

## Freedom of Information Procedures

(also covering Environmental Information (Scotland) Regulations 2004)

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## Section 1 – Sending an Acknowledgement

- 1.1** The staff member responding to the request should acknowledge receipt of the request within three working days.
- 1.2** This acknowledgement should state their name and that they are dealing with the request on behalf of the ESC. It should also state when a response is likely to be issued and give contact details for the person handling the request. It should alert the applicant that a charge may be payable depending on the volume of material covered.
- 1.3** The information requested should also be re-iterated. If it is unclear what information is required then clarification should be sought at this stage.

## Section 2 – Seeking Clarification

- 2.1** If it is unclear what information the applicant wants, the staff member should obtain clarification but also offer reasonable advice and assistance to the applicant. Where a request is not reasonably clear, advice and assistance could include:
- providing an outline of different kinds of information which might meet the terms of the request
  - providing a general response to the request setting out options for further information which could be provided on request
  - contacting the applicant to discuss what information the applicant wants.
- 2.2** Applicants cannot reasonably be expected to always possess identifiers such as file reference numbers or the description of a particular record. Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek.
- 2.3** Clarification should be sought as soon as reasonably possible and normally as part of the acknowledgement of receipt of the request – i.e. within three working days. The statutory 20 working-day deadline for responding to a request will not start until clarification has then been received from the applicant.
- 2.4** The SIC is likely to be critical if the ESC takes an unreasonable length of time to provide advice and assistance or clarify the request.
- 2.5 When sufficient clarification is not provided**
- If, after seeking clarification and all reasonable assistance has been given, the applicant still cannot describe the information requested in a way which enables it to be identified and located, then the ESC is not required to proceed with the request.
- 2.6** In these circumstances, the staff member should explain to the applicant why their request cannot be taken any further and provide details of the review procedure and the applicant's right to apply to the SIC for a further review.
- 2.7** Where clarification is sought from the applicant but no response is received, the staff member should issue a reminder to the applicant after 20 working days explaining that the ESC cannot proceed until the applicant responds. After 40 working days the applicant's right to review expires, at which point the staff member should contact the applicant explaining that the case is now considered to be closed.

## **Section 3 – Locating and Retrieving Information**

### **3.1 Checking ESC records**

Staff members have access to the majority of the ESC's records. This allows information to be located and retrieved easily and response issued promptly. The IMITO has full access to all records and areas.

**3.2** The ESC operates a series of rules for managing records in a structured way. This provides reassurance that all relevant locations where the requested information might be held can be and has been checked. Please refer to the [ESC Records Management Plan](#) and [ESC File Plan and Retention Schedule](#).

**3.3** Searches should be proportionate and focus on systems where staff members with a working knowledge of the records relating to the request consider information might be held. Reference to "systems" do not relate only to IT systems but may include any other system, including paper records, informal systems such as notes and temporary records. Staff members handling a request should think beyond conventional places where information might be held to satisfy themselves that a full and robust search has been undertaken.

**3.4** Where appropriate, for example in responding to a request for a complex set of information, the staff member should maintain a record of searches conducted, including details of who carried out the searches and the systems that were checked. Records of searches provide helpful evidence to reviewers and, in the event of an appeal, to the SIC.

### **3.5 Consulting third parties**

### **3.6 Making third parties aware of authorities' duties**

The ESC will ensure that third parties such as contractors and suppliers are aware of his duty to comply with the regimes and that information will have to be disclosed upon request unless an exemption under FOISA or an exception under the EIRs applies. Normally, this information will be provided during any tender process.

**3.7** The ESC will exercise caution about making any confidentiality agreements with third parties in relation to information they are to supply. For example, when inviting consultation responses, the ESC cannot provide an undertaking that all responses will be treated as confidential.

### **3.8 Consultation with the third party**

There is no definitive list of circumstances in which consultation would be appropriate, and much depends on the facts and circumstances of the particular case. Consultation is likely to be appropriate where a third party's interest in the handling of a request will be significant, for example because they are the primary focus of the information (e.g. as a business or an individual) or because disclosure would significantly affect them.

**3.9** The ESC will identify interested third parties as soon as possible to give them the sufficient time in which to respond to consultation.

## **3.10** Consultation is recommended in all cases where:

- the views of the third party may help the ESC to determine whether an exemption or exception applies to the information requested. For example, if disclosure would cause substantial prejudice to that third party's interests or constitute a breach of confidentiality
- the views of the third party may help the ESC determine where the public interest lies.

## **3.11** Consultation is less likely to be necessary where:

- the ESC already has evidence from the third party that disclosure would, or would not, prejudice their interests
- the views of the third party can bear no influence on our decision (for example where there is other legislation either preventing or requiring disclosure).

## **3.12** Consultation may not be appropriate where:

- in the ESC's view there is no basis for withholding the information
- the cost of consulting third parties would be disproportionate (for example, because many third parties are involved)
- where the ESC holds evidence of earlier consultation on the status and sensitivity of the information and nothing (including the views of the third party) has changed.

## **3.13** In such cases, the ESC will consider what is the most reasonable course of action to take in light of the requirements of the regimes, the potential effects of disclosure and the public interest. It will usually be appropriate to notify the third party about the disclosure of information.

## **3.14 Meeting statutory deadlines**

Meeting the statutory deadline for responding to a request must always take priority over consulting third parties. This will often mean that the ESC can only allow third parties a short time to respond; this time should not be extended if that will prevent the ESC responding on time.

## **3.15** If the ESC does not identify the need to consult third parties until near the deadline, instead of consulting, they will notify third parties at the same time as responding to the applicant.

## **3.16 Inviting views from third parties**

When inviting third parties for their views, the ESC will focus the invitation on the information that has been requested. It should always be made clear to the third party that their consent is not being sought and they do not have a veto on release. It is for the ESC, not the third party (or representative of the third party), to determine whether or not information should be disclosed. A refusal by a third party to consent to disclosure does not, in itself, mean that information should be withheld.

**3.17** If the applicant is an individual their identity should almost always remain withheld from third parties as this is personal data and its disclosure is likely to be in breach of the Data Protection Principles. There may be occasions when the identity of the applicant is relevant to the request but it should not be shared with third parties unless permission is sought and granted, or the request was made in the public domain (e.g. via [whatdotheyknow.com](http://whatdotheyknow.com)).

### **3.18 When a response from a third party is not received**

The fact that the third party has not responded to consultation does not relieve the ESC of their duty to make information available, or their duty to reply within the statutory timescales.

### **3.19 Notifying third parties about the release of information**

When the ESC has decided to release information they may, as a courtesy, notify any third parties who have a material interest that information relevant to them has been released in response to a request, regardless of whether they have been consulted. This ensures that the release does not come as a surprise. Notification is at the discretion of the ESC and would depend on the individual circumstances surrounding the information released and what is judged to be a material interest.

**3.20** Please refer to the Scottish Government's [Code of Practice](#) and the SIC's website for further guidance on disclosing information relating to contracts or procurement processes.

### **3.21 Is a fee payable?**

The ESC is entitled to charge for the direct and indirect costs incurred in locating, retrieving and providing information. Full details of what can and cannot be charged for are contained in the Fees Regulations. However, authorities are not entitled to charge for:

- any costs incurred in determining whether it actually holds the information
- any costs incurred in determining whether information should or should not be disclosed
- the time spent deciding what parts of a document/report should be redacted (although the actual process of redacting can be charged).

**3.22** Costs which might be charged include estimates of the staff time to collate information or redact documents, the cost of postage to deliver the information to the applicant or photocopying.

### **3.23 Calculating staff costs**

The Fees Regulations cap the amount which can be charged per hour per member of staff at £15.00. Further details about what can be charged and how costs are calculated is available in the Scottish Government's [Code of Practice](#) and on the SIC's website.

## 3.24 Costs for providing information in a particular format

Applicants have the right to request information in a particular format. For example, the applicant may prefer to receive a summary or digest rather than the whole document in which the information is recorded. The ESC must give effect to these preferences, so far as is reasonably practicable. The ESC is entitled to charge the applicant for the costs of carrying out this work. As already noted that there may be duties to the applicant in terms of the Equality Act 2010. The ESC may not charge for any costs likely to be incurred in fulfilling any such duty.

## 3.25 How much can be charged?

The ESC is not entitled to recoup costs in full. The Fees Regulations limit the chargeable amount to a proportion of the actual cost incurred. Where the cost to the public authority of responding to the information request:

- is less than £100, then no charge can be made
- is above £100, then the authority is allowed to make a charge of 10% of those costs up to £600
- exceeds £600, the public authority does not have to provide the information.

## 3.26 Where excessive costs apply

The ESC is not required to provide information where the cost of the responding to the request exceeds £600. However, the ESC has a duty to provide reasonable advice and assistance to applicants. This means that where the estimated cost of responding to a request will exceed £600, it is good practice to discuss the request with the applicant to find out if the scope of their request could be narrowed to bring it under the £600 limit. Any narrowed request would be a separate, new request and should be responded to accordingly.

**3.27** If the cost of dealing with the request is more than £600 and the scope of the request has not been narrowed the staff member should issue a notice stating that the ESC does not plan to supply the information as the estimated cost of complying would exceed the maximum amount in the Fees Regulations. The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

**3.28** Alternatively, the ESC can provide the information free of charge or can, with the agreement of the applicant, make a charge for responding to the information request.

## Section 4 – Issuing a Request for Payment

- 4.1** Where a fee is payable the ESC will notify the applicant as soon as possible and within the 20 working day time limit. The notice will set out the projected costs of handling the request. The projected costs should be a reasonable estimate of the costs likely to be incurred. The statutory 20 working-day deadline for responding to a request pauses when the fee notice is issued and will resume once the applicant has paid the fee. The ESC will inform the applicant that they must pay the fee within three months of the date of the fees notice (60 working days under the EIRs) or there will no longer be any obligation to give the applicant the information.
- 4.2** Upon payment of a fees notice, the timescale for responding resumes from the point when the fees notice was issued. If 10 working days had passed between receipt of the request and the issuing of the fees notice, this means that only 10 working days remain to respond once the fee has been paid. It is therefore both good practice and common sense to issue a fee notice as soon as possible after receiving the request.
- 4.3** Further guidance about when and how to charge are available in the Scottish Government's [Code of Practice](#) and on the SIC's website.

## Section 5 – Responding to the Request

- 5.1** This section explains how to respond to a request. Further guidance and up-to-date advice are available on the SIC website in the section entitled '[Responding to a request](#)'. Staff members should refer to the SIC's website and to the Scottish Government's [Code of Practice](#) when responding to a request for environmental information.
- 5.2** The staff member responsible must respond to the request within 20 working days of receipt.
- 5.3** The ESC has established a panel to consider complex requests and carry out reviews. The pool of panel members is appropriately trained and drawn from across the organisation. Requests that are complex, voluminous, vexatious or involve the application of an infrequently used exemption or exception should be referred to the panel. Staff members should refer such requests to the HCS who will decide whether a panel should be convened and assign the panel members. Further details about the operation of the panel is available in ESC's [FOI Panel Guidance](#).
- 5.4** All responses should be reviewed by the HCS, IMITO or other appropriately trained member of staff to ensure that, where applicable, the correct exemptions have been applied and to check for accuracy and quality before they are issued. Please bear in mind that whoever checks the initial response, cannot act as a reviewer if the applicant then requests a review of the decision to release or withhold the information.

## 5.5 When the Commissioner does not hold the information requested

If the information is not held, advise the applicant of this and explain why the ESC does not hold the information. This makes a request for review less likely.

**5.6** Staff must remember their duty to advise and assist. If they know who does hold the information, tell the applicant or, exceptionally, transfer the case.

**5.7** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

**5.8** Further guidance on handling requests for environmental information which is not held is available in the Scottish Government's [Code of Practice](#) and on the SIC's website.

## 5.9 Withholding information (applying an exemption)

Under FOISA, certain information may be considered exempt from the requirements of the act and so does not have to be released. There follows a summary of the exemptions that can be used. Please refer to FOISA itself, the Scottish Government's [Code of Practice](#) and to the SIC's website for further details.

**5.10** Certain exemptions can be applied absolutely others are subject to the public interest test.

## 5.11 Public Interest Test

The test requires authorities to undertake a balancing exercise to consider the public interest in disclosing information and the public interest in maintaining the exemption. Some exemptions are absolute (see list below). In these cases, the public interest test is not applied.

**5.12** Where the public interest in maintaining the exemption outweighs the public interest in the disclosure of the information, then the information can be withheld. If the public interest in disclosing the information is equal to or greater than the public interest in maintaining the exemption, then the information must be disclosed.

**5.13** Please refer to the [SIC's briefing paper](#) on the public interest test for more information.



## **5.14 The Exemptions**

Please note the numbering refers to the sections of FOISA.

- **25** Information otherwise accessible (ABSOLUTE) – see section below
- **26** Prohibitions on disclosure (ABSOLUTE) – information is exempt if its disclosure (otherwise than under FOISA) is prohibited by or under another enactment or would constitute a contempt of court.
- **27** Information intended for future publication – see section below
- **28** Relations within the United Kingdom – information is exempt if its release is likely to prejudice substantially relations with any other UK administration
- **29** Formulation of Scottish Administration policy etc. – information is exempt if it refers to the development of Scottish Government policy
- **30** Prejudice to effective conduct of public affairs – information is exempt if its release is likely to prejudice substantially the free and frank exchange of views
- **31** National security and defence – information is exempt if its release is likely to prejudice substantially the defence of the British Islands, etc.
- **32** International relations – information is exempt if its release is likely to prejudice substantially relations between the United Kingdom and any other State or international organisation, etc.
- **33** Commercial interests and the economy – this exemption applies if the information constitutes a trade secret or its disclosure would prejudice substantially the commercial interests of any person (including another Scottish public authority).
- **34** Investigations by Scottish public authorities and proceedings arising out of such investigations. Section 3 (a) is particularly relevant to the ESC - information held by a Scottish public authority is exempt information if it was obtained or recorded by the authority for the purposes of investigations which are, by virtue of powers conferred by or under any enactment, conducted by the authority for any purpose specified in section 35(2) - see below
- **35** Law enforcement – information is exempt if its release is likely to prejudice substantially the prevention or detection of crime, etc. Sections 35 (1)(g), (2)(b) and (2)(c) are particularly relevant to the ESC - information is exempt if its disclosure under FOISA is likely to prejudice substantially the exercise by any public authority of its functions for the purposes of ascertaining whether a person is responsible for conduct which is improper or whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.
- **36** Confidentiality (36(2) ABSOLUTE) – information is exempt if its disclosure would constitute an actionable breach of confidence.
- **37** Court records, etc. (ABSOLUTE) - information is exempt if it is contained in a court record.
- **38** Personal information (38(1) ABSOLUTE) - information is exempt if it constitutes personal data. Please note that this exemption covers the interrelation with the Data Protection Act.
- **39** Health, safety and the environment - information is exempt if its disclosure would endanger the physical or mental health or the safety of an individual.

- **40** Audit functions – information is exempt if its release is likely to prejudice substantially the audit of accounts of Scottish public authorities or the examination of the economy, efficiency and effectiveness with which resources are used in discharging their functions.
- **41** Communications with His Majesty etc. and honours – information is exempt if it relates to communications with His Majesty, etc.

When considering applying an exemption, please refer to the legislation and SIC's website for the latest advice and guidance.

## **5.15 Informing the applicant the information is held but is exempt**

If the information is held, but an exemption is to be applied restricting the release of all or some of the information, respond as follows:

- Disclose that the ESC holds the information
- State that the information is exempt
- Specify the exemption in question
- State why (if not otherwise apparent) the exemption applies
- If the exemption is subject to the public interest test, state why the public interest is in favour of maintaining that exemption.

## **5.16** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

**5.17** FOISA makes it clear that there is nothing in the Act to stop public authorities from disclosing information which falls within one of the exemptions. However, public authorities should be aware that there may be other legislation which will prevent them from releasing the information - see [section 26\(a\)](#).

## **5.18 Informing the applicant the information is exempt but not whether it is held**

On occasion, the ESC may consider that to reveal whether the information exists or is held would be contrary to the public interest.

**5.19** If the information is held but considered exempt under one of the exemptions in sections 28-35, 39(1) or 41 and the ESC considers that it would not be in the public interest to admit whether the information is held or not, issue a notice under section 18 of FOISA.

- State that the information, if it existed or was held by the ESC, would be exempt
- Specify the exemption in question
- State why (if not otherwise apparent) the exemption applies
- If the exemption is subject to the public interest test, state why the public interest is in favour of maintaining that exemption.

**5.20** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

### **5.21 Information otherwise accessible (Section 25 exemption)**

The ESC is unlikely to use a section 25 exemption, preferring instead to simply provide a link to the information or re-issue it.

**5.22** However, there may be an occasion, where the ESC will refuse a request on the grounds that the information is otherwise accessible. The staff member must send the applicant a refusal notice which acknowledges that we hold the information and explain why the exemption applies.

**5.23** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

**5.24** The ESC should not assume that the applicant will know where and how the information can otherwise be obtained. If the information is already publicly available (e.g. on the ESC website) the staff member should tell the applicant how to access it and provide adequate signposting, for example, providing direct links to online information. In all cases bear in mind the general duty to provide advice and assistance to applicants.

## **5.25 Information intended for future publication (Section 27 exemption)**

The ESC may refuse to disclose information if it will be published within 12 weeks from the date of the request. When citing this exemption in a refusal notice, the staff member should provide the intended date of publication and offer to forward the information when available.

**5.26** There may be occasions where the ESC is then unable to publish the requested information on the planned date of publication. In this case, the staff member should contact the applicant and explain the reason for the delay and give the revised date of publication if this is known.

**5.27** While an applicant has no automatic right to receive the information as soon as a delay in publication exceeds the 12 week time limit, any significant delay would make it more difficult for the ESC to continue to claim that it is reasonable to withhold the information.

**5.28** If the applicant did not challenge the ESC's earlier decision to withhold the information, they may have missed the 40 day deadline for asking for a review of the original decision. If the applicant then seeks a review in such circumstances, the ESC will carry out a late review.

## **5.29 When all the information can be released**

If the information is held and is not exempt, the application is not vexatious or repeated and there are no issues with fees, the staff member should send the information.

**5.30** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

## 5.31 Handling vexatious or repeat requests

If the ESC considers that the request is vexatious or repeated, the staff member should issue a notice stating that the ESC is not obliged to comply with a request for information because, after due consideration, we consider the request is vexatious or repeated.

**5.32** Please refer to the Scottish Government's [Code of Practice](#) or the SIC's website for the latest guidance when considering whether a request is vexatious or repeated.

**5.33** The staff member should also:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

## 5.34 Using standard wording

Standard wording to include in acknowledgements and responses is available. Please ask the information officers for more details.

## 5.35 Creating new information

There is no requirement under the legislation for the ESC to create new information in response to a request. The compilation of information, e.g. in order to respond to a request for statistics, will not generally be considered as creating new information.

**5.36** The duty to provide advice and assistance does not extend to providing additional information which falls outside the scope of the information request, or locating information held by other public authorities. However, in some situations it may be helpful to provide context to a response to avoid the information disclosed being misunderstood or misinterpreted.

## 5.37 Deciding on the format in which to provide the information

Under FOISA, as far as is reasonably practicable, the ESC must provide the information requested in the applicant's preferred format (if the applicant has indicated a particular format).

**5.38** If the information is not yet held in the preferred format, the ESC must consider whether it would be reasonably practicable to convert the information into that format. In considering what is "reasonably practicable", the ESC should have regard to all the circumstances applicable to the request. Where the ESC considers providing the information in the requested format is not "reasonably practicable", the applicant should be informed of the reasons for this decision.

**5.39** In deciding whether a response to a request for information can be provided in a particular format, the ESC must consider the requirements of the Equality Act 2010 as there may be a further requirement under the Equality Act to make a reasonable adjustment, for example, by providing a copy of a document on audio tape.

## **5.40 Informing applicants about copyright issues**

There is a waiver for the copyright provisions in the Copyright Designs and Patents Act 1988. This permits the ESC to disclose information which contains third party copyright in response to a request. However, this waiver does not apply to the person who receives the information. It is therefore good practice to explain where third party copyright may lie within information that is released. Reference to copyright rules should only be included in responses where it is appropriate to do so and should not be included as a standard reference in all responses.

## **5.41 Providing details of review procedures**

The ESC will provide details of the rights to request a review and to make an appeal in all response notices.

**5.42** In the notice, the staff member should:

- confirm they are responding under the terms of FOISA on behalf of the ESC
- explain that the applicant has the right to request a review of this decision within 40 working days
- explain how to make that request
- highlight that the applicant must state why they are dissatisfied with the response
- give the name of the reviewer and provide contact details
- explain that the applicant, if still dissatisfied following the outcome of the review, may make an application for decision to the SIC within six months of the response
- include a link to the SIC's website or, where appropriate, contact details for the SIC's office.

## **5.43 Responding to requests via Social Media**

While it is possible for a valid request for information to be made on social media websites with a limited character limit, it may not be possible for a full response, which complies with FOISA, to be given within such a limit. Therefore, when responding to a request made through such sites, the staff member should either:

- ask the applicant for an email or postal address to which the full response (and information, if appropriate) can be sent
- upload a full response letter (and requested information, if appropriate) to the website, then send the applicant a link to the full response.

## **5.44 Communicating with the applicant about the progress of a request**

If there is likely to be any delay to responding to the request an apology should be provided to the applicant together with an estimated response date. Bear in mind that, even if an apology is given, the deadlines under both regimes are absolute and failure to comply is a breach of the legislation. The applicant will still have the right to seek a review of the failure to give a substantive response within 20 working days.

## **Section 6 – Handling Reviews**

### **6.1 Receiving requests for review**

A request for review is made to the office, not to an individual officer. It is therefore important that all staff can recognise a request for review and ensure that it receives an appropriate response.

### **6.2 Determining whether a request for review is valid or invalid**

A request for review is not valid if the applicant requests a review before the original 20-working day timescale has expired and the ESC has not yet responded. In such a case, the staff member should advise the applicant that:

- the response to the request will be provided within the timescale for compliance (if this is the case)
- if, following issue of the response, they are still dissatisfied (or in the event the response is not provided by the deadline) then the applicant may make a new request for review.

### **6.3 A request for review must:**

- be in writing or in another form which, by reason of it having some permanency, is capable of being used for subsequent reference
- state the name of the applicant and an address for correspondence
- specify the request for information to which the requirement for review relates
- specify the matter which gives rise to the applicant's dissatisfaction.

**6.4** If an applicant writes to the ESC expressing dissatisfaction with the way in which the office has dealt with their request following a response, the ESC should treat this as a formal request for review - the applicant does not need to specifically ask for a review.

**6.5** If the request for review is not clear, or the request fails to comply with the requirements of the regimes, the ESC has a duty to advise and assist the applicant in making a valid review request. The statutory timescale will not begin until a valid review request is received by the ESC.

### **6.6 Has the review request been made in time?**

Applicants have 40 working days from receipt of the ESC's response to their request for information to request a review.

**6.7** If the request for review is made after more than 40 working days, the ESC can choose to carry out a review if appropriate to do so.

### **6.8 Responding to a request for review**

The review must be carried out within 20 working days of receipt of a valid request for review.

**6.9** The ESC has established a panel to carry out reviews. The pool of panel members is appropriately trained and drawn from across the organisation. Staff members should refer requests for review to the HCS who will convene a panel and assign the panel members. Panel members should not have been involved in responding to the original request. Please refer to the [FOI Panel Guidance](#) document for further information.

**6.10** The aim of a review is to allow the nominated reviewers (the panel) to take a fresh look at the response, to confirm the decision (with or without modifications) or, if appropriate, to substitute a different decision. The review must therefore be fair and impartial and allow decision makers to look at the request afresh. It should also enable different decisions to be taken.

**6.11** The applicant must be advised of the outcome of the review within 20 working days of receipt of request for review. This notice must:

- advise the applicant what steps the ESC has taken to investigate their request for review
- advise the applicant of the result of the review
- advise the applicant why it has taken these steps
- if appropriate, provide any additional information relating to the original request for information
- advise the applicant about their right to make an application to the SIC within six months of the notice and their right to appeal to the Court of Session. The details provided must include the postal address of the SIC's office, along with contact telephone number and email address.

### **6.12 Requests for review of a failure to respond to the original request**

An applicant may complain to the ESC if they have not received a response to their request within the statutory timescales. This should be treated as a formal request for review of a failure to respond. In such cases, and where appropriate to save any further delay, the reviewer may be the same person who was assigned the original request.

**6.13** Where the ESC accepts that they have failed to respond on time, the reviewer should apologise for the failure and provide the decision on the original request to the applicant. The review response must set out the applicant's right to appeal to the SIC. There is no opportunity for the ESC to invite a further request for review.

**6.14** The reviewer should also identify the reasons for the procedural failure and, where appropriate, make recommendations for action to prevent recurrence.

### **6.15 Learning lessons from reviews**

Requests to review FOI responses will be added to the agenda for the next SMT meeting with a view to identifying and acting on any lessons learned.



## Section 7 – Appeals to the SIC

- 7.1** Where an appeal has been made to the SIC regarding the ESC’s handling of an information request, the SIC will provide the ESC with an opportunity to comment on the application. This opportunity also allows the ESC to present submissions on their handling of the request and to include additional reasoning in support, for example, of their position that the information requested is not held, or the arguments put forward in support of the decision not to disclose information.
- 7.2** The ESC will take the following steps to help ensure appeals are handled efficiently and cost-effectively:
- provide a copy of the withheld information to the SIC within the timescales requested
  - provide a schedule of documents and number documents individually, and clearly identify which exemptions/exceptions are applied to each piece of withheld information
  - provide clear explanations of why exemptions/exceptions apply, including (where applicable) why the balance of the public interest lies in favour of withholding the information. These explanations should be specific to the information being withheld. The burden of proof is always on the ESC to demonstrate that the exemptions/exceptions apply, and the SIC is unlikely to agree that exemptions/exceptions apply where only generic reasons have been provided
  - provide a clear robust response to any questions asked by the SIC
  - provide background information and any other relevant information that the authority believes will support its case
  - provide a clear indication of what information has been disclosed already.
- 7.3** If the ESC finds new information during an appeal investigation, they will disclose it to the applicant immediately and inform the SIC. Or, inform the SIC and the applicant if the ESC does not plan to release it, giving reasons and citing exemptions/exceptions.

## Section 8 - Versions

<b>Version</b>	<b>Description</b>	<b>Author</b>	<b>Date</b>
4.0	Reformatting of original FOI policy.	IMITO	23/07/2024