

Responding to Information Requests: Guidance and Procedures

Scottish Information Commissioner



Scottish Information
Commissioner

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List of abbreviations used in the document

CST	Corporate Services Team
DHOE	Deputy Head of Enforcement
DO	Designated Officer, the officer designated to respond to the request
DPA	Data Protection Act 1998
EIRs	Environmental Information (Scotland) Regulations 2004 (EIRs)
FAM	Facilities Manager
FOISA	Freedom of Information (Scotland) Act 2002 (FOISA)
HOCS	Head of Corporate Services
HOD	Head of Department
HOE	Head of Enforcement
HOPI	Head of Policy and Information
P&I	Policy and Information Team
RPSI	Re-use of Public Sector Information Regulations 2015
SAR	Subject access request
Section 60 Code	Scottish Ministers’ Code of Practice on the discharge of functions by

Scottish Public Authorities under FOISA and the EIRs

SIC, the Commissioner Scottish Information Commissioner
SMT Senior Management Team

Responding to Information Requests

Introduction

1. This document sets out the procedures that should be followed on receipt of, and in responding to:
 - (i) requests for information or review under the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs)
 - (ii) subject access requests (SARs) under the Data Protection Act 1998 (the DPA)
2. The Commissioner has separate guidance for responding to re-use requests under the Re-use of Public Sector Information Regulations 2015 (VC78673).
3. This guidance sets out the *procedures* to be followed. It aims to give procedural guidance. Staff are expected to refer to published briefings, guidance and advice on technical issues. This document only gives technical guidance in relation to specific legislative provisions where there is none available through published briefings and guidance, or a specific interpretation applies to the SIC.
4. Requesters have slightly different rights to access to information held by the Commissioner when making information requests under FOISA or the EIRs. Unlike when requesting information from most other Scottish public authorities, requesters cannot make an application to the Commissioner. This means that:
 - (i) instead of having: a right to request, a right to review, a right to make an application and then a right to appeal to the Court of Session, plus the right to complain about our service to the Scottish Public Services Ombudsman (SPSO)
 - (ii) requesters to the SIC have: a right to request information and a right to request a review. If they are dissatisfied with the way we have responded they can also seek to have our decision Judicially Reviewed and/ or complain about our service to the SPSO.
5. This means it is especially important to be as thorough and accurate as possible, particularly at review stage. At the same time, a proportionate approach should be taken, based on the principles of good and effective communications and helping requesters.

Policy and principles

6. The SIC will respond to all requests for information and review promptly. The actual time taken will depend on the request and the amount of information held. The general principle is that a response will be made as soon as practicable, within statutory timescales. At all points, the SIC will take account of the requirements of the Equality Act 2010.
7. The presumption is always that information will be disclosed. We must always ask ourselves: even when an exemption applies and information could be withheld, should it be withheld? Unless there is an overriding reason for non-disclosure (e.g. personal data, or risk to the organisation), we should disclose as much as possible.

8. Information requests are an opportunity to engage and communicate with stakeholders. Where needed, responses should inform, assist and advise requesters, by providing explanations and context that help them to understand and interpret the information disclosed or why it is being withheld.
9. We will ensure that when information is disclosed, we will also consider whether it should be published under our publication scheme.
10. When information is withheld, we will consider whether it would be beneficial to stakeholders to provide an explanation (e.g. through an FAQ) on our website.
11. SIC will monitor performance, and publish statistical information about how we respond to requests and reviews, at least annually.

Structure of the document

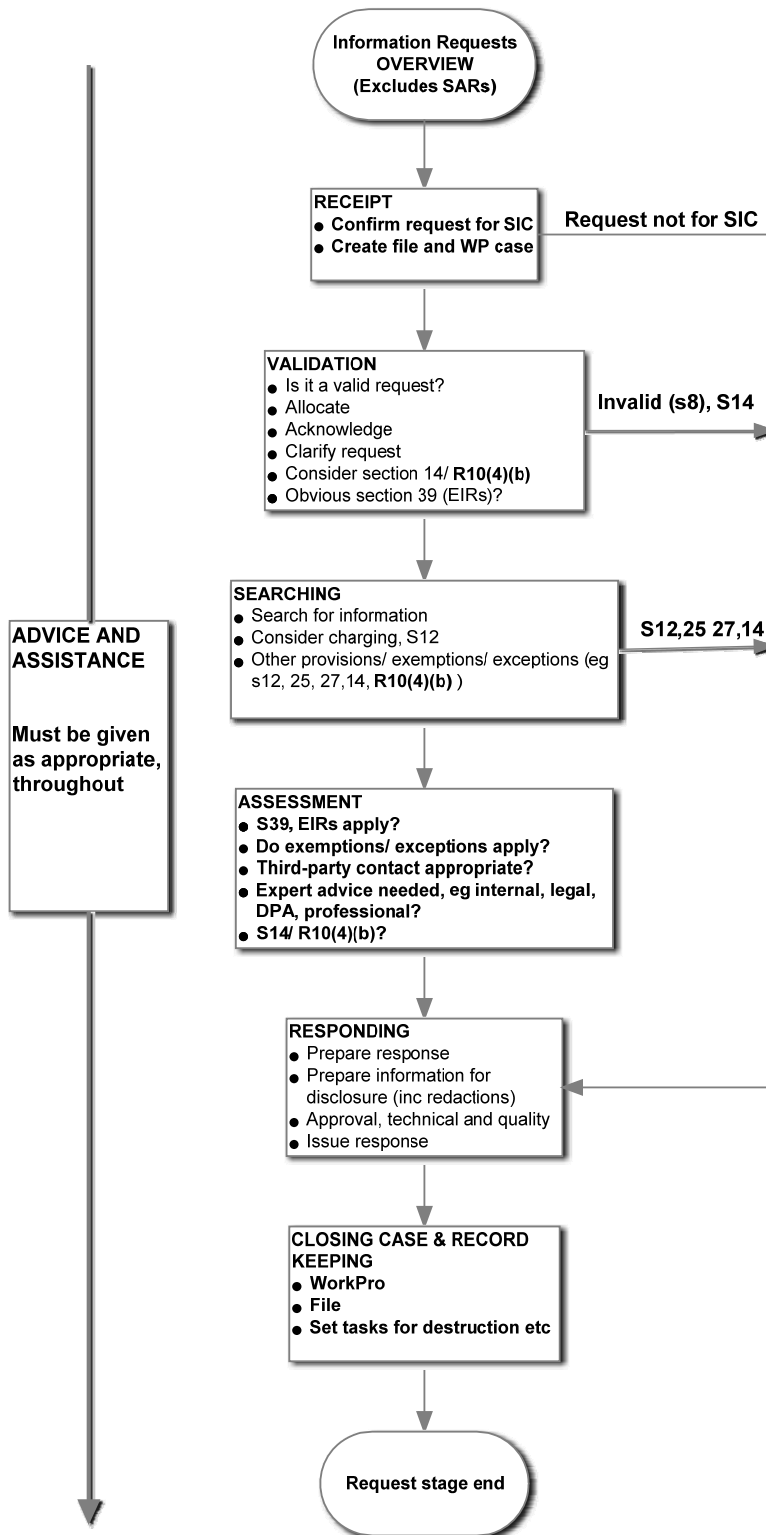
12. The document is set out in a series of sections, which can be read independently of each other, where specific guidance is sought.
 - (i) Introduction
 - (ii) Policy and principles
 - (iii) Responsibilities
 - (iv) Responding to requests under FOISA
 - (a) Receipt of a request
 - (b) Assessment of application of FOISA
 - (c) Responding to the request
 - (v) Requests for review under FOISA and EIRs
 - (vi) Timescales and monitoring
 - (vii) Responding to subject access requests

Responsibilities

Role	Responsibility
Ensure procedures and guidance reviewed and updated (actual reviewing likely to be delegated to colleagues).	HOCS
Allocation of information requests/SARs	HOE (DHOE in HOE's absence)
Approving fees notices	HOE/DHOE
Responding to requests	Designated officer (DO)
Management check of responses	SMT, DHOE
Allocation of review requests	HOPI
Identifying and reporting lessons learned	Reviewer
Monitoring and reporting performance	SMT
Searching for and locating information	Any individual commissioned by the DO
Reporting and uploading of statistics	FAM

Procedures for responding to requests for information, FOISA and EIRS

Overview of main steps in responding to information requests



13. The flow diagram sets out the broad process which should be followed when responding to a request for information. The application of this process is not intended to be linear and relies on judgement as to which parts can be carried out concurrently, and the amount of action needed in relation to each element.

Receipt of a request

14. The overall aim of this part of the process is to assess and decide whether the request is for the SIC, and to set up the file.
15. **All** requests for information should be referred to the CST, irrespective of who receives them and how as soon as they are identified as information requests. If a request is received directly into the enquiries or SIC box, the CST should make the initial assessment about whether it is an information request or SAR. Advice on whether something is an information request should be sought from the HOE or a DHOE. If the request is, or appears to be misdirected, see [Misdirected requests](#).
16. If the request is contained within a letter/ email/ complaint which deals with other issues, the officer receiving the request should copy it and highlight the part containing the request and pass it to the CST immediately.
17. If a request contains (or appears to contain) a combination of a FOISA/EIRs request, a SAR or RPSI request, separate cases should be created for each at the outset. (See VC78673 for guidance on responding to re-use requests.)
18. If it becomes apparent during the handling of a request that it also contains a SAR or re-use request (or *vice versa*), a second case should be created at that point.
19. The CST will open a case in WorkPro, and create a hard-copy file.

Hard copy files

20. The type of hard copy file created is a matter of judgement, based on the request itself. The CST will have a stock of prepared file dividers (first one at the back) which will be used in every case (as it is administratively easier, but clearly officers will only use those they need to). The CST will decide what type of file cover to use when they create the record:
 - (i) Request and clarification
 - (ii) Searches and information not in scope
 - (iii) Correspondence
 - (iv) File notes and internal guidance
 - (v) Information withheld (note: marked-up with exemptions and whether considered at request/ review stage)
 - (vi) Information disclosed (note: marked up with exemptions and whether considered at request/ review stage)
 - (vii) Response to request
 - (viii) Review request and clarification
 - (ix) Officer's note/ other information for reviewer

- (x) Review decision and response
- 21. The main record is WorkPro, but the file will be the working record so it is important that both are up-to-date.
- 22. Note that when the case is closed, CST are responsible for record-keeping and will recycle files/ dividers, and store papers to minimise storage space.

Allocation

- 23. All cases will be passed to the HOE (or, in the HOE's absence, a DHOE) for allocation and initial guidance (where needed), on the same or next working day.
- 24. Allocation will be based on the following principles:
 - (i) Which team?
 - E.g.
 - (a) Case related requests/ information will be appropriate to Enforcement
 - (b) Information not held: to the CST if straightforward about the office, or a specific individual if related to a particular subject or information type (e.g. legal advice)
 - (c) Role and remit of the Commissioner or the office: to the CST or P&I
 - (d) The running of the office: to the CST
 - (e) HR: to the CST or appropriate member of SMT
 - (f) Finance: to HOCS or FAM
 - (g) Statistical information: to P&I or FAM
 - (h) SARs: to the appropriate individual (if a SAR and request are made in the same letter, both would normally be allocated to the same officer)
 - (ii) Which person within the team?
 - (a) For CST, the allocation will be to the team, who will ensure a specific officer takes the DO role.
 - (b) For Enforcement, the specific officer if the HOE (DHOE) considers appropriate, based on an assessment of, for example, who dealt with the underlying case, how many information requests already dealt with, annual leave, current caseloads and so on.
 - (c) For P&I, the specific officer if the HOE (DHOE) considers appropriate, based on an assessment of, for example, annual leave, current workload, areas of responsibility and so on. The HOPI should be consulted as needed.
 - (d) For an individual (e.g. FAM), a check should be made of annual leave or other commitments (particularly out of the office), and where appropriate the allocation made to their line manager or another team where practicable.
- 25. The HOE (DHOE) will update the rota in VC82164.

26. The HOE will prepare any guidance/ direction required they consider appropriate including who should approve the final response (DHOE or HOE) and in relation to searching for information. HOE will check the 20th working day on the front of the file. HOE will then pass the case to the CST who will, using **FOI00**:
- (i) acknowledge receipt of the request advising the requester that [the nominated DO] will contact them within the next few days
 - (ii) issue an Equality Monitoring Form and
 - (iii) allocate the request immediately to the Designated Officer (DO).

Contacting the requester

27. The DO must send the requester an introductory letter (hard copy or attached to email) within two working days. Standard letter **FOI01** should be used for this. **If a full response can definitely be sent in that time, this letter may be omitted.**

Validation

Misdirected requests

28. A large proportion of the information requests we receive are for information which is not held by the Commissioner. Often it can be difficult to decide whether it is an enquiry because the request was simply misdirected to us, or whether it is an information request. It may be necessary to clarify this before taking any action. If that is the case, clarification should be by phone or email. If phone/ email contact details are not held, rather than delay, treat the request as an information request. Seek HOE (DHOE) advice when needed, but broadly speaking:
- (i) If it is obvious that the requester has misunderstood the role and remit of the Commissioner, and has misdirected their request, but is still requesting information, then it should be treated as an information request.
 - (ii) If the requester is clearly seeking information (or advice) about where to go for information, then it should be treated as an enquiry
 - (iii) If it is unclear (even after seeking advice from the HOE (DHOE)), then it should be treated as an information request.
29. Where a misdirected request has been treated as an information request and the requester subsequently confirms the request was misdirected, close the case in WorkPro using outcome code 'Request withdrawn' and provide a brief reason in the Outcome Details section.
30. Misdirected requests and enquiries will normally be allocated to the CST, and must be responded to within two working days.
31. Even if a request is misdirected, there is always the possibility that we might hold some relevant information in relation to an application for a decision. The HOE (DHOE) will alert the DO to this, when aware of other information, and in such cases may decide to allocate the case to another team. The DO receiving the request should first of all check that the request is valid (see below).

32. If it is valid, the DO should take any reasonable (and proportionate) steps to check whether the SIC holds (any of) the information requested. This may involve checking with colleagues whether any ongoing or recent case has considered the type of information the requester is seeking.
33. In order to comply with FOISA / EIRs (and provided the information is not held), the response must explain that the information requested is not held. If it is known, or can be easily established, where the request should have been directed, this advice should be included in the response.
34. Whether or not information is held, if the DO believes section 18 (neither confirm nor deny) applies, guidance should be sought from the DHOE/ HOE.
35. In all such cases, and in line with the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs ("the Section 60 Code"), the requester must be advised that they have a legal right to request a review of the response, even where it is extremely unlikely that this right would be exercised.
36. If it is **not** valid, the DO should contact the requester to offer advice and assistance and proceed on the basis of the outcome of that contact.

Assessing validity

37. To be a valid request under FOISA a request must meet the requirements set out in section 8 of FOISA. In summary:
 - (i) In writing or another form capable of being used for subsequent reference (e.g. email, tape, DVD)
 - (ii) Must state the name of the applicant and address for correspondence
 - (iii) Must describe the information requested.
38. If the request is for environmental information, the request can be made verbally, but should (ideally) include the information set out in section 8.
39. The HOE (DHOE) may have commented on the validity of the request when allocating it. The SIC's website has a range of information about validity of requests. It is recommended the DO refers to this or seeks further guidance from their DHOE if unsure or the request appears to be anything other than straightforward.
40. If a request is clearly **not** valid, the DO should contact the requester immediately by the quickest method and give advice and assistance as needed. Subsequent action will depend on the outcome of that contact.
41. If a request is clearly **not** valid, and the request is straightforward:
 - (i) if information is not held the requester should be told this and advice and assistance given as appropriate;
 - (ii) if information is held and can be disclosed in full, it should be sent to the requester even if the request is invalid and advice and assistance given as appropriate.
42. In both instances, the advice and assistance should explain that as the request has not been responded to under FOISA/ EIRs there is no right to review, and what needs to be done to make a valid request.

Clarification of the request

43. There are many reasons why a request may require clarification, the most common being it is simply unclear what the requester is asking for.

Unclear requests

44. Section 1(3) of FOISA and regulation 9(2) of the EIRs deal with the issue of unclear requests and those which have been formulated in too general a manner for an authority to comply. If such a request is received, the DO must provide advice and assistance in accordance with section 15 of FOISA / regulation 9 of the EIRs before either accepting a revised request which meets the criteria or closing the case. See “Advice and Assistance” guidance below.
45. It is critical that the DO responding to the request is clear about what is being asked for. If there is any doubt, and it is reasonable to do so, clarification should be sought, and the reasons why we are seeking it explained clearly to the requester. For example:
- (i) the information requested is framed in too general a manner to be clear
 - (ii) the request uses ambiguous or unknown terminology
 - (iii) the request contains acronyms or abbreviations that are either unknown, or could have several meanings
46. It is a matter of judgement for the DO as to how much clarification is needed, but it should be remembered that the requester may seek a review, so the meaning will also need to be clear to the reviewer.

Process of seeking clarification

47. The process of seeking clarification must be recorded in WorkPro. The DO should use the most efficient method to help them respond quickly. A helpful approach is to say what you *think* the requester is asking for and to explore with them your understanding.
- (i) **By phone:** if the clarification sought is something quick and simple (e.g. confirming what an acronym stands for, or clarifying timescales), this can be done by phone and a note kept of the conversation. If the request appears complex, it is good practice to phone the requester to offer advice and assistance, and then to follow this up with a letter or email.
 - (ii) **By letter:** standard letter **FOI02** can be used to do this. If an email address is held, the letter should be emailed as an attachment. If the request appears complex, it is good practice to phone the requester to offer advice and assistance, and then to follow this up with a letter or email.
 - (iii) **By email:** straightforward clarification can be sought in the body of the email. If the matter is complex, standard letter **FOI02** should be used and sent as an attachment.
48. The 20 working days for responding to the request will commence on the day after receipt of the clarification.
49. If no response to letter **FOI02** has been received within 20 working days the DO should write to the requester, explaining that we cannot proceed with it under FOISA/ EIRs, as we do not have sufficient information to help us identify *precisely* what is being asked for, or whether we hold it and that if we do not hear from them by [insert date that is day after 40th working day] we will close the case. If there is no response by that date, close the case and notify

the requester. Standard letters **FOI03** and **FOI04** should be used. It is good practice to send the requester any information we hold that we think is in scope, making it clear that we have done so to be helpful, not because we were required to.

50. If this is an EIRs case, the response should cite the exception in regulation 10(4)(c) (request formulated in too general a manner).
51. The requester must be told about their right to request a review. If there is no response within 40 days, the case can be closed.

Verbal requests

52. If the request is made verbally (e.g. during a phone call), the officer taking the call should consider both:
 - (i) whether it is a request for environmental information, and
 - (ii) whether it would be in the requester's interest to make the request in a recordable format so that the rights under FOISA will apply. This should certainly be discussed with the requester where there is any doubt whether all the information can be provided. In all cases, SIC staff should endeavour to respond to the request regardless of the format of the request or the rights of the requester.
53. If it is not clear what information is being asked for in a verbal request, this should be explored as far as possible while speaking with the requester.
54. The verbal request should be recorded in a note. The request and/ or any follow-up conversation about it must be followed-up with a letter or email on the same or next working day.
55. The note of a verbal request should be forwarded to the CST to be registered as a request for allocation on the same day and followed up the same or next working day with standard letter **FOI05**. If further clarification is required, standard letter **FOI02** can be used to obtain clarification.

Identity of the applicant

56. Section 8(1)(b) of FOISA requires that the requester provides a name and an address for correspondence. SIC interprets this as meaning that the requester has provided sufficient contact details to allow staff to respond to them. Therefore an email address, or a PO Box would be sufficient contact information to enable us to respond.
57. If there is any doubt whether all the information can be provided, it is important to make sure that the applicant has included their name in the body of the email. If they have not done so, or have used a pseudonym, their ability to e.g. seek a review, may be affected.
58. Requests made on behalf of another person (e.g. by a firm of solicitors on behalf of a client) must name the third party (the "true applicant") in order to be valid.
59. If it is not appropriate in the circumstances to accept the request for any of the above reasons, standard letter **FOI06** should be sent. HOE (DHOE) should be consulted before the letter is issued.
60. The EIRs do not require a requester to provide contact details, although there would clearly be a practical difficulty to responding to a request if we did not know where to send the information. Practical solutions to this should be explored, such as viewing the information at the office, or picking it up in person.

FOISA or EIRs?

61. From the outset of responding to an information request, the DO must consider whether it is for environmental (EIRs) or non-environmental information (FOISA), as this will determine under which legislation it is considered. This is particularly relevant where information is likely to be withheld.
62. If information is to be disclosed in full, consideration of which type of request should not delay making a response, but it is important to reach a conclusion for our own records.
63. There is guidance available on the SIC's website.

Mixed EIRs/FOISA requests

64. If the request covers both environmental information and non-environmental information or some of the information is not held, the DO must separate out all the elements of the request and deal with each element individually according to these procedures. All parts of the request can be dealt with in one response letter.
65. Note, if the request also includes a SAR or re-use request, the response to request must be sent out in a separate letter.

FOISA section 14/ EIRs regulation 10(4)(b): vexatious/ repeated/ manifestly unreasonable requests

66. SIC can refuse to comply with a vexatious or repeated request (section 14 FOISA) or with a request which is manifestly unreasonable (regulation 10(4)(b) EIRs). The SIC briefings on section 14 and regulation 10(4)(b) are helpful.
67. Consideration as to whether a request is 'vexatious' applies at every stage of responding to a request, but is most likely to be in the early stages.
68. The HOE (DHOE) should be consulted for guidance if a request is believed to be vexatious, manifestly unreasonable or repeated. If the final determination is that the request is vexatious, manifestly unreasonable or repeated, letter **FOI07** should be issued, in consultation with a DHOE or HOE.
69. If the DO considers a request is 'vexatious' having carried out further work, they should consult the HOE (DHOE), even if this differs from an earlier view.

Advice and assistance (section 15 and regulation 9)

70. Both section 15 of FOISA and regulation 9 of the EIRs require SIC to provide reasonable advice and assistance to requesters.
71. The Section 60 Code (paragraph 5.1.1) states:
72. *Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.*
73. The Section 60 Code of Practice expands on this and recommends a number of practical steps.

Assistance to make a request in a recordable format

74. If the requester is having difficulty making a request in a recordable format, whether because of a disability or any other reason, the DO should offer to write it down for them. In such cases the requester should be asked to sign and return the written request to the SIC. This is clearly easier in a face to face situation, but can also be done by mail or email using standard letter **FOI05**.
75. The DO should provide the requester with two copies of the request (one for their records) and a business reply envelope for the reply.

Assistance in framing a request

76. If the requester has difficulty in stating what information they want, the DO should work with them to try to frame the request and/ or narrow the information down to something we can help with or which might be more useful. For example, a requester asks for all the information we hold on a particular public authority. This wide request would embrace (but not be limited to) information relating to investigations, publication scheme approval, enquiries, research/events co-ordinated by P&I, and it is unlikely that the requester actually wants everything. In this instance, it would be good practice to describe the sorts of information we do hold, helping to identify the elements the requester would like to see.

Requests for information not held

77. If the information was at one time held by the SIC, but has been disposed of, this should be explained to the requester at the earliest possible opportunity. It is good practice to do this informally, preferably by phone, as this is likely to be the quickest approach for the requester. It should be made clear that this is not the SIC's formal response, but that one will be issued with the explanation in it, if that is what the requester wants.
78. The Commissioner's Retention Schedule (VC72711) may be useful in such cases, in explaining our procedures for retention, archiving and disposal.

Searching for information

Procedures

79. All searches for information will be initiated by the DO within one working day of receiving a clear information request (unless it is very clear that complying with the request is likely to exceed cost limits in FOISA or to be manifestly unreasonable under the EIRs). The DO should follow any guidance given at allocation. If the DO is in any doubt about where searches should be made and who should be asked to conduct them, they should seek advice from SMT, DHOEs or the CST as needed.
80. All searches must be carried out promptly, to the timescale set by the DO. The DO will normally ask for searches to be completed by the end of the following working day, but this may be extended by negotiation with the DO by up to three working days if it is known the information is particularly complex or voluminous. Searching for information requested by the DO is a priority. Any conflicts or issues in relation to other priorities should be discussed with the appropriate line manager.
81. Any officer required to carry out a search must respond, even to say no information is held.
82. If an officer is of the view that searching for the information is likely to be extensive and potentially near or exceed cost limits, the DO must be consulted immediately.

83. A single summary of searches will be recorded on the Information Search Checklist in WorkPro, which also contains additional guidance on how to approach the search. **It is the DO's responsibility** to ensure that this summary contains a complete picture of the searches carried out, when and by whom.
84. The checklist must record:
- (i) Where searches are made
 - (ii) Who makes them
 - (iii) What search terms are used if electronic
 - (iv) A summary of the results
85. The Information Search Checklist should be kept up-to-date in WorkPro and printed out for the hard-copy file when it is complete. It should be filed in the relevant section of the file.
86. If the DO is of the view that there are likely to be charges they should, as appropriate:
- (i) contact the requester immediately to offer advice and assistance
 - (ii) seek advice from the HOE (DHOE).
87. It is for the DO to decide how to carry out and commission searches, following the principles of **thoroughness and proportionality**. For example, if the information is for something very specific, and the only place it is held is in an email account inaccessible to the DO, they may simply email appropriate staff asking them to search their email boxes using specific search terms. There may be occasions where multiple searches are needed and it is expedient to email copies of the Information Search Checklist (full or amended versions) to multiple staff. **Round-robin emails should be avoided where possible.**
88. All requests to colleagues to search for information must be made by email. Every member of staff who is asked to search for information must be told:
- (i) Where/ what system they are required to search, e.g. Outlook email, notebooks, paper records
 - (ii) What search terms they are required to use, if electronic, e.g. "Mr Jones; Jon Jones, Johnathan Jones, Jonathan Jones" ... Check your notebook for information about the meeting with XYZ on XX/XX/XX
 - (iii) Timescale for response
 - (iv) To reply to the DO by email confirming either:
 - (a) no information is held, or
 - (b) information is held and attached
 - (v) The following should be attached to the response to the DO:
 - (a) The search results if electronic
 - (b) All information (or reference to the hard copy information) that on the face-of-it is in scope (see also point (vi))
 - (c) Information located that may be in scope, but it is unclear

- (vi) If a lot of information is held (e.g. in a case file), the DO should be notified so that arrangements can be made to have it copied for the paper file.
89. When the DO is content they have all the information held, a check should be made to ensure it is all within scope, seeking advice or guidance from the HOE (DHOE) or colleagues as appropriate.
90. The DO must organise the information held and in scope as follows:
- (i) Sort documents into reverse chronological order (as far as possible)
 - (ii) Number the documents and then enter them into the Schedule of Information in WorkPro.
 - (iii) Scan (or have scanned) a complete set into the WorkPro record.
 - (iv) File a 'clean' hard copy filed in the paper file.
91. If information is not held, the DO must offer reasonable advice and assistance, and/ or respond as set out in the section on **Responding to the request**.

Chain emails

92. Chain emails often result in duplication of information. The DO should ensure that chain emails are separated into separate emails and duplicates removed.
- (i) Open the email, save it as an 'HTML' document. Open the HTML document and insert page breaks at the end of each email in the chain. You will then have a document where each email starts on a new page.
 - (ii) The duplicate pages can then be removed and the information sorted into reverse chronological order, making it easier for the requester to follow.
 - (iii) Care should be taken to keep emails together when needed (e.g. *in point 6 of your email below ... as I set out in my last email...*)

Charging and excessive cost of compliance (section 12)

93. The SIC has published guidance on charging and excessive costs based on the Fees Regulations. The SIC has also published guidance on responding to manifestly unreasonable requests under the EIRs. This guidance, and FAQs, on the SIC website should be followed to establish whether charges are applicable under FOISA and/ or the EIRs.
94. Our information charging policy (VC49012) sets out when we will impose a charge. The online SIC publication scheme also sets out our charging policy: <http://www.itspublicknowledge.info/home/SICPublicationScheme/PSintro.aspx>. There is little information that will ever be charged for.
95. If a charge does apply, the CST should be asked to raise an invoice for the amount. The invoice must clearly set out how the charge has been calculated. The 20 working day clock stops when the invoice is sent out and restarts the day after payment is received. If payment is made by cheque, CST should advise when it has cleared. The clock will restart the day after the cheque has cleared.

96. If fees are applicable, the DO must offer advice and assistance to the requester, explaining why fees are applicable and helping the requester to narrow the scope. This may include, for example, explaining what could be provided for no cost, or minimal cost.
97. In all cases where fees are applied, a fees notice must be drafted by the DO and approved by DHOE before it can be issued. Use standard letter **FOIO08**.
98. If the request is refused because fees exceed the upper cost limit or the cost of complying would be manifestly unreasonable, standard letter **FOIO9** should be used. In all cases the requester must be advised in this letter whether and, if so how, to bring their request within the cost threshold, by describing, in line with the duty to provide advice and assistance in section 15 or regulation 9, the information that could be provided with that limit, or by helping them find the most suitable way to limit the scope of their request. This might include providing a sample of the information held.

Assessment

Initial checks

99. The DO should ensure they are confident that searches are complete, all information held has been identified and that it is all within scope. They should also re-consider whether charges apply and whether the request should be refused under section 14 (FOISA) or regulation 10(4)(b) (EIRs), in line with guidance above.

Environmental information

100. The DO should confirm whether the information held is environmental as this will determine under which legislation a response should be made.

Action needed

101. The aim of the assessment part of the process is for the DO to reach a conclusion about whether the information held:
 - (i) Should be **disclosed** in full, e.g. because no exemptions/ exceptions apply, or because even if they do, we have decided to disclose the information anyway
 - (ii) **Withheld**, either in full or redacted as part of a document because exemptions/ exceptions apply to the information and we have concluded that it should not be disclosed.
 - (iii) **Section 18**, neither confirm nor deny, applies.

Applying exemptions/ exceptions

102. The SIC has issued extensive guidance and briefing notes on applying exemptions and exceptions. This should be applied as appropriate to the held information.
103. If the DO's view is an entire document should be withheld, the document should be annotated to this effect, saying which exemptions/ exceptions apply, and the Schedule of Information updated.
104. If the DO's view is information in the body of documents should be withheld, then the document should be annotated (in pencil at this stage) in such a way that it is clear to anyone not familiar with the case, which information is being withheld and under what exemption/

exception e.g. bracket at start and finish of the extract, with the exemption/ exception noted in the margin.

105. In considering whether exemptions/exceptions apply, the general advice in the next section should also be followed.

Requests for information about investigations

106. Requests for information relating to investigations must be given careful consideration.
107. Information relating to ongoing investigations is likely to be more sensitive than information from a closed case, but in either situation it is important to consider whether disclosure would have any adverse consequences, either for the SIC or for other parties.
108. The Commissioner is most likely to withhold information where disclosure would contravene one of the data protection principles (section 38(1)(b) / regulation 11) or where disclosure would affect our ability to reach a decision on this or any other case (section 30(c) / regulations 10(4)(d) or (e)).
109. Responses to such requests should always be discussed with the HOE (DHOE) or HOPI, and DO's should follow the guidance on third-party consultation where appropriate.

Information otherwise accessible (section 25)

110. If the request relates to a class of information in the Commissioner's publication scheme, the document may already be available online at <http://www.itspublicknowledge.info/home/SICPublicationScheme/PSintro.asp> or in the SIC store of publications. Most of the SIC's business documents are available here.
111. Information in the online publication scheme can always be disclosed as published. If the request is for information that is in the publication scheme but has not yet been uploaded to the website, the DO must check whether any exemptions apply e.g., personal data. If they do, the procedures for withholding information and serving notice should be followed.

Information intended for future publication (section 27)

112. If any of the information held is intended for future publication the SIC will not normally disclose it until the publication date. That said, a considered approach should be taken, the underlying principle being to disclose at the earliest possible time (remembering that section 27 is subject to the public interest test and that for the exemption to apply it must be reasonable to delay disclosure).
113. The intention to publish must be clear and demonstrable and not aspirational. For example, the annual report plan will give our intended date for laying before Parliament and launch; this is a clear intention to publish. In contrast, for example, "we are currently reviewing our approach to "XYZ" and aim to have completed this work by the end of August", is vague.
114. Helpful sources of information about future publication are the operational plan, project plans, register of key documents and colleagues. If in any doubt, speak to the relevant HOD.
115. If the request is for information that may be included in other reports, e.g. statistical information that we may be publishing in a special report, seek advice from the relevant HOD.

General assessment advice

Third-Party Consultation

116. If the information held and in scope includes information about third-parties such as applicants, public authorities or suppliers to the SIC, it may be appropriate to seek their views on disclosure. This is particularly pertinent where the release of such information without a third party's prior consent may result in an actionable breach of confidence or in a breach of data protection laws.
117. Consultation should take place as soon as practicable, as it must be completed within the 20 working days.
118. Consultation should always be "proportionate". It is a matter of judgement as to what proportionate is, and if in doubt DHOE/ HOD advice should be sought. For example, it would not be proportionate to consult the views of all authorities surveyed in a research study before releasing a copy of the report as long as no confidentiality commitments had been made during the course of the study. Before consulting, check with the colleague who manages the relationship with the third-party as we may have already identified particular sensitivities in the information.
119. If the third-party information is in relation to procurement, guidance in the Section 60 Code of Practice should be followed.
120. If the information which has been requested was provided to the Commissioner by a public authority, the views of the public authority on disclosure should always be sought, unless the Commissioner does not intend to disclose the information. If the Commissioner considers that some of the information may be exempt from disclosure (or subject to a provision in Part 1 or the EIRs), but other information may not, the consultation with the public authority should make that clear.
121. If consultation with third parties is appropriate, standard letter **FOI10** should be used. This letter sets out the parameters of the consultation and should:
 - (i) invite the third-party to set out their views in the terms of the exemptions/ exceptions they consider could apply to the information
 - (ii) make it clear that it is ultimately a matter for the Commissioner to decide whether the information should be released
 - (iii) give a date by which responses must be made, allowing time to formulate the response to the requester.
122. The DO must also follow the guidance on Section 45 of FOISA, when considering third-party information.

Expert advice required?

123. Expert advice, such as technical advice from a subject expert (internal or external), legal advice, guidance from colleagues should be sought at the earliest possible opportunity and clear timescales set for the expected response.
124. For internal advice, the VC template should be used. Any request for expert advice should set out the request, or a short synopsis of the request (if very long), the issues and the advice/ questions that need to be addressed.

125. If the advice is likely to be required from an external source, HOE guidance should be sought, whether or not the advice is likely to incur costs.

Section 45 of FOISA

126. Section 45 of FOISA makes it a criminal offence for the Commissioner, a member of the Commissioner's staff or an agent of the Commissioner to knowingly or recklessly disclose information which has been obtained by, or furnished to, the Commissioner under or for the purposes of FOISA (or the EIRs) if that information is not, and has not previously been, available to the public from another source, *unless the disclosure is made with lawful authority*.

127. It is very important that staff take account of section 45 in dealing with any information request which involves the possible disclosure of information obtained from a third party (this will usually, but not always, be a public authority). This will involve not only the withheld information under consideration in any particular case, but also information contained in submissions, etc.

128. Section 45(2) sets out the circumstances where information can be disclosed without committing a criminal offence. The following are particularly relevant when dealing with information requests:

- (i) *the disclosure is made with the consent of the person from whom the information was obtained or furnished*. In other words, if we obtain the consent of the public authority (or third party) to disclose the information, there will be no breach of section 45. (Even if consent is not given, it may still be possible to disclose information without breaching section 45, provided another condition in section 45(2) can be fulfilled.)
- (ii) *the disclosure is made for the purpose of, and is necessary for, the discharge of a [European] Community obligation*. Probably the most important Community obligations for the purposes of section 45 are the duties to comply with subject access requests under the Data Protection Act 1998 (these are dealt with in Part 5 below) and to respond to requests for environmental information made under the EIRs. Where we receive a request for environmental information held by the Commissioner, we will have lawful authority to disclose that information provided it is *necessary* for us to disclose that information in order to comply with the request. This means:
 - (a) the request must be valid before information can be disclosed
 - (b) there must be a careful consideration of the terms of the request (e.g. it will not be necessary for the Commissioner to disclose information which falls outwith the terms of the request – although the duty to provide advice and assistance in terms of regulation 9 will remain) and
 - (c) where exemptions/exceptions are available to the Commissioner, they must be applied.

Again, even if disclosure is not necessary for the discharge of a Community obligation, it may still be possible to disclose information without breaching section 45, provided another condition in section 45(2) can be fulfilled.

129. In line with the Section 60 Code of Practice, it is good practice to consult with a public authority when dealing with a request for information provided by that authority.

Management of the information held

130. Care must be taken to secure any information covered by an information request against destruction between the time the request is received and the time it is responded to. In many cases it will be appropriate to alert the HOD, in their capacity as Records Custodian for their team, that an information request has been made. The HOD should ensure that team members are alerted using the most appropriate means in the circumstances.
131. This should be done at the earliest possible opportunity, where possible by the HOE at allocation.

Responding to the request

General process

132. Whatever the outcome of the request, the underlying principles in responding to requests are:
- (i) The response should be drafted and rooted in the context of good 'customer service'. It should avoid unnecessary jargon. Where jargon or technical language are needed, it should be explained or the requester should be referred to other guidance which gives more information. We should be seeking to be helpful, as well as responding to the letter of the law.
 - (ii) The response should be legally and technically competent
133. The DO should:
- (i) Draft the response letter, ensuring it makes reference to the Schedule of Information (where appropriate) and rights of review
 - (ii) Ensure the Schedule of Information is complete. This should include documents we are disclosing. The normal practice is to send information with the Schedule. If there is only a small amount of information being disclosed and in the DO's judgement a Schedule is not appropriate, the covering letter **must** list the information enclosed so that it is clear exactly what was sent.
 - (iii) Prepare (or arrange to have prepared) the information to send to the requester, including redactions where needed (redactions should be made using the software available on designated PCs – see the Adobe Acrobat DC Redaction Guide for further guidance)
 - (iv) Ensure the paper file is up-to-date
 - (v) Refer the file and the draft response to the HOE (DHOE) for approval as directed by the HOE at allocation.
 - (vi) Standard letters should be used, adapted as necessary, when responding to a request. **The DO must never delete information about review and/ or appeal rights.** On the rare occasions a letter has to be drafted in full from scratch, the DO should refer to the Commissioner's guidance "Content of notices: Guidance on what a response to an information request must contain to comply with FOISA/EIRs" at http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Contentofnotices/Content_of_notices.aspx.

134. The HOE (DHOE) will :
- (i) check the response for:
 - (a) Accuracy (e.g. have all redactions been made properly, is any advice correct and so on)
 - (b) Quality (including use of plain English and appropriate context/ advice and assistance)
 - (c) Technical competence (e.g. have exemptions/ exceptions/ other provisions been properly applied)
 - (ii) report any information which it may be appropriate to add to the SIC publication scheme, or website, to the SMT for consideration
 - (iii) sign-off the response via a file-note on WorkPro.
135. The DO will sign and issue the response, once approved.
136. All standard letter templates in WorkPro have a logo header and footer so that they can be sent out as email attachments. If you are sending a hard-copy letter, the header and footers should be deleted before printing on headed paper.
137. All responses should normally be sent out as either a hard-copy letter, or an electronic "letter" attached to an email as a pdf. Emails sent from within WorkPro cannot request receipts so it must be emailed from the DO's inbox.
138. The response should generally be sent by the same means with which it was received, e.g. by email if it was received by email.
139. Covering emails must say that if there's any difficulty in reading the attachment, to let us know so that alternative arrangements can be made.
140. Whenever a response is issued by email, the email must ask the requester to acknowledge receipt of the response. Read receipts must also be requested. Evidence of receipt (including any contact from the requester confirming receipt) must be saved to the WorkPro file.

Information disclosed in full responses

141. Standard letter **FOI11** should be completed and sent to the requester. .
142. The information should be collated, accompanied by a Schedule of Information and, if necessary, transferred into the agreed format.
143. When responding to an email request for information which is available in the online publication scheme, it is good practice to attach the documents to the response rather than sending links to the scheme (where links are sent, the exemption in section 25 should be used).

Information not held responses

144. The requester must be informed that the SIC does not hold the information. Use standard letter **FOI12**.

145. If the information was at one time held by the SIC, but is no longer, this should be explained to the requester. The Commissioner's Retention Schedule (VC72711) may be useful in such cases, in explaining our procedures for retention, archiving and disposal.
146. Where we hold evidence that a specific document or file has been destroyed, it may be helpful to provide the requester with a copy of that evidence.

Neither confirm nor deny responses

147. In limited circumstances, it may be necessary to issue a section 18/regulation 10(8) refusal letter which neither confirms nor denies that the information is held by this organisation. In this circumstance standard letter **FOI13** should be used.

Withholding information/ refusing to disclose responses

148. If information is to be refused and withheld in full, the DO will use **FOI13a** and a Schedule of Information listing what is being withheld under what exemption (notwithstanding where section 18/ regulation10(8) applies). Bear in mind this should already be on file by this stage.
149. If information is to be partially refused, the DO will use **FOI14**, and a Schedule of Information listing what is being disclosed/ withheld (notwithstanding where section18/ regulation10(8) applies).
150. In the refusal letter all information withheld, including redactions, must be explained by citing the relevant exception/exemption and why it has been applied, making reference to the schedule as appropriate. The letter should also, where relevant, explain how the public interest test has been applied and why the conclusion has been reached that release is not in the public interest.
151. The requester should be told about their right to a review and asked to address any request for review to the SIC (even though they will be passed to the HOPI).

Formatting information

152. As noted above, as a general rule, responses should be sent by the same means that the request was made.
153. If we are disclosing a large amount of information and the request was made electronically, it may be appropriate to ask the requester if they would like to receive the information in a hard copy format to make it easier to read, before automatically issuing it by email.
154. If there is any possibility that the requester may have problems with the format the record is held in (e.g. PowerPoint), the DO should check with the requester before sending the information. We will comply with their format preference where it is reasonably practical to do so.
155. The Equality Act 2010 applies to information requests as it does to all other service provision. If the requester has specified a format because of a disability, we must comply. The only exception to this is where it would be unreasonable to do so. The burden of proof of what is reasonable lies with the service provider (i.e. the SIC). Audio tape and large print versions of documents in-house can be provided. Braille and other specialist formats can be out-sourced as required: refer the matter to HOPI.
156. Similar duties are placed on the SIC in terms of provision of translated information. Translation work can be outsourced if required, after discussion with HOPI.

157. Any disputes with the requester about the format should be referred to HOPI in the first instance.

Tracking of responses

158. It is good practice for all Scottish public authorities to track responses to information requests to ensure that responses are made within 20 working days.

159. Once a case has been validated, the CST will add the case to the Information Request Monitoring Sheet (VC84883) and will note when the case reaches 15 days old. This sheet will be checked daily. Where a request has not been responded to by day 15, the CST will alert the HOE (or a DHOE in the HOE's absence) to ensure that a response will be issued on time.

Records management at request stage

160. The DO is responsible for:

- (i) Ensuring the electronic and hard-copy files are in good order, complete and up-to-date, to the point the case is referred to a reviewer. Both must contain the response and both information disclosed, and withheld.
- (ii) Updating WorkPro, including closing the case and re-opening it if a request for review is received.
- (iii) Ensuring the case is closed by no later than the next working day after the response is sent or by the close of the last working day of the month, whichever is sooner.
- (iv) Passing the hard-copy file to the CST for storage until either needed or destroyed in line with the Commissioner's Retention Schedule (VC72711).

161. The CST will ensure closed cases are appropriately filed:

- (i) Short cases, such as misdirected or brief information provided in full, will be transferred to plastic wallets clearly marked with the reference number and stored with similar cases in a central file.
- (ii) The contents of files and/ or ring binders will simply be filed until either the contents are destroyed or a review is requested.

162. Records will be destroyed in line with the Commissioner's Retention Schedule (VC72711).

Updating WorkPro

Requester tab

163. Enter all contact details provided.

164. Select type of requester from the drop down list and enter any special circumstances e.g. "needs large print"

Requester Details tab

165. Complete all fields.

166. Select type from the drop down list. These are the options:

- (i) FOI

- (ii) EIR
 - (iii) Subject Access Request
 - (iv) Joint FOI/EIR
 - (v) Re-use request
167. The Request Details field must be completed in line with this guidance. It must not be left blank.
168. The data in this field is used to:
- (i) Monitor the information requests workload
 - (ii) Alert us to any new trends so that we can take any appropriate action, for example, building template responses
 - (iii) Help prepare the annual report statistics and is useful qualitative information when the statistics are analysed. It allows us to see very quickly what kinds of issues people have come to us about.
169. The request details should provide a succinct (**no more than 200 characters**) account of the subject of the request. It should give sufficient information to allow any colleague to understand what the request was about.

File Location

170. Throughout the Request Stage, from receipt to closure, the location of the file must be updated in WorkPro. This is done by updating the “case properties” section of the WorkPro file. It is the responsibility of the person transferring the file to update the location in WorkPro.

General tips

- (i) The name of the requester should be entered under the appropriate tab. For data protection purposes, the name of the requester should never appear in the request details.
- (ii) Spelling is really important so that we can search the reports.

Adding additional information

Phone notes

171. Phone notes should include the main points of the conversation, and if possible avoid personal data. If the phone call is to discuss clarification of a request, a follow-up letter/ email should be sent to the requester confirming any outcomes or actions agreed.

Attaching emails and documents to case files

172. Emails should be forwarded from Outlook to WorkPro, and then attached to the case file as soon as possible.
173. Make sure that the subjects are self-explanatory, particularly when strings of emails have been attached. Avoid duplicate titles for separate emails. Lock phone notes, letters and uploaded emails in WorkPro so that they cannot be amended later. Emails created in, or forwarded to, WorkPro are automatically locked and marked as sent.

Closing the case

174. Complete the Outcome Details in the Request Details tab.

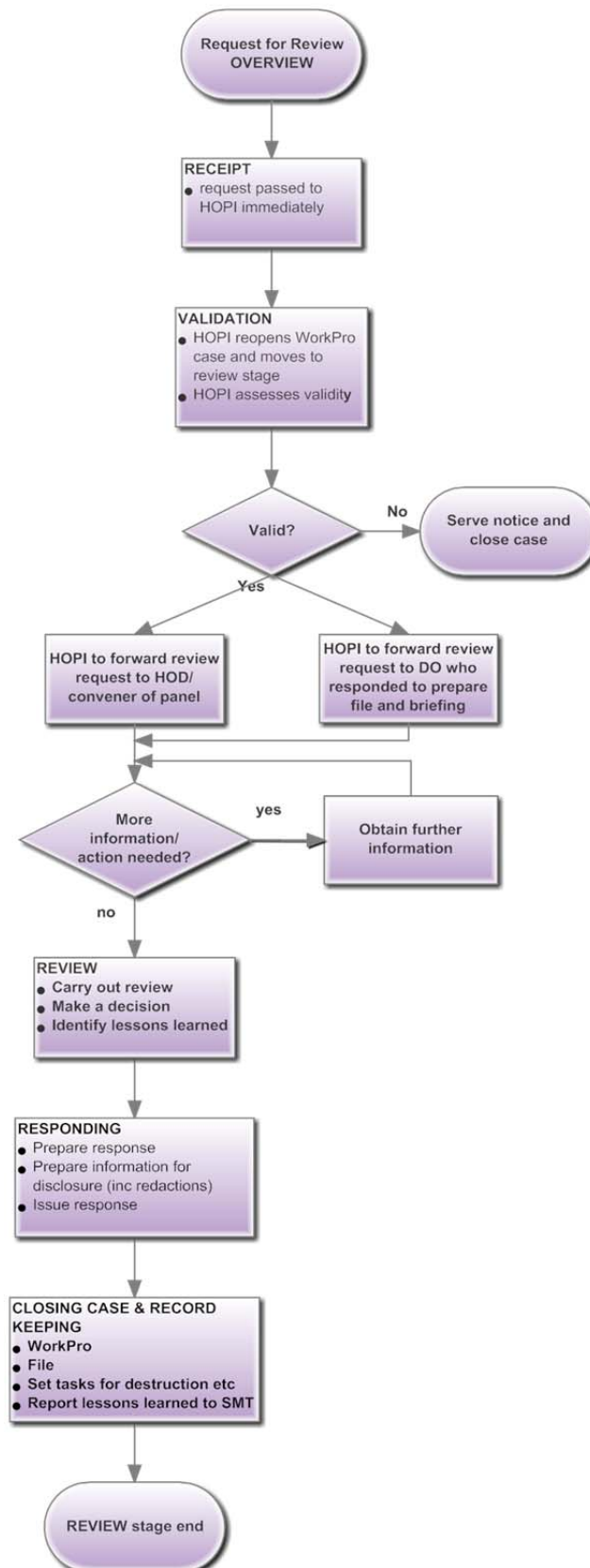
175. You must complete the Provisions field.

176. Outcome details/general notes should only be used where it is important to leave information about the outcome for future reference.

177. Select Close Request.

Requests for review under FOISA and EIRs

Overview of the review process



Review procedure

178. If the requester is dissatisfied with the response to an information request, they have the right to request a review (but no right of further appeal to the Commissioner). Requesters should be asked to direct requests for review to the SIC.
179. Review requests will be passed to the HOPI immediately. The HOPI will decide whether it is valid and who should carry out the review. Depending on the case, this will either be by the Commissioner or an HOD. Wherever possible, the review will be carried out by a HOD whose department was not previously involved in responding to the request. Reviews must not be carried out by the manager who approved the response.
180. In complex or technically challenging cases, the HOPI may recommend that the review should be carried out by a panel. In these cases the HOPI will discuss the matter immediately with the SMT or Commissioner, as appropriate.
181. **The HOPI will:**
- (i) re-open the original request case file in WorkPro and move it on to the Request for Review stage.
 - (ii) ensure the review request is valid, providing advice and assistance to the requester as appropriate.
182. In accordance with section 20 of FOISA, the review request must:
- (i) be made no later than 40 days from receipt of the information or notice, or from the 20th working day from making a request if we failed to respond. (Section 20(5) of FOISA allows SIC to accept a late request for review. Extension will be at the HOPI's discretion taking into account the circumstances at the time. Reasons must be recorded on the case file and in WorkPro, and communicated to the requester.)
 - (ii) be in writing or another permanent form
 - (iii) state the requester's name and address for correspondence
 - (iv) specify the information request to which the review request relates
 - (v) specify why the requester is dissatisfied
183. Regulation 16 of the EIRs does not go into the same detail as section 20 of FOISA. However, a request for review under the EIRs ("representations to a Scottish public authority") must:
- (i) be in writing
 - (ii) be made not later than 40 days from receipt of the information or notice, or from the 20th working day from making a request if we failed to respond. (There is no discretion under the EIRs to accept a later request for review.)
184. If the review request is invalid and cannot be resolved through advice and assistance, the HOPI will write to the requester explaining why, and what rights the requester has, using standard letter **FOI16**.
185. If the review request is valid, the HOPI will forward the request for review to:

- (i) the appropriate HOD or convener of the review panel (the HOD should not have been the manager who approved the initial response to the request), and
- (ii) the designated officer (DO) who responded to the original request.

186. In many cases the HOPI will be the appropriate HOD and will therefore conduct the review.

187. **The DO who responded to the original request** must:

- (i) Ensure the paper case file is up to date within two working days of receipt of the request for review. The paper case file must contain marked-up copies of:
 - (a) the original request.
 - (b) any correspondence about the request (including correspondence with the applicant and any third parties).
 - (c) a record of searches undertaken to find information in scope of the request.
 - (d) the response to the original request (including a full copy of any information released).
 - (e) any withheld information.
 - (f) the request for review.
- (ii) Prepare a briefing for the reviewing HOD on the issues highlighted in the request for review within five working days of receipt.

188. **The reviewing HOD/ panel** should:

- (i) Acknowledge receipt using standard letter **FOI15** within two working days. The review must be an objective assessment of the complaint and involve a thorough assessment of the handling of the request. Reviews should be undertaken and completed as quickly as possible, and in all cases will be completed within the statutory 20 working days.
- (ii) Review the paper case file and briefing (provided by the DO who responded to the original request) in the light of the dissatisfaction expressed in the request for review. When carrying out a review, the reviewer must consider the status of the information and other relevant circumstances at the time of the receipt of the request. However, if circumstances have changed since we received the request (e.g. we now hold information which we didn't hold when we received the request), the reviewer may address the change in circumstances either by, in this example, disclosing the information we now hold or advising the requester to make a new request for the information.
- (iii) According to the circumstances of the case, it may also be necessary to:
 - Perform (or arrange for) a further search for information
 - Read other associated case files.
 - Contact the requester for clarification
 - Seek legal advice on points of law

- Discuss the merits of the review further with the DO who responded to the request
 - Call upon other staff in the SIC to assist with the review.
- (iv) Create and maintain a record of the issues considered in the review and any learning points in the case file.
- (v) Form a view on the case. If the review is to be by panel, the convener will arrange a meeting and ensure papers are circulated. The options open to the HOD/ panel are to:
- (a) Confirm the original decision
 - (b) Substitute a different decision
 - (c) Reach a decision (in the case of a mute or deemed response) for the first time.
- (These are the options in line with section 21(4) of FOISA. Again, the EIRs are not as prescriptive. See *Decision 034/2017 Rob Edwards and the Scottish Ministers* which accepts that these options are also available under the EIRs.)
- (vi) Prepare the appropriate standard letter to the requester (**FOI17** or **FOI18**) and share the findings with the DO who dealt with the original request.
- (vii) Refer draft response to colleague for quality review, and if new exemptions are applied, for a technical review. Record details in WorkPro.
- (viii) Issue the response to the requester.
- (ix) Report review outcome to the SIC and SMT, sharing any learning points.

Further right of appeal

189. The template letters explain that the requester has no further right of appeal under FOISA/the EIRs, but if they believe that there has been administrative failure, failure to provide a service, or failure in a service provided to the point where they have suffered injustice or hardship as a result of these failures, they should be informed that they can complain about the SIC to the Scottish Public Services Ombudsman.

190. The requester should also be told about their right to seek a judicial review. It is important that in doing this, we do not give legal advice. The wording should make it clear that there is a general right to challenge public bodies through the judicial review process, but the requester would need to seek independent legal advice about this.

Records management at review stage

191. The **Reviewer** is responsible for:

- (i) Ensuring the electronic and hard-copy files are in good order, complete and up-to-date from the point the DO refers the case to them
- (ii) Updating WorkPro after the review response has been issued, ensuring the final outcome is recorded and the Provisions field is completed.
- (iii) Ensuring the case is closed by no later than the next working day after the response is sent or by the close of the last working day of the month, whichever is sooner.

- (iv) Maintaining records if any further communication is received or sent.
 - (v) Passing the hard-copy file to the CST for storage until either needed or destroyed in line with the Commissioner's Retention Schedule (VC72711).
 - (vi) Updating the "case properties" section of the WorkPro file. This is done by updating the "case properties" section of the WorkPro file.
192. **CST** will ensure closed cases are appropriately filed until the contents are due to be destroyed and will update the "case properties" in the WorkPro case.
193. Records will be destroyed in line with the Commissioner's Retention Schedule (VC72711).

Timescales and monitoring

Timescales

194. Requests for information and review should be dealt with promptly and in the shortest reasonable time. The aim is to make information available at the soonest possible point.
195. Section 10(1) of FOISA (and regulation 5(2) of the EIRs) make it clear that the 20 working days for response is a maximum and that public authorities are required to disclose information as soon as they are in a position to do so. Regulation 7 of the EIRs allows for the timescale to be extended, but we will only seek to extend the time period in the most complex and voluminous cases. SIC or HOE approval should be sought before doing that.
196. If a response cannot be sent straight away, the DO must send an acknowledgement letter/ email to the requester within two working days. Standard letter **FOI01** should be used for this.
197. The substantive response to a request for information must be sent within 20 working days.
198. If the response is straightforward and for full disclosure the DO should aim to do this straightaway and in no more than 5 working days.
199. A review response must be sent within 20 working days.
200. If the 20 working days is missed at any stage, the response should be given priority and sent out as soon as possible, even if the requester has since requested a review or made a complaint about service. If the response is sent out after a request for review has been submitted it must be in terms of section 21(4)(c) (reach a decision where no decision has been reached).
201. Day 1:
- (i) For **requests** is the first working day following receipt of the request. So, for a request received on Tuesday (regardless of the time it is received), the first working day will be Wednesday. For a request received on a Saturday, the first working day will be Monday (provided the Monday is not a bank holiday, in which case it will be the Tuesday). When clarification is sought, the first working day is the day following receipt of clarification of the information request
 - (ii) For requests for **review** is the day following receipt of the request (the same rules apply as for requests)

Monitoring

202. The SIC has a KPI to respond to 60% of requests within 5 working days and to 100% of requests and reviews within the statutory 20 working days. The Senior Management Team (SMT) will monitor and report against this KPI.
203. The SMT will report information requests and reviews activity in line with its governance framework, ensuring that lessons are learned and procedures and guidance remain up-to-date and fit for purpose.
204. The SIC will keep statistics about information requests in line with the data it requests from all Scottish public authorities. The FAM is responsible for uploading SIC statistics to the SIC statistics portal within 20 working days of the end of each quarter.

Guidance on responding to subject access requests

Responding to subject access requests

Introduction

205. Administratively, subject access requests will be processed in the same way as FOISA and EIRs requests. To avoid repetition, administrative guidance is not reproduced in this section, but references are made to other relevant guidance in this document. Those dealing with subject access requests must take account of the Information Commissioner's Subject Access Code of Practice - http://ico.org.uk/for_organisations/data_protection/~media/documents/library/Data_Protection/Detailed_specialist_guides/subject-access-code-of-practice.PDF

What are Subject Access Requests?

206. Subject access requests (SARs) are requests to the Commissioner for information about (and identifying) a living person, made by that person. However, in some cases, a SAR may be made by a third party, e.g.

- by a parent on behalf of a young child
- by a representative on behalf of an adult with incapacity
- by a solicitor on behalf of a client.

207. We must take reasonable steps to make sure that the person making the SAR is who they say they are. If someone is making a request on behalf of a third party, we need to check that they have the authority to make that request (see the section on processing a request).

208. If they do not, their request should be treated as a request for third party personal information under FOISA or the EIRs. Where this happens, the information is likely to be exempt.

Receipt and allocation of SARs

Receipt

209. As with information requests, all SARs must be passed to the CST immediately. CST will create the case records (WorkPro and hard copy). Detailed guidance can be found from paragraph 14 onwards.

Allocation

210. The case will be passed immediately to the HOE for allocation as per the guidance at paragraph 23 onwards. The HOE will allocate the case to the designated officer.

Charging

211. We can charge up to £10 for complying with a SAR. Our general policy is not to charge. A charge may be made if, e.g., complying with a SAR is likely to be very time-consuming or the personal data is reasonably accessible to the requester by other means. The agreement of the Commissioner (or, in the Commissioner's absence, the HOCS) must be sought prior to charging a fee. When seeking agreement, it is important to state why a charge is considered appropriate in the circumstances.

212. There are specific provisions providing for access to “unstructured personal data”. If the data requested fall into this category, we are under no obligation to comply with the request where the cost of doing so exceeds £450. However, this issue is unlikely to arise in practice: basically, “unstructured personal data” are manual records which aren’t structured by reference to individuals or to criteria relating to individuals. We are likely to hold information in that form only where it is of exceptional sensitivity, in which case it is likely to be exempt from disclosure: any cases which appear to involve unstructured personal data should be discussed with the HOE (DHOE).

“Validity” of SARs

Format of SARs

213. The Data Protection Act 1998 (the DPA) specifies that all SARs must be made in writing. Requests can be made by email, fax etc. Depending on how it is framed, a SAR may also be an information request under FOISA or the EIRs: if it is, it should be refused as such under section 38(1)(a)/regulation 11(1), before going on to respond to the SAR. Remember that the timescales for responding are likely to be different under FOISA/the EIRs and the DPA.

214. Remember that the request does not have to mention the DPA. The requester might just ask for access to personal data/information/files/records relating to them.

Making reasonable adjustments for disable people

215. As noted in paragraph 213, SARs must be made in writing (under FOISA, requests can be made in any recordable format). Some disabled people find it difficult to communicate in writing and may therefore have difficulty making a subject access request. Under the Equality Act 2010, the Commissioner has a duty to make reasonable adjustments. For example, we could simply treat a verbal request for information as though it were a valid subject access request. If the request is complex, it would be good practice to document it in an accessible format and send it to the disabled person to confirm the details of the request.

216. We may also have to respond in a format which is accessible to the disabled person, such as Braille, large print, email or audio formats. If this is needed, refer the matter to HOPI.

Non-specific requests

217. In some cases, the Commissioner may not have sufficient information to confirm the requester’s identity or locate the information the requester is seeking. If the requester is asked for that information but fails to provide it, the Commissioner does not have to comply with the request.

Verify the identity of the Requester

218. It is important that the DO is satisfied as to the identity of the requester. Disclosure to the wrong person is likely to have serious consequences, so proof of identity must always be obtained, even where there has been previous contact with the requester. (Requesters should be asked to provide a copy of their passport, driving licence or utility bill.)

219. The DO, taking guidance from the HOE (DHOE), will check the request to ensure that all of the necessary information has been provided to allow the identification of the requester and the location of the personal data.

220. If all the necessary information is there, the DO will issue letter **SAR01**.
221. Where further information is required (such as proof of identity or more details about the information requested), the DO will issue letter **SAR02**.
222. Where a third party has made a subject access request on behalf of another person, it is very important (in addition to verifying the requester's identity, as required) to check that they have the authority to do so. Use standard letter **SAR03**.

Searching for personal data

223. The DO will initiate the search for the personal data, following the guidance at **Searching for information**.

Assessment of SARs

Information to be provided

224. Under section 7 of the DPA, an individual is entitled to the following information:
- (i) confirmation of whether the Commissioner (or a data processor on behalf of the Commissioner) is processing their personal data
 - (ii) if their personal data is being processed in this manner, a description of:
 - (a) the personal data
 - (b) the purposes for which the data are being or will be processed
 - (c) any recipients or classes of recipients to whom the data are or may be disclosed (basically, any persons or organisations who might receive the data in the course of processing, but not anyone - such as the police or other law enforcement agencies - who might obtain the data in pursuance of a statutory right)
 - (iii) to be given, in an intelligible form:
 - (a) the personal data
 - (b) the source of the personal data
 - (iv) details of the logic involved in any automated decision-making about the requester (highly unlikely to arise in relation to data held by the Commissioner).
225. The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations 2000 say how requests should be dealt with if, for example, the data subject only wants confirmation of whether their personal data is being processed by or on behalf of the Commissioner, but does not mention other aspects of section 7.
226. When describing the data, the purposes and the recipients, it should be sufficient to refer to general categories rather than being any more specific.
227. The personal data must be provided in an intelligible form. This must be a permanent form, unless either
- (i) doing so would involve disproportionate effort (see paragraphs 233 and 234 below), or
 - (ii) the requester agrees otherwise: we should approach SARs on the basis that the data will be provided in permanent form.

228. If the personal data contain codes or indicators which can only be understood by reference to a key, or if they contain abbreviations, technical terms or jargon, these must be explained to the requester.
229. When considering what information should be provided in response to the SAR, bear in mind that what the applicant is entitled to his/her personal data, as defined in section 1(1) of the DPA. This will not necessarily mean everything the Commissioner holds relating to an application/enquiry the requester has made.
230. In areas of doubt, consult the relevant guidance produced by the ICO, particularly:
- (i) “Determining what is personal data” (<https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>) and
 - (ii) “Access to information held in complaint files” (https://ico.org.uk/media/for-organisations/documents/1179/access_to_information_held_in_complaint_files.pdf)
231. Any remaining questions should be discussed with the HOE (DHOE).
232. As with information requested under FOISA/EIRs, reasonable care should be taken to secure any information covered by a SAR against destruction between the time the request is received and the time it is responded to.

Disproportionate effort

233. The obligation to supply the requester with a copy of the information in a permanent form does not apply where supplying a copy is impossible or would involve disproportionate effort. The courts have accepted that, in some cases, supplying a copy of information in permanent form would result in so much work or expense as to outweigh the requester’s right of access to their personal data.
234. These are some of the things you should take into account when deciding if responding would involve disproportionate effort:
- (i) the difficulties in complying with the request, including any difficulties in finding the information
 - (ii) balancing any difficulties involved in complying against the benefits the information might bring to the requester (bearing in mind the fundamental nature of the right of subject access)
 - (iii) the burden of proof is on the data controller to show that all reasonable steps have been taken to comply with the SAR and that it would be disproportionate to take further steps
 - (iv) engage with the requester and have an open discussion with them about the information they want – if the matter is referred to the ICO for an assessment, contact with the requester may be relevant
 - (v) even if responding would involve disproportionate effort, it is important to try to comply with the request in some other way.

Similar or repeated requests

235. The Commissioner does not need to comply with a SAR if an identical or similar request by the same individual has already been complied with, unless a reasonable interval has

passed between compliance with the previous request and the making of the current request. In deciding what amounts to a reasonable interval, consideration must be given to the nature of the data, the purposes for which the Commissioner processes the data and the frequency with which the data are altered.

Third party information

236. In some cases, it will be impossible to comply with a SAR without disclosing information relating to another individual who can be identified from that information. It will be possible to identify another individual where they can be identified simply from the information disclosed, or from that information and any other information the data controller considers it reasonably likely is (or will be) in the requester's possession: areas of doubt should be discussed with the HOE (DHOE).
237. Where compliance would involve disclosure of information relating to and identifying another individual, the request does not have to be complied with unless either (a) the other individual has consented to disclosure of the information or (b) it is reasonable in all the circumstances to disclose the information without that consent. In considering what is reasonable, relevant factors include:
- whether there is any duty of confidentiality owed to the other individual
 - any steps taken to seek the other individual's consent
 - whether the individual was capable of giving consent
 - whether the other individual has expressly refused consent
238. These must be taken into consideration (and other factors may be relevant, depending on the circumstances), but none of them necessarily preclude disclosure.
239. It may be possible to separate the information about the other individual from the requester's own personal data, e.g. by redaction of names or other identifiers: if so, this should be done to allow the SAR to be complied with. In such cases, it should also be possible to deal with that part of the request relating to the other individual's personal data as a separate request under FOISA/the EIRs.
240. Disclosing third party personal data without a valid reason may be a breach of Article 8 of the European Convention of Human Rights.
241. The ICO's Subject Access Code of Practice (see paragraph 205 for a link to the Code) suggests the following three step approach when deciding whether to disclose third party information. You should record your decision making against these three steps in WP.

Step 1: Does the request require the disclosure of information that identifies a third party?

Is it possible to comply with the request without revealing information that relates to and identifies a third party? Take into account the information you are disclosing **and** any information you reasonably believe the person making the request may have, or get hold of, that would identify the third party.

You can delete names or edit documents if the third party information doesn't form part of the requested information.

If it is impossible to separate the third party information from the information that's been

requested and still comply with the request, move to step 2..

Step 2: Has the third party consented?

The clearest basis for justifying the disclosure of third party information in response to a subject access request is that the third party has given their consent. It is therefore good practice to ask third parties for consent.

You are not obliged to try to get consent. In some circumstances, it will be reasonable to disclose without trying to get consent, such as where the information will be known to the requester anyway.

It might not always be appropriate to try to get consent if, for example, to do so would involve a disclosure of personal data about the requester to the third party.

If you don't have consent, move to step 3.

Step 3: Would it be reasonable in all the circumstances to disclose without consent?

In practice, it might be difficult to get third party consent. For example, a third party might refuse consent or may be difficult to find. If so, you must consider whether it is "reasonable in all the circumstances" to disclose the information about the third party anyway.

The DPA provides a non-exhaustive list of factors to be taken into account when making this decision (see paragraph 237 above).

Exemptions

242. In certain limited circumstances, the Commissioner can refuse to comply with a SAR, either in full or in part. Part IV and Schedule 7 of the DPA set out the exemptions which may be used to withhold information from data subjects. There are exemptions relating to national security and to information processed (not necessarily by the Commissioner) for various purposes connected with crime prevention and other regulatory functions.
243. Information subject to legal professional privilege is also exempt, as is information from confidential employment references given by the Commissioner (or an employee of the Commissioner, acting in that capacity) in relation to the data subject.
244. Staff should note that it is the Commissioner's policy to be as open as possible, in relation to requests under the DPA as well as those made under FOISA or the EIRs. As the DPA derives from a Community obligation, disclosure in response to a SAR will usually be with lawful authority for the purposes of section 45 of FOISA. However, there may be cases where the information relates to matters falling outwith the scope of Community law (in particular, public security, defence, state security [including the state's economic well-being] and criminal law), in which case there cannot be a Community obligation and section 45 may apply. Any case where this appears likely to arise should be discussed with the HOE/DHOE. (See also, the section above, [Section 45 of FOISA](#).)

Timescales for responding to SARs

245. The DPA states that a data controller (i.e. the Commissioner) shall comply with a SAR within 40 calendar days (not working days) of receiving a request from a requester or their representative.

246. The 40 day period starts when we have received enough information to identify the requester and to locate the requested data.
247. **Unlike FOISA/the EIRs, day 1 is the date of receipt.**

Responding to SARs

248. The general process to be followed is the same as for information requests, at paragraph **132** onwards.
249. Personal data will usually be sent to the applicant by post. Depending on the sensitivity of the information, it may have to be sent out by recorded delivery. Use standard letter **SAR04** and a Schedule of Information. If the information is particularly voluminous, it may be appropriate to ask the requester whether they wish to come to the office and look over the information.
250. The requester should be provided with a contact or reference point should they wish to discuss any of the information provided in response to their SAR. This will generally, but not always, be the DO who dealt with the SAR.

Appeals and complaints about the procedures

251. Unlike FOISA/the EIRs, the DPA does not give a data subject the right to seek an internal review if they are unhappy with the outcome of a SAR. Therefore, the requester should be advised to contact the (UK) Information Commissioner in Wilmslow (<https://ico.org.uk/concerns/>).
252. If the individual is unhappy with the way in which his/her request was handled (i.e. the service they have received, rather than the outcome of the request), it should be dealt with as a service complaint, under our complaints procedures.

SARs Records Management

253. Responsibility for records management is the same as for information requests.
- (i) WorkPro should be updated promptly and all cases recorded following the guidance at paragraph **163**
 - (ii) At first response (i.e. the response to the SAR) follow the guidance at **160**.
 - (iii) At appeal/complaint, follow the guidance at **191**.

Appendix 1: List of standard letters & templates in WorkPro

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27/03/17	KB	02.05	02.06	DCS updated, published on website
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05/07/17	MK	02.10	02.11	Tracked changes for consideration by HOCS: <ul style="list-style-type: none"> • Table updated • Typo in para 25 corrected • Spacing sorted • Text added (paras.225(i),230,231) to reflect revised Subject access code of practice (v1.2) re "disproportionate effort"
05/07/17	MK	02.11	02.12	Details re OGL added to backing.
07/07/17	HGS	02.12	02.13	HOCS included comments relating to paras 205, 212, 234
07/07/17	MK	02.12	02.13	Additional text added re Subject access code of practice re. requirement to follow code; reasonable adjustments and the "three steps" approach to third party data.
09/10/17	HGS	02.13	02.14	Opened in edit mode to check track changes
09/10/17	HGS	02.14	02.15	Removed comments
09/10/17	HGS	02.15	02.16	Accepted track changes
10/10/17	SH	02.16	02.18	Reviewed for approval, small typos marked up
11/10/17	HGS	02.18	02.19	Accepted track changes
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