must be sent to IGT via [foi@investni.com](mailto:foi@investni.com).

**Note: The Fees Regulations do not apply to the Environmental Information Regulations 2004.**

## **6. Exemptions / Exceptions & the Public Interest Test**

Both the FOIA and the EIRs provide a right of access to information. However, it would clearly not be appropriate for all information to be made public. This is recognised by 'exemptions' in the FOIA and 'exceptions' in the EIRs.

Exemptions/Exceptions exist to protect information that should not be disclosed, for example because disclosing it would be harmful to another person.

There are no blanket exemptions for certain 'types' of information. Consideration must be given to the specific information requested & whether the exemption applies in those particular circumstances.

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An exemption cannot be applied to information already in the public domain (for example on a company website, in public accounts on Companies House, in a news story etc).

Exemptions can be applied to all or part of the information requested and different exemptions may be appropriate for different parts of a record.

Information can automatically be withheld if the exemption applied is absolute. However, most exemptions and all exceptions are not absolute but are 'qualified'. This means that before deciding whether to withhold information under an exemption/exception, the public interest arguments must be considered.

Guidance on the exemptions and exceptions, including the public interest test, can be found on the Invest NI intranet site. Specific guidance can be sought from the Information Governance Team via [foi@investni.com](mailto:foi@investni.com).

## 7. Datasets

The Protection of Freedoms Act 2012 adds new provisions to the FOIA regarding datasets. A dataset is defined as a collection of factual information in electronic form related to the services and functions of Invest NI that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

If a response includes information that constitutes a dataset and the requester has expressed a preference to receive the information in electronic form (which in practice includes all requests made via email), then it must be provided in a re-usable form so far as reasonably practicable. In practice this will mean providing the information in Excel or other spreadsheet format.

Datasets that have been requested under a FOI request must also be published under the Invest NI Publication Scheme, unless it is not appropriate to do so (e.g. the dataset was disclosed with redactions due to applicable exemptions).

Further guidance on Datasets can be found on the intranet and specific guidance can be sought from IGT via [foi@investni.com](mailto:foi@investni.com).

**Note: The Dataset provisions do not relate to the Environmental Information Regulations.**

## 8. Internal Review Process

When an applicant is unhappy with the outcome of a response, the reply from the requestor will be dealt with under the Internal Review process.

Within Invest NI there is a designated Internal Review Panel consisting of Divisional Heads / Directors.

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### **Step 1: Log, Acknowledge & Allocate**

The IGT will:

- (a) register the request on the tracking system,
- (b) acknowledge the request including target completion date,
- (c) pass the review to the relevant reviewing officer.

*Timescale: The above will be actioned within 1-2 days of receipt*

### **Step 2: The Review**

The review is a fresh decision making process and the reviewer conducts an evaluation of the handling of the original request reviewing evidence in terms of whether the information should have been disclosed to the applicant and whether any exemptions were appropriately applied. The reviewer can consider new arguments put forward by the applicant.

It is recommended that the reviewer discuss details of the case under review with the Information Governance Team and the original Decision Maker. As part of this process an Internal Review meeting takes place with the original decision makers and the Information Governance Team.

The reviewer will come to a decision as to whether the information should be disclosed and an internal review response will be issued to the applicant.

When 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 applicant will be informed and the reason for the delay explained.

The result of the review process will be recorded on the tracking system by the Information Governance Team.

*Timescale: The target for completion of Internal Reviews is **20 working days**. No review should take longer than 40 working days.*

## **9. Publication Scheme**

The FOIA places an obligation on Invest NI to publish information proactively under a Publication Scheme. This includes a commitment to make certain classes of information routinely available, usually on the website, such as policies and procedures, minutes of meetings, annual reports and financial information.

This is managed through the model publication scheme which sets out a high level commitment by Invest NI to proactively publish information in line with the recommendations of the Information Commissioner's Office. Details of the Publication Scheme are published on the Invest NI internet.

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Each Division is responsible for ensuring that the information they hold that falls within the scope of this scheme is proactively published in line with this requirement. IGT will periodically review organisational compliance with this scheme.

### Version Control

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1.0	Amanda Latimer	Liam Hagan	Dec 2004	Publication
2.0	Danny Smyth	Charles Hamilton	June 2009	Update
3.0	Danny Smyth	Charles Hamilton	Oct 2010	Update
4.0	Danny Smyth	Nigel McClelland	Dec 2013	Revision [title & content]
5.0	Danny Smyth	Nigel McClelland	Apr 2016	Update
6.0	Clodagh Claxton	Danny Smyth	April 2020	Update

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