



Freedom of Information Act Publication Scheme	
Protective Marking	Not Protectively Marked
Publication Scheme Y/N	Y
Title	Processes for Freedom of Information Act 2000 (FoIA) Compliance Standard Operating Procedures (SOPs)
Version	Version 3.1
Summary	The purpose of this document is to define the minimum standard operating procedures to be applied by MPS staff in order to support compliance with the FoIA 2000
Branch / OCU	Directorate of Information, DoI2 (3-3) Public Access Office
Review date	July 2013
Date created	May 2011
Notice reference/ date:	Item 3, Notices 28/10, 7 July 2010

Processes for Freedom of Information Act Compliance STANDARD OPERATING PROCEDURES

Version 3.1 - May 2011

Table of Contents

1. Introduction

2. Application

3. Freedom of Information Act 2000 (FoIA) Overview

4. Roles and Responsibilities

4.1 FOIA Decision Makers

4.2 Information Managers

4.3 BOCU and OCU SMT Members

4.4 PAO FOIA Policy & Support Team (PST)

4.5 PAO FOIA Quality Assurance & Compliance Team (QA&CT)

4.6 PAO FOIA Co-ordinator and Review Officer

4.7 PAO FOIA Policy, Research & Review Officer/ Internal Reviews Officer (IRC)

4.8 Higher Information Access Manager (HIAM)

4.9 Deputy Freedom of Information Officer (Deputy Head of the Public Access Office)

4.10 Freedom of Information Officer (Head of the Public Access Office)

4.11 Association of Chief Police Officer's Freedom of Information Central Referral Unit (ACPO CRU)

5. Defining what is a FOIA request and Business as Usual

5.1 Defining a Valid FOIA Request

5.2 Use of Pseudonyms

5.3 Defining what is Business as Usual (BAU)

6. Environmental Information Regulations

- 16.1** EIR Overview
- 16.2** Differences between FOIA and EIR
- 16.3** The EIR case handling process

7. Processing FOIA Requests

- 7.1** FOIA Section 16 Duty to Assist - Instructions and Advice
- 7.2** Logging & acknowledging an FOIA Request
- 7.3** Initial processing of an FOIA request

8. Compliance Timeframes

9. Transfer of Requests

10. Refusing a Request

- 10.1** Section 17 Requirements
- 10.2** Neither Confirm nor Deny (NCND) Refusals
- 10.3** Requests exceeding the Prescribed Costs
- 10.4** Requests which require clarification
- 10.5** Vexatious & Repeat Requests Refusals

11. The Decision-Making Process

- 11.1** Pre Decision-Making
- 11.2** How to make a decision on public disclosure
- 11.3** Prejudice Test (Harm)
- 11.4** Public Interest Test (PIT)
- 11.5** Balance Test

12. Engaging exemptions

- 12.1** Considerations when engaging exemptions
- 12.2** List of exemptions

13. MPS FOIA Internal Reviews and Complaints Procedure

14. FOIA Appeals to the ICO Procedure

15. FOIA Appeals to the Information Tribunal

16. MPS Publication Scheme

16.1 Fees and Charge

16.2 Publication Scheme Complaints Procedure

17. Responsibilities

18. Associated Documents & Policies

Appendix A - Public Interest/ Balance Test Table

Appendix B - ACPO FOIA Refusal Letter Quality Assurance Checklist

Appendix C - ACPO Guide to Police Service Publication Scheme

Appendix D - MPS EIR Verbal request record sheet

Appendix E - ACPO CRU Referral Criteria v4

Appendix F - ACPO CRU Referral Template v2

1. INTRODUCTION

This SOP supports the MPS Information Management Policy.

This SOP will demonstrate the corporate processes for MPS compliance with FoIA (also referred to hereinafter as the Act). Those with specific roles and duties for FOIA compliance are known as FOIA Practitioners [see section 4] and they must undertake to ensure that MPS staff handle all FoIA requests in a consistent and corporate manner.

In particular it will support MPS FoIA practitioners and all MPS staff in recognising the measures to be applied to achieve MPS compliance with the Act. The SOP aligns fully with the MPS commitment to achieve greater openness, accountability and engagement with individuals, communities and partners in London and beyond.

This SOP is to be used primarily by MPS FoIA Practitioners (including but not limited to Information Managers and Decision Makers). Furthermore, it has been developed to reflect the latest procedures contained in the ACPO Manual of Guidance – Version 6 (referred to

hereinafter as the ACPO MoG) which is designed to achieve FOIA processing consistency across UK police forces and national compliance with the Information Commissioner's Office (ICO) guidance

2. APPLICATION

This SOP is applicable **with immediate effect**.

All police officers and police staff, including the extended police family and those working voluntarily or under contract to the MPA must be aware of, and are required to comply with, all relevant MPS policy and associated procedures.

This SOP applies to all MPS personnel, but in particular to officers and staff, known as FOIA practitioners, in the following designated roles:

- Information Managers (IM)
- Decision Makers (DM)
- FOIA Policy and Support Team (PST)
- FOIA Quality and Assurance Team (QAT)
- All MPS staff with designated FOIA responsibilities
- Publication Scheme Team

N.B. This list is not intended to be exhaustive

SOP DETAILS

3. FOIA OVERVIEW

THE PURPOSE	The Act is designed to: • Foster a culture of openness; • Improve the democratic process by giving greater access to information about the workings of Government and public bodies; • Make Government more accountable; • Improve transparency and accountability and to limit complacency and mal-administration;
--------------------	--

	• Enhance public participation in, and perception of, the democratic process; • Encourage public discussion and understanding of the process of government; and • Modernise, with other policies, the process of Government in the age of the Internet where much more information is expected to be published regularly and made available electronically.
THE BASICS	• The Act gives any individual anywhere in the world the right to information held by the Police Service, subject to the application of exemptions. • The Act gives two related qualified rights – the right to be told whether the information is held and the right to receive the information. • The right of access applies regardless of the purpose of the application.

RESPONSIBILITIES ON PUBLIC AUTHORITIES	The Freedom of Information Act (FoIA) confers two responsibilities on public sector bodies: • The duty to confirm or deny whether the information requested exists; and • The duty to communicate the information. The two main instruments through which the release of information is achieved are: • Creating and maintaining a publication scheme The purpose of this is to make available a significant proportion of disclosable information routinely available and accessible without waiting for it to be requested. • Providing a general right of access to all types of ‘recorded’ information held by public authorities Under the terms of the Act, public authorities are required to make
---	--

	available requested information (subject to a range of exemptions) to any individual or organisation anywhere in the world.
VALIDITY	To be valid under the Freedom of Information Act, requests: • Must be made in writing; • Must clearly describe the information being sought; • Can be made from anywhere in the world; • Can be made by an individual or an organisation; • Can be made by letter, fax or email; • Must be legible; and • Must contain the name of the applicant and a return address. To be valid under the Freedom of Information Act, requests do not: • Have to be written on a special form; • Need to mention the Act; or • Need to refer to 'Freedom of Information' (FoIA) in any way. For further information on defining a valid FOIA request, please see Section 5 of this SOP.
WHAT IS COVERED?	The Freedom of Information Act: • Covers records capable of recovery in any form. • Covers information not data or documents. • Covers information in any format, no matter how it is recorded. • Is fully retrospective: as long as the public authority has the information, it can be requested. • All information, no matter how recorded, is subject to the FoIA. This includes written records, typed, handwritten, scribbled notes, e-mails, flip-charts, videos, audio tapes, computer tapes, logs, answer phone messages, tapes of telephone conversations and archived records.

UNDERLYING ALL OF THIS IS THE PRESUMPTION THAT INFORMATION WILL BE RELEASED IN-KEEPING WITH THE SPIRIT OF THE LEGISLATION, WHICH EMPHASISES A POSITIVE APPROACH TO DISCLOSURE.

4. ROLES AND RESPONSIBILITIES

4.1 FOIA DECISION MAKERS

Ownership of Requests

- ***Remember** that every response sent is on behalf of the MPS Commissioner and not just the local unit, therefore, every response must be owned and signed off by a local Decision-Maker.*

Lead the FoIA Process

FOIA Decision Makers must:

- Guide and liaise with the IM to ensure that full and appropriate MPS searches are conducted to locate relevant information
- Ensure that the FoIA process stipulated within this SOP is followed including the actions required of the dedicated IM (**see section 4.2**).
- Follow the decision making process before sign-off to ensure the robustness of decision; and
- Fully and openly assess response letters drafted by IMs and make amendments where appropriate.
- Be aware it is a criminal offence to conceal or destroy information if this is done with the intention of preventing disclosure under either the Freedom of Information Act (FOIA) or the Environmental Information Regulations (EIR). The offence is set out in section 77 of FOIA and regulation 19 of EIR. The ICO advise that individual employees can be guilty of this offence as well as the public authority itself.
- Be responsible for the process in place to ensure the Public Access Office is informed (by your Information Manager) on a monthly basis of any local FoIA requests which require additional organisational support for the applicant, for example, in regards to their age or disabilities. Such requests are initially monitored by Freedom of Information Officer within the Public Access Office, for the purposes of upholding the 'duty to assist' provisions of the MPS. Contact the Policy and Support Team Leader for further details for relevant requests.

Mandatory Training Courses

All FOIA Decision Makers must:

- Undertake the mandatory FOIA computer based training (CBT) and ACPO Decision Maker Training (contact the PAO for more details).

4.2 INFORMATION MANAGERS

Comply with the Legislative Requirements through the following actions

Information Managers (IMs) must:

- Understand what information the applicant requires. If in doubt clarify with the applicant their request requirements via telephone (if a contact number is available) and follow-up any agreement reached via email or letter.
- Ensure that the FOIA request is handled within 20 working days, or should consideration of the balance of public interest be necessary, 40 working days. In accordance with ICO guidance, the time for consideration of the public interest should only be extended in exceptionally complex cases.
- Ensure that where there is a delay in responding to a request, the applicant is kept fully apprised of the progress of the case and such correspondence is attached to MetRIC.
- Ensure full and proper consultation takes place promptly with appropriate staff and third parties to ensure possible prejudice is identified.
- Ensure every request is handled on a strict case-by-case basis.
- Ensure full and robust PIT and Prejudice (harm) considerations are included in all (relevant – see Section 9) FOIA refusal letters, which must **not** include generic and non-case specific arguments.
- Keep a complete log of all case actions on MetRIC including a full and robust decision rationale and a copy of the final draft response, and;
- Follow the template letters provided on MetRIC and fully complete the sections, which are highlighted as legislatively required.
- Assist the MPS Environment Team promptly with Environmental Information Regulation requests, as and when local information is required from the OCU/ BOCU.
- Be aware it is a criminal offence to conceal or destroy information if this is done with the intention of preventing disclosure under either the Freedom of Information Act (FOIA) or the Environmental Information Regulations (EIR). The offence is set out in section 77 of FOIA

and regulation 19 of EIR. The ICO advise that individual employees can be guilty of this offence as well as the public authority itself.

- Ensure the Public Access Office is informed on a monthly basis of any local FoIA requests which require additional organisational support for the applicant, for example, in regards to their age or disabilities. Such requests are monitored by Freedom of Information Officer within the Public Access Office, for the purposes of upholding the 'duty to assist' provisions of the MPS. Contact the Policy and Support Team Leader for further details for such relevant requests.

To Think Corporately and Not Just Locally

IMs in the course of their duties must:

- Make thorough checks to ensure whether the MPS and not just your local unit hold information requested.
- Contact the PAO within 48 hours of receiving the request if searches reveal part of the requested information is the responsibility of a different OCU/ BOCU as this will allow the PAO to coordinate case centrally.
- Inform the PAO within 48 hours of receiving the request if a request needs to be referred to ACPO Central Referral Unit (ACPO CRU) for guidance, where this has not already been done (see ACPO CRU Referral Criteria and template in **Appendix E and F**), and;
- Fully comply with ACPO / organisational policy unless to do so would directly conflict with legal requirements or compromise other policing imperatives [e.g. active operations]. ***In all such cases the PAO must be consulted first before any release is made.***

To Follow the Quality and Assurance and Compliance Team (QA+CT) Process Requirements

- All 32 boroughs, TPHQ and CO12 Olympics FOI Requests are currently subject to the QA+CT review process. For these areas, all draft responses, full and robust decision rationales and a copy of the requested information, where physically possible, must be sent by the IM to the dedicated QA+CT Officer for review by day 15.

To Follow the MPS and ACPO FoIA Policy

IMs are required to ensure they:

- Read and respond promptly within 24 / 48 hours to all correspondence sent by the PAO.

- Do not send responses to applicants until ACPO CRU advice has been received (if it has been referred).
- Read and adapt ACPO CRU advice and do not simply cut and paste advice into letters.
- Read and follow all instructions added on MetRIC by the PAO.
- Draft response letters for approval of the local Decision Maker in good time (PAO advises that this should be done by no later than day 15 of the process, thus allowing time to make any required amendments).
- Contact the PAO should any advice or guidance be needed before a response is sent

4.3 BOCU AND OCU SMT MEMBERS

It is important to remember that all decisions made by the MPS including the initial response to the requestor will be referred to and used as evidence of non-compliance by the Information Commissioner's Office (ICO) and the Information Tribunal (IT) should the response not meet the requirements of the FoIA. Inaccurate decisions or mishandling of FoIA requests has, in recent cases, weakened our arguments to protect certain pieces of valuable information. The IT and the ICO mainly concentrate on processes and whether or not the organisation has handled the request in accordance with the legislation, which is why we must get it right first time.

It is also important to remember that every response sent is on behalf of the MPS Commissioner and not just the local unit; therefore, every response must be owned and signed off by your dedicated FoIA Decision Maker who is to liaise closely with the Information Manager. You must ensure your Information Manager is aware of who you have appointed Decision Maker.

Staffing requirements

It is a requirement for all OCUs and BOCUs to have at least one dedicated and trained Information Manager and Decision Maker to handle all FoIA requests relevant to their area of business.

It is the responsibility of the local SMT to ensure that their area of business has adequate Information Manager and Decision Maker cover to handle FoIA requests **AT ALL TIMES**.

Such failure will present the Commissioner of the MPS with a degree of vulnerability in terms of protecting one of our most valuable assets – our information. Therefore, any failure in providing

adequate resources to cover FoIA requests will be reported to the Director of Information by the Freedom of Information Officer.

Statutory deadlines

It is the responsibility of the local SMT to ensure that the FoIA requests received in their area are responded to within 20 working days (unless consideration of the public interest is required through the use of qualified exemptions, in which case the deadline can be extended for another 20 days). This statutory deadline is a legal requirement and any failure to comply will be considered a Section 10 breach by the ICO. Repeat failings to meet this **legal requirement** will be reported by the Public Access Office to the Director of Information.

Refusal Notices

It is the responsibility of the local SMT to ensure refusal notices sent by their local business area follow the requirements set out in this SOP, especially the legal requirements outlined in Section 9 (Refusing a Request) of this SOP. Those that do not meet the legal and procedural requirements will be reported to the Director of Information.

FAILURE TO MEET THE LEGAL REQUIREMENTS SET OUT IN THESE SOPS WILL BE CONSIDERED AS EITHER A BREACH OF THE FOIA OR A CRIMINAL OFFENCE BY THE ICO, THEREFORE IT IS PARAMOUNT THAT THE PROCEDURES SET OUT IN THIS SOP ARE FOLLOWED AT ALL TIMES.

Decision Letters

It is the responsibility of the local SMT to ensure that the FoIA responses include the Decision Makers signatory – **not** the Information Manager's. The Decision Maker must be prepared to stand by their decision and rationale to either release or withhold the requested information and the quality of the letter they have approved for release.

Decision Making

It is the responsibility of the local SMT to ensure that decisions are not being made based on possible organisational embarrassment or controversy – there are no exemptions for considerations such as these and it may, again, be considered as a Section 77 criminal offence by the ICO to withhold such information.

Decisions must be purely based on the public interest and Prejudice considerations drawn out in the decision making process for the final decision to be legally upstanding. For more information, see **section 10** (Refusal of a Request) and **section 11.3** (Prejudice Test) of this SOP.

ACPO Advice

In addition to the above, your local IM and DM must wait for and follow the advice given by the Public Access Office (PAO) and/ or the ACPO Central Referral Unit (CRU) to ensure that our decisions do not weaken the arguments made nationally by our colleagues in other forces and partnership agencies.

If any staff member has issue with the advice offered by the PAO or ACPO, this must be discussed with the PAO immediately and before any release of information that contradicts the advice given.

Publication Scheme

It is the responsibility of the local SMT to ensure that all documents suitable for publication are forwarded to the Publication Scheme Team, especially those documents where there is a Section 19 requirement to proactively disclose. For information on the full list of Publication Scheme document requirements please refer to **section 16 of this SOP** and to **Appendix C** for the ACPO minimum standards to ensure compliance with the Act.

Please see Section 13 for further detailed information regarding the maintenance of the MPS Publication Scheme.

4.4 PAO FOIA POLICY AND SUPPORT TEAM (PST)

The PAO PST undertakes to:

- Log and acknowledge all FoIA requests received by the MPS
- Pursue and escalate non-compliance cases
- Assist with or escalate matters which are causing persistent non-compliance issues.
- Compile a weekly High Profile Report and forward to relevant staff
- Compile a weekly Compliance Report and forward to relevant staff
- Compile a monthly statistical report and forward to relevant staff

- Refer relevant requests to the ACPO Central Referral Unit (CRU)
- Be a conduit for information between ACPO CRU and IMs/ DMs / case owners
- Provide FoIA support to IMs and DMs in regards to legislation, policy, process and MetRIC database training and;
- Provide the PAO Training Officer with evidence of gaps in organisational knowledge, which is to be addressed through appropriate staff training.

4.5 PAO FOIA QUALITY ASSURANCE AND COMPLIANCE TEAM (QA&CT)

The QA&CT will:

- For selected areas of the organisation (currently all 32 boroughs, TPHQ, CO12 Olympics), quality assure all FoIA responses for legislative and organisational / national policy compliance before dispatch.
- In conjunction with the PST, provide FoIA support to all IMs and DMs in regards to legislation, policy and process
- Capture trends data, to identify sections within the MPS that demonstrate significant issue of poor compliance.
- With the PST, provide the PAO Training Officer with evidence of gaps in organisational knowledge, which requires urgent attention, to be addressed through appropriate staff training.
- Pursue, assist with and escalate non-compliance cases and persistent non-compliance issues.

4.6 FOI CO-ORDINATOR AND REVIEW OFFICER

The PAO FoIA co-ordinator and Review Officer will:

- Co-ordinate requests that cut across multiple BOCU/ OCUs
- Assist with the handling of first stage FoIA complaints/ internal reviews as soon as practicable and unless an exceptional case, no later than 20 working days following the date the FOI request was received.
- Report review findings back to the original section dealing with the FoIA request to ensure future compliance.

- Escalate to the FoIA Higher Information Access Manager (HIAM) any continual non-compliance following review findings.
- Be a conduit for information between ACPO CRU and the relevant information owners for all review cases.

4.7 PAO FOIA POLICY, RESEARCH AND REVIEW OFFICER/ INTERNAL REVIEWS OFFICER (IRC)

The Policy, Research & Review Officer/ IRC will:

- Handle first stage FoIA/ EIR complaints/ internal reviews as soon as practicable and unless an exceptional case no later than 20 working days following the date of receipt
- Report review findings back to the original section dealing to ensure future compliance.
- Create and amend FoIA policy, supporting documents and advice for the MPS
- Provide a digest and direct link to any Information Tribunal hearings results, ICO guidance and Decision Notices for FoIA Practitioners
- Escalate to the FoIA Higher Information Access Manager (HIAM) any continual non-compliance following review findings
- Provide the PAO Training Officer with evidence of any organisational knowledge gaps to be addressed as a matter of urgency by establishing essential training needs for appropriate staff
- Be a conduit for information between ACPO CRU and the relevant information owners for all review cases.

4.8 PAO HIGHER INFORMATION ACCESS MANAGER (HIAM)

The HIAM will:

- Handle all ICO Appeals
- Lead dedicated teams of PAO FoIA Support Officers (PST and QAT).
- Provide higher FoIA support to all areas of the MPS in regards to legislation, policy and process
- Assist with, or further escalate issues, which are causing persistent FOIA non-compliance and high-risk areas for FOIA.
- Review and report on all statistical analysis created by the PAO FoIA Support Officers.

- Ensure that the PAO FoIA Support Officers follow all relevant FoIA SOPs, processes and policies.
- Ensure that the PAO FoIA Support Officers are equipped and trained to provide FoIA support to IMs and DMs in regards to legislation, policy, process and MetRIC database training
- Liaise with the PAO Training Officer in developing FoIA training packages to cater for all knowledge levels and grades of staff, using the evidence of organisational knowledge gaps gathered by the PAO FoIA Support Officers; and
- Be the higher conduit for information between the ACPO CRU and MPS IMs/ DMs / information owners.

4.9 DEPUTY FREEDOM OF INFORMATION OFFICER (Deputy Head of Public Access Office)

The Deputy Freedom of Information Officer (Deputy Head of the PAO) is responsible for the following organisation and processes and will:

- Assist the Freedom of Information Officer in managing the Commissioner's statutory responsibilities under the FoIA.
- Provide senior decision maker guidance on legislative and policy compliance to all areas of the MPS.
- Monitor all MPS and Public Access Office performance against Corporate Health Check Indicators and taking necessary action where there are areas of poor performance / non-compliance with the FoIA.
- Be the secondary leading liaison point within the MPS for ACPO members, partnership agencies and the ICO on FoIA legislation matters.
- Implement and maintain an independent Review and Appeals process within the organisation (i.e. the PAO).
- Ensure adequate legislation training is provided (in conjunction with the iMET) and support is provided to all FoIA Practitioners.
- Chair the Single Point of Contact meetings.
- In the absence of the Freedom of Information Officer, provide MPS representations at the ACPO National and Regional FoIA (etc.) Portfolio Group Meetings to raise / discuss / debate issues of national / regional interest, which contributes to the overall development of national policy / action.

4.10 FREEDOM OF INFORMATION OFFICER (Head of Public Access Office)

The Freedom of Information Officer (Head of the PAO) is responsible for the following organisation and processes and will:

- Manage the Commissioner's statutory responsibilities under the FoIA
- Provide leading guidance on legislative and policy compliance to all areas of the MPS.
- Chair the Single Point of Contact meetings.
- In conjunction with the DLS, handle all Information Tribunals on behalf of the organisation and report back areas of development both to the organisation and to the ACPO FoIA (etc) National Portfolio Group.
- Obtain (where necessary) legal guidance and counsel's advice via DLS or ACPO on behalf of the organisation.
- Hold the position of ACPO South East Region FoIA Representative and undertake national and regional work packages accordingly.
- Represent the MPS at the ACPO FoIA (etc.) National and Regional Portfolio Group Meetings and raise / discuss / debate issues of national interest in contribution to the overall development of national policy / action.
- Be the leading liaison point within the MPS for ACPO members, partnership agencies and the ICO on FoIA legislation matters.
- Lead an independent Review and Appeals process within the organisation (i.e. the PAO); and
- Escalate continual / serious issues of poor FOIA compliance for the ultimate attention of the Director of Information and relevant Management Board members.
- Suspend the release of any responses where inappropriate / legally unsound decision making has been identified, for consideration by the Director of Information and other Management Board members (or appropriate senior responsible owners). The final decision to suspend the release of any responses rests with the Freedom of Information Officer.

4.11 ACPO FREEDOM OF INFORMATION Central Referral Unit

The ACPO Freedom of Information Central Referral Unit (CRU) will:

- Promote corporate compliance with national FOIA issues whenever possible.

- Deliver corporate advice assisting forces to release information, ensuring there is a consistency of approach in applying FOI principles.
- Assist with defining requests that must be referred centrally due to their possible impact on the Police Service as a whole.
- Deliver essential training to staff within the police service, to ensure staff continues to develop their decision-making skills and judgement with regard to the retention or release of information.
- Provide an ACPO Manual National FOI Manual of Guidance (ACPO MoG), which MPS FOI practitioners must use as a guide when responding to FOI requests.
- See ACPO CRU Referral Criteria and template in **Appendix E and F**.

5. DEFINING WHAT IS A FOIA REQUEST AND BUSINESS AS USUAL

5.1 DEFINING A VALID FOIA REQUEST:

As defined in Section 8 of the Act and to meet all requirements of the FoIA, a valid FoIA request must:

- Be in writing; and
- State the name of the applicant and a valid address for correspondence (email and fax address is valid); and
- Describes the information requested; and
- Be received in legible form; and
- Be capable of being used for subsequent reference (i.e. the request must be clear enough to enable the Information Manager to refer to information which may or may not be held within the MPS)

A request becomes a valid FoIA request when:

- FoIA is mentioned / quoted, or
- When the information cannot be supplied under the Business as Usual criteria within 20 days.

Valid FOIA requests **do not** include the supply of information in the following listed circumstances. Different functions / processes will be engaged for these requests and other circumstances, to enable the MPS to process them outside of the Freedom of Information Act.

- Subject access applications under the Data Protection Act 1998 (DPA) - i.e. requests by individuals for personal data about themselves [see the section 40 FOIA 2000 exemption];
- Requests for information under the Environmental Information Regulations 2004 (EIR);
- Requests for information sharing and other data exchange [primarily on a non-contractual basis between public bodies that meets statutory or other legal purposes];
- Disclosure or discovery of information/ documentation in accordance with either court orders or during the course of criminal or civil litigation procedures; and
- Requests for information for employment purposes, emigration, visas or residency in certain countries, on payment of a fee etc.

This list itself is not definitive as information can be disclosed in various ways and according to different circumstances.

5.2 PSEUDONYMS

The general principle is that any disclosure under the Act is effectively a disclosure to the world and therefore if the applicant uses a pseudonym name that is effectively a non-relevant factor when considering the application.

However, Section 8 of the Act does stipulate that a request is only considered valid when the requester provides “the name” of the applicant. It is the MPS position that where a request for information would require Public Interest Test (PIT) considerations and / or would result in anything but a disclosure of information we will refuse the request on the basis that the Service will not accept requests from applicants using pseudonym names, as the particulars given by the applicant do not meet the Section 8 requirements.

In incidences where an applicant uses a pseudonym name and the applicant requires access to information the Service would normally disclose, the Service will not refuse due to Section 8 and will process the request as normal. The ICO is fully aware of the MPS interpretation of these provisions in the Act.

5.3 DEFINING WHAT IS BUSINESS AS USUAL

Anything the MPS provides to partner agencies and members of the public as a part of its normal business process counts as business as usual (BAU).

A request must fit the following 3 criteria to be treated as BAU:

1. It must not indicate it is a FoIA request
2. All the information requested will be provided with no applied exemption
3. All the information requested will be provided within 20 working days

The term 'BAU' has been created to cover requests from the public, which can fall outside of the FoIA legislation.

If a request for information does not meet the above criteria then it must be treated as a FoIA request.

FoIA practitioners must be mindful not abuse our ability to use BAU for routine enquiries, particularly where requests should clearly be handled under the FoIA legislation.

If you are in receipt of a FoIA request and are in doubt about whether to treat it as BAU, please contact the **Public Access Office** for support.

6. ENVIRONMENTAL INFORMATION REGULATIONS (EIR)

6.1 EIR OVERVIEW

The Environmental Information Regulations (EIR) came into force on 1st January 2005 to coincide with the full implementation of the Freedom of Information Act 2000 (FOIA). EIR gives the public access rights to environmental information held by the MPS, subject to certain exceptions.

EIR applies to the MPS when information is held, produced or received by the organisation, or held by another person on behalf of the MPS.

'Environmental information' has a broad definition and will cover information concerning any environmental impact of the MPS on the state of the natural and built environment. This includes information about:

- The state of the elements of the environment including air, water, soil, land, flora and fauna;
- Factors such as substances, energy, noise, radiation or waste including emissions;
- Measures including policies, plans and programmes;
- Reports on implementation of environmental legislation; and
- The state of human health and safety

6.2 DIFFERENCES BETWEEN FOIA AND EIR REQUESTS

- Requests for environmental information need not be in writing. A verbal request record sheet should be completed (see **Appendix D**)
- The information held by the MPS includes holding information held on behalf of any other person.
- The 20 working days time limit for complying with a request applies to ALL requests, including those involving consideration of the public interest test. Regulation 7 does allow for an extension from 20 to 40 working days for complex and high volume requests.
- No exception is made for requests that will involve costs in excess of the 'appropriate limit', within the meaning of the Fees Regulations made under sections 9, 12 and 13 of the FOIA. Except in specified limited circumstances, ALL requests must be dealt with and any charges imposed must be reasonable.
- There are differences in the 'exceptions' available under EIR and the 'exemptions' available under FOIA. Every exception is subject to public interest testing.
- There is a weightier presumption on disclosure than that of the FOIA.

6.3 THE EIR CASE HANDLING PROCESS

- All EIR requests should be passed directly to the MPS Environment Team who can be contacted through the FOIA Policy and Support Team within the Public Access Office (FOIRequestForm-DOI@met.police.uk)
- The MPS Environment Team will log EIR cases on to the MetRIC logging system under EIR.
- If information is not held directly by the MPS Environment Team then they are responsible for collating relevant information from BOCU/OCUs before responding

directly to the applicant and closing all completed cases. In complex cross departmental cases advice is sought from the PAO.

- The PAO will be listed in the complaint section of correspondence letters to the applicant. In the event of a request for review, the FOIA Policy, Research and Review Officer within the PAO will conduct the review.

Further associated documents and information on the Environmental Information Regulations can be found in **Section 6** of this SOP.

7. PROCESSING FOIA REQUESTS

7.1 FOIA SECTION 16 DUTY TO ASSIST - INSTRUCTIONS & ADVICE

7.1.1 General duty to assist requestors - Freedom of Information Act (FoIA) 2000 Section 16 and the statutory Codes of Practice, places the MPS under a general duty to provide reasonable advice and assistance to any applicant when they make a FoIA request for information. In particular, front counter staff at police stations **must** be prepared to assist any requester in submitting their information request, especially where there is an age related, disability or language support requirement. If guidance in this regard is needed staff are advised to contact the Public Access Office for further assistance.

The MPS will endeavour to meet the reasonable and proportionate needs of individual requestors in order to remove any barriers to accessing information; to generally make the process as accessible as possible to all sections of the community and to encourage active participation in public life. To meet this duty, MPS personnel **must**:

- Take care not to discourage requestors from making legitimate requests;
- To be sensitive when dealing with individual needs; and
- To do their best to help requestors submit information requests.

The extent of any advice and assistance provided will always be subject to the availability of appropriate MPS resources. The level of assistance will be recorded/ monitored to improve future provision of services and to make any adjustments necessary for legal compliance.

The following persons have been identified as potentially needing special requirements in this area:

- **Where age is a factor** - young children [generally under 12 years of age] with limited understanding and older persons exhibiting infirmity may require additional assistance;
- **Disabilities or impairments (physical, mental or learning)** - a large range of persons requiring different types of help, including the blind/ visually impaired and persons with deafness; and
- **Information requests submitted in a language other than English (or Welsh)** - or where a request is received to translate the information to be supplied into another language.

7.1.2 Where age is a factor - Ideally, children and older persons will be assisted by a personal representative best able to understand their individual needs and to help with submitting a written request for information on their behalf. The personal representative may in the case of children be a parent/ guardian or teacher or, for older persons, a relative/ friend/ carer/ social worker or other member of the local community. For unaccompanied children or older persons attending a police station, it may be necessary for MPS personnel to help set out and record the information request in writing with their agreement.

7.1.3 Disabilities (as defined in the Equality Act 2010) or other impairments (i.e. physical, mental or learning) - This can act as a barrier for requestors wishing to access information. This is particularly so if requestors attend police stations and there are communication barriers (e.g. maybe due to visual impairment or deafness etc.). Requestors may also be unable independently to write down exactly what they require from their information request. The assistance of a personal representative for the requestor is invaluable, but where such a person is not present further assistance should be provided either by front counter staff or via the PAO customer services.

7.1.4 Information requests received in a language other than English (or Welsh)/ and requests to provide information in a particular format or language other than English (or Welsh) - It is not proportionate for the MPS to provide translation services in such

circumstances and where required applicants should be advised to seek the services of an independent interpreter. There is no requirement for the MPS to process requests received in another language (i.e. not English or Welsh); or where the supply of data is also requested to be translated into another language (i.e. not English or Welsh). Where an applicant makes a request in a language other than English (or Welsh), the MPS will inform the applicant, in English that a request should be made in either English or Welsh and as required, advise them to seek the services of an independent interpreter. Requests may also be submitted in English or Welsh by the applicant's personal or community representative on their behalf. If there are any remaining doubts as to how to respond to requestors in these circumstances, such matters should be discussed with the Public Access Office as soon as possible.

7.1.5 Fulfilling information requests within the legitimate aims of the Act - The MPS will deal with these requests in a reasonably practicable and proportionate manner, with due regard for the wider public interest and in accordance with the statutory requirements set down in section 11 of the Act. Each case will be dealt with on its own merits in regards to the formatting provisions of information held, the decision being informed by an assessment of meeting the legitimate aims of the Act, the public interest and the costs that would be incurred. Additionally the strict time limits under the Act will determine the limits of how information will be supplied to requesters. Information will not be altered or translated into languages other than English or Welsh due to the risk of misinterpreted and inaccurate information being released.

7.1.6 Recording the type and scope of assistance provided - In the situations described at **7.1.2** to **7.1.5**, the MPS will endeavour to best meet the reasonable and proportionate needs of individual requestors, subject to available resources. Persons may choose, for example, to return at another time to the police station with a personal representative who can best serve their interests. In any of these circumstances, it is essential that the nature and extent of the assistance provided are also recorded by local MPS personnel to prevent any future misunderstanding and to maintain a degree of impartiality. Alternatively, in the case of any communication issues that cannot be locally resolved, such requests should be referred immediately to the Public Access Office to be answered within the statutory period of 20 days.

7.1.7 Monitoring - Full details of assistance needed, in regards to applicants who require additional support (as described in **7.1.2** to **7.1.5**) **must** be provided to the Public Access Office collectively on a monthly basis, for the purposes of monitoring the 'duty to assist' provisions.

The local FoIA decision-maker will be responsible for ensuring arrangements are in place, so that such returns are regularly sent to the Public Access Office. The Public Access Office will collate the returns and maintain a 'Duty to Assist' spreadsheet. The returns will be reviewed annually to see if trends emerge indicating adjustments are required to meet the emerging requirements of requestors. After, three years the Data Protection Officer will implement a full review to be carried out to ensure the provisions match the MPS commitment in this area.

7.1.8 Sources guiding MPS personnel dealing with the duty to assist - An important document that can help with the duty to assist is the MPS Accessible Formats Guidance (http://www.met.police.uk/dcf/files/accessible_formats.doc) produced jointly by the Directorate of Public Affairs (DPA) and Diversity & Citizen Focus (DCFD). It explains the sort of issues that can affect persons accessing information and how information can be presented in various formats suitable for different audiences. For example, requests might, for instance, be submitted in Braille or British Sign Language could be used; or the information has been requested to be converted to Braille or into alternative formats. Listed are useful contacts relating to organisations assisting disabled persons with different forms of communication needs, including finding ways to deal with Braille and other specialised formats. If there are any remaining doubts as to how to respond to requestors in these circumstances, they should be discussed with the Public Access Office as soon as possible.

7.2 LOGGING AND ACKNOWLEDGING AN FOIA REQUEST

- It is ACPO policy that all FoIA requests are acknowledged by the Police Service, therefore, the MPS FoIA Policy and Support Team will acknowledge FoIA requests received.
- It is the role and responsibility of the FoIA Policy and Support Team to log and acknowledge all FoIA requests received by the MPS on the MetRIC database system, unless a local agreement with BOCU/OCU FoIA teams are in place for them to log their own.
- Should any other MPS staff member receive a FoIA request, it is their responsibility to ensure the FoIA Policy and Support Team are made aware of the request, so it can be logged and acknowledged appropriately. Requests should be referred in this instance to FOIRequestForm-DOI@met.police.uk

- The FoIA acknowledgment letter must include the MetRIC case number, the date the request was received and an indication of the estimated date as to when the request will be dealt with.
- Under Section 16 of the Act, the MPS has a duty to provide advice and assistance to applicants making a FoIA request where appropriate. Therefore, the FoIA Policy and Support Team must contact the applicant within 24 hours of receiving the request if it is necessary to clarify a request. The applicant must be informed in writing that their case will be put on hold until clarification is received. The applicant must also be informed that if clarification is not received within 60 working days, the case will be treated as 'withdrawn'. On the day the request for clarification is sent to the applicant, the FoIA Policy and Support Team is permitted to 'stop the clock' on MetRIC until clarification is received, on which day the clock will be re-started.
- Should a FoIA practitioner who does not work on the FoIA Policy and Support Team require clarification of a request before they can continue with the request, they must ensure:
 - a) such clarification is sought within 48 hours of allocation of the request; and
 - b) the FoIA Policy and Support Team are made aware that clarification is needed, so that the clock can be stopped on MetRIC until the applicant has clarified the request.
- **Under no circumstances is a deadline to be amended on the MetRIC database system.** If you have any concerns about the need to change a case deadline, please contact the FoIA Policy and Support Team Leader who will make the final decision regarding any system amendments. However, if the information owners have any objections to the decision taken by the Support Team Leader these must be raised with the FoIA Higher Information Access Managers or the Freedom of Information Act Officer directly. The PAO's decision in this regard is final.
- In all circumstances the MetRIC acknowledgment letter template is to be used within MetRIC to acknowledge all FoIA requests. This will ensure the FoIA audit trail is robust and consistent.

7.3 INITIAL PROCESSING OF FOIA REQUESTS

When logging a new FoIA request, the FoIA Policy and Support Team (PST) will do the following;

- Check if the request is a duplicate/ repeated by conducting a MetRIC search.
- If another BOCU/OCU has a similar request, inform both departments to consult each other before the final responses are sent out to maintain corporacy. Such a situation may require the PAO to co-ordinate both requests.
- Check if the request needs to be referred to the ACPO CRU. If so, complete and refer the relevant CRU referral template. The action log in MetRIC must then be updated to state the request has been referred for advice and that a response should not be sent to the applicant until advice is received.
- Check ACPO CRU notification emails that guidance has not already been, or is about to be issued. The PST must inform staff dealing with the FoIA request that CRU national advice is or will be available in due course. This must also be confirmed on the action log.
- Check if the subject matter within the request needs to be flagged with any particular MPS unit.
- The High Profile context must be added to the action log of every FoIA case. This context states, *“All High Profile FoIA requests - particularly those from journalists - continue to be of interest to the DPA. The DPA receives a list of HIGH PROFILE requests that are of MEDIA INTEREST on a weekly basis. If it is thought a FoIA request will require press lines a press officer will contact you at an early stage. As such there is no longer a requirement for you to contact the DPA and forward the request for sight as a matter of course. If however you feel a request is generating issues which could result in media coverage and you have not already been contacted by DPA please contact the Chief Press Officer”*. The PAO Support Team will provide DPA contact details for cases where this applies.
- Attach the original FoIA request and all relevant correspondence to the MetRIC case for audit purposes.
- The FoIA is to then be allocated to the appropriate borough or compliance unit.

- If the request needs to be answered by two or more different MPS units, the request will be co-ordinated and handled at the PAO. Full PIT and Harms tests will still be required from each unit covered by the FoIA request. These will need to be presented to the PAO by no later than the 15th working day.
- Should a FoIA practitioner find they have been incorrectly allocated a FoIA request to deal with; the action log must be updated as to why the case cannot be dealt with at that department. The request must then be reallocated back to the PST immediately.

8. COMPLIANCE TIMEFRAMES

- Section 10 of the Act confirms **the MPS has 20 working days following the date of receipt to comply with a FoIA request**. Failure to meet this requirement without a valid Public Interest Test extension is a breach of the Act and is enforceable by the ICO.
- Where a qualified exemption is being applied, the deadline may be extended, if necessary, to consider the public interest factors, but this extension must be for a reasonable period. It is ICO policy that in exceptional cases the Public Interest Test (PIT) extension can be up to 20 working days taking the overall time to a maximum of 40 working days within which to complete the request.
- The applicant must be kept regularly informed and updated of the progress of their case, particularly where a deadline has been extended. The applicant must be provided with the estimated date for completion of the case.
- FoIA practitioners must comply with Section 10 (Time of Compliance) and Section 17 (Refusal of a Request) of the Act. A Section 17 refusal notice must therefore be issued when extending a deadline for PIT considerations. Section 17(2) of the Act requires an estimate to be given of the expected date of a decision concerning the balance of public interest.

- | |
|--|
| <ul style="list-style-type: none"> • The Public Interest Test (PIT) extension letter must state which exemptions have been engaged and are being considered. • <i>However, if a deadline needs to be extended in regards to our considerations as to whether we can confirm or deny whether we hold the requested information, the</i> |
|--|

extension letter to the requestor will need to be carefully drafted to ensure sensitive information is protected. If in any doubt, contact the PAO for advice.

- The PAO must always be informed if a FoIA response needs to apply a 'neither confirm nor deny' approach, so that ACPO CRU can be informed.
- The Section 45 FoIA Code of Practice (CoP) confirms that where possible, the MPS should not wait until the 20th day before responding to an applicant if the response can be provided earlier.
- If a PIT extension letter is sent, this must be noted in full on the MetRIC database action log, as regards to when the letter was sent, why an extension has been applied and the new estimated response time for responding to the request.
- As with all correspondence to FoIA applicants, the extension letter must also be sent through MetRIC to ensure a sound audit trail is maintained.
- Poor time compliance figures for each BOCU/ OCU are reported to the Director of Information on a monthly basis.

9. TRANSFER OF REQUESTS

- The Section 45 Code of Practice (CoP) governs Section 10 of the Act in regards to the transfer of requests.
- MPS FoIA practitioners may completely transfer requests to relevant bodies and authorities where the service holds none of the requested information and the MPS has checked with the authority that they are the appropriate authority to receive this request.
- MPS FoIA practitioners may partially transfer requests to relevant bodies and authorities where the MPS holds only some of the information requested.

Before handing any personal details to the other body, always ensure the applicant would be happy for you to do so.

10. REFUSING A REQUEST

10.1 SECTION 17 REQUIREMENTS

A refusal notice must be issued which complies with Section 17 of the Act if a practitioner refuses either all or part of a request because:

- The request is deemed vexatious or repeated; or
- The cost of compliance exceeds the prescribed limit; or
- The information requested falls under one of the exemptions listed in part II of the Act.

A refusal notice is **NOT** required where:

- A refusal notice has already been issued to an applicant who has then re-submitted the same or substantially similar request again;
- No information is held by the MPS (however this must be confirmed in writing within the 20 day deadline).

MPS FoIA practitioners must ensure the correct subsection is applied if a Section 17 refusal notice is being issued. For example a refusal notice on cost grounds incurs the use of Section 17(5) rather than Section 17(1).

To ensure legal compliance when refusing a request you **must**:

- State clearly which section **AND** subsection of an exemption is being applied to what piece of information; and
- Include the title of the exemption (i.e. Section 38 – **Health and Safety**); and
- State the type of exemption being relied on (**absolute or qualified, class or prejudice**); and
- Where appropriate, explain what the exemption means and why it applies unless this would be harmful in itself.

Furthermore, if:

- A **prejudice** based exemption applies, confirm you will be providing a Prejudice test; or
- A **class** based exemption applies, confirm you are not obliged to provide a Prejudice test; or

- An **absolute** based exemption applies, confirm you are not obliged to provide a public interest test; or
- A **qualified** based exemption applies, confirm you will be providing a public interest test and balance test.

Whilst the MPS Commissioner is not referred to in our decision letters, as stated before, all responses letters are sent on behalf of the MPS Commissioner and not the local unit, therefore, the Decision Maker, not the Information Manager, must sign a refusal notice.

When issuing a refusal notice it is a legal requirement to include the MPS complaints procedure and the applicant's right to complain to the ICO (as per Section 50 of the Act) in the response. This information will be provided when the template response letter within MetRIC is used.

A full decision rationale, including the unedited version of the PIT and Prejudice tests must be added to MetRIC.

A copy of the ACPO FOIA Refusal Letter Quality Assurance Checklist can be found at **Appendix B**.

Where a partial disclosure is taking place (i.e. some information is being disclosed and other information may be redacted), redaction should always take place using the tools provided on the MetRIC system which is used to log FOI requests. For training on the use of the redaction tool on MetRIC, please contact the Freedom of Information Policy and Support Team.

10.2 NEITHER CONFIRM NOR DENY (NCND)

As per Section 1(1)(A) and Section 1(1)(B) of the Act, the FoIA 2000 provides two distinct but related rights of access to information, which impose corresponding duties on the MPS.

- S1(1)(A) the duty to inform the applicant whether or not the requested information is held by the MPS, and if so,
- S1(1)(B) the duty to communicate that information to the applicant.

The PAO Policy Support Team (PST) must be informed if a request may attract an NCND stance in regards to whether the requested information is held by the MPS.

Application of Sections 23 and 24 Mandatory Process:

Note: The PST are required to refer requests applying Section 23 and Section 24 exemptions to the CRU, therefore, if the IM or DM wishes to apply these exemptions the draft response must be sent to the PAO for mandatory referral to ACPO CRU. Any response, which includes these exemptions, must await ACPO CRU sign-off before disclosure.

When information requested is exempt, the public interest is applied to both S1(1)(A) and S1(1)(B) independently.

These two separate public interest tests are required as there may be circumstances where it may not be in the public interest to even confirm or deny if the requested information is held by the MPS.

It is important to consider the implications of confirming whether particular information [is](#) held. There are some exceptional cases where it would not even be right to confirm or deny if certain sensitive or damaging information is held. For example when handling requests regarding covert operations and national security, it is paramount to consider the Prejudice which may be caused by even confirming particular information is held.

Section 21 is the only exemption, which does not include a provision that enables the MPS to NCND whether the information is held by the MPS when it is requested.

A Section 17 refusal notice **must** state to an applicant:

- The fact the request is refused,
- The exemption(s) relied upon, and
- Why the exemption applies (PIT / Harm).

The above must be communicated to the applicant if the MPS refuses to disclose the requested information or neither confirm nor deny if the information is held.

However, Section 17(4) states the MPS is not obliged to make a statement as to the reasons why NCND is engaged if the statement itself would disclose information which in itself would be exempt.

Additionally, the ICO recommends that whenever possible, the MPS should explain why the NCND stance is engaged, as long as this does not compromise the NCND stance itself.

A **partial** NCND can be engaged where the MPS confirm some of the information requested is held, although to confirm this represents all the information held by the MPS would itself be harmful. The MPS may then confirm to the applicant that they NCND (by virtue of the relevant exemption) that any other information is held.

A full rationale of the decision made must be added to MetRIC.

Please refer to the ACPO Manual of Guidance (MoG) for detailed guidance on the application of the NCND stance for FoIA requests, as many NCND responses will require specialist advice from ACPO CRU and PAO. A link to the ACPO MoG has been provided in section 18 of this SOP under Associated Documents and Policies.

10.3 REQUESTS EXCEEDING THE PRESCRIBED COST

Section 12 of the Act states that the MPS is not obliged to comply with a request for information if the Service estimates that the cost of complying with the request would exceed the appropriate limit, which currently stands at £450 / 18 hours total.

There are only three areas of the process with which the Service can apply this cost levy:

- Time taken in determining whether the information's held; or
- Time taken in locating and retrieving the information; or
- Time taken in extracting information to be disclosed from other information*.

** This does not include the time spent in identifying information to be exempted or the time dedicated to the process of redaction. Please see section 10.1 of this SOP regarding the system used to redact information.*

Where the cost of dealing with a request exceeds the cost threshold, the MPS will decline to comply with the request by virtue of Section 12 of the Act within the 20-day deadline.

Should one question within aggregated requests be classed as exempt under Section 12, the other aggregated requests will also be included as exempt under Section 12 of the Act.

A full breakdown of the cost estimate must be added to the MetRIC log.

When declining requests under Section 12, we must under Section 16 (Duty to Assist) provide the applicant the opportunity to redefine their request, so that it falls below the cost threshold. In doing this, we should provide guidance to the applicant on what can be disclosed within the cost.

The MPS will then aim to comply with any new redefined request no later than 20 days after receipt of the request, subject to any exemptions which may still apply.

When providing guidance of this nature it is important to stress to the applicant that these are only suggestions and the Service is willing to discuss their request requirements further so long as it meets the cost threshold.

Once the definition is received / agreed the 20-day deadline countdown will re-start from the day the deadline was suspended. Therefore, it is imperative that all Section 12 refusals are sent as early into the 20-day process as possible to ensure that there is enough time to continue with the redefined request.

There are some requests, which are received by the organisation whereby the public interest in providing the requested information far out-weighs the public interest to refuse the request based on cost. These are not commonplace but it is worth noting this point should such an incident occur in your area.

For example: if retrieving the details of the Commissioner's expenses takes over 18 hours to complete this would fall beyond the cost threshold. However, the public interest in disclosing such information far outweighs the cost argument due to the seniority and influence of the role and the accountability factors in holding such a senior position along with spending public money. For these reasons the request should be processed despite the cost threshold being exceeded

If you are in any doubt regarding this section contact the PAO for further guidance.

10.4 REQUESTS WHICH REQUIRE CLARIFICATION

FoIA practitioners must contact the applicant within 48 hours of allocation of the FoIA request should the request be difficult to interpret. Do not wait until the 20 days is nearly complete before contacting the applicant to clarify their question.

On writing to the applicant to request further clarification, FoIA practitioners must 'stop the clock' and confirm the applicant has 60 days to clarify their request or it will be treated as 'withdrawn'.

10.5 VEXATIOUS AND REPEAT REQUESTS REFUSALS

Under Section 14(1) the MPS does not have to comply with vexatious requests. There is no public interest test.

To decide whether a request is vexatious, MPS FoIA practitioners need to look at its context and history. It is important to question whether the request is likely to cause unjustified distress, disruption or irritation.

*However, it should be noted that strong grounds **must** be evidenced on MetRIC to class a request as vexatious as the MPS may need to defend its decision to the ICO.*

To class a request as vexatious, it is likely to be the latest in a series of requests, imposing a significant burden on the force.

To class a request as vexatious, you must be able to also evidence at least **one** of the following:

- It clearly does not have any serious purpose or value; or
- It is designed to cause disruption or annoyance; or
- It has the effect of harassing the MPS; or
- Can otherwise be fairly characterised as obsessive or manifestly unreasonable in nature.

Furthermore, to class a request as vexatious, evidence such as those provided for below, needs to be collated (and attached to the case on MetRIC):

- The requestor has a clear intention to cause the MPS the maximum inconvenience through a request; or
- The MPS has independent knowledge of the intention of the applicant; or
- The request has no serious purpose or value (with no public benefit); or

- After receiving a refusal and public interest test, the applicant comes back to ask for all the exempted information to be redacted to the point it would render the released information as useless; or
- The request is obsessive or manifestly unreasonable, i.e. it may be a continuous repeat request.

MPS FoIA practitioners need to be mindful not to confuse a vexatious request with a request that needs to be refused on cost grounds (Section 12). A request that cannot be answered as the information would take over 18 hours to either retrieve/ locate or extract **must not** in itself be classed as vexatious. The context and history of the case must be taken into account in regards to classing a request as vexatious.

Under Section 14(2) (Repeat Request), the MPS is not obliged to comply with any subsequent request if:

- It is made by the same person as a previous request;
- It is identical or substantially similar to the previous request; and
- No reasonable interval has elapsed since the previous request.

The MPS find a reasonable interval may be defined as 60 working days.

MPS FoIA practitioners must be mindful some requests are 'repeated' but due to the time frame that has passed since the original MPS response was sent out, the MPS held information may be different. In this case, the request cannot be classed as 'repeat'.

Note: *In regards to the use of Section 14, the request **not** the applicant is classed as vexatious.*

Should an MPS FoIA practitioner receive a request that the MPS has classed as vexatious/ repeated, they **must** notify the applicant and inform them why this is the case only after consultation with the PAO.

A refusal notice need not be provided in the case of repeated requests if a similar notice on the same question has previously been issued to the same requester.

Once a notice of a vexatious or repeat request has been provided to the applicant, a request for internal review **must** still be forwarded to the PAO to be processed the same as all complaints.

Only when the internal MPS FoIA complaints process has been exhausted can the MPS ignore any follow up repeated requests.

Important note: *The PAO Policy and Support Team **must** be informed if an MPS FoIA practitioner is seeking to class a request as vexatious or 'repeat' under Section 14 of the Act.*

*The PAO Policy and Support Team **must** update the ACPO CRU of the use of Section 14 as this allows a database of evidence to be maintained nationally, which is necessary should the request go to more than one force.*

A full decision rationale must be added to MetRIC.

11. THE DECISION MAKING PROCESS

The MPS fully endorses the ACPO 'good practice' model, which enables MPS FoIA practitioners to process a FoIA request for information effectively.

For in depth training on the use of the model, MPS FoIA Practitioners and Decision Makers are required to contact the FoIA Policy Support Team to book attendance on the mandatory ACPO two day decision-maker/ reviewer training course.

11.1 PRE-DECISION MAKING

The ACPO model request process advises that before proceeding with a FoIA request, FoIA Practitioners **must** address the following points and consider:

- Is it vexatious or repeated? **(See section 10.5)**
- Is it a valid request? **(See section 5.1)**
- Has the applicant been contacted to establish exactly what they want if the question is not clear.
- Confirm this cannot be provided under normal business processes **(see 5.3)**.

- Is it already in the public domain?
- How much will it cost to locate/ retrieve/ extract the information requested? (**see section 10.3**)
- Is the information requested held?
- Should the ACPO CRU be notified? (**see section 4.11**)

The PAOs have created a Public Interest Test (PIT) / Balance template to help Practitioners record / assist their decision making process. The suggested headers are merely guidance and FoIA practitioners must consider each request on a case-by-case basis. The template can be found in **Appendix A**.

11.2 HOW TO MAKE A DECISION ON PUBLIC DISCLOSURE

Section 1(1)(A) and Section 1(1)(B) of the Act

For Section 1(1)(A) of the Act - (the duty to confirm or deny whether the requested information is held), consider:

“Is there any harm/ prejudice in confirming the information is, or is not, held by the MPS?”

The prejudice (harm) to consider at this point is only in relation to confirming whether we hold the information or not, not whether disclosing the actual information itself would be harmful.

Should prejudice be identified in even confirming whether the requested information is held or not by the MPS, a NCND (Neither Confirm Nor Deny) response may need to be applied. This will remove the obligation on the MPS to go on to consider whether the requested information would be harmful to disclose to the applicant.

Further procedural guidance on the duty to confirm or deny can be found in **Section 10**.

For Section 1(1)(B) of the Act – (the duty to communicate the information to the applicant), consider:

“If the MPS can confirm the requested information is held, is there any prejudice in disclosing it?”

11.3 PREJUDICE TEST

Before identifying which exemptions may be engaged in regards to the release of particular information, all FoIA Practitioners are required to identify any prejudice, which may result in disclosure.

ACPO's definition of prejudice (within the ACPO Manual of Guidance Version 6) in a policing context equates to:

“The undesired consequence of the disclosure of information which will or could lead to the physical or mental Prejudice of a person, damage to property, loss of public confidence or a reduction in the effective provision of public service delivery. In all cases this can be temporary or permanent”.

Although harm/ prejudice need not be substantial, the ICO expects it to be more than trivial. It must be real and not perceived.

The decision-maker must be able to provide some evidence so that a conclusion can be drawn about what is likely. Actual examples are more effective than anecdotal comparisons. Decision-makers must take into account that the less significant the prejudice is shown to be, the higher the likelihood is that the public interest will favour disclosure.

Evidence of actual prejudice identified should be recorded to make decisions stronger in terms of the rationale, even if these examples are not provided to the applicant.

If no prejudice is identified and no class-based exemptions apply, in most cases the information should be disclosed. Should prejudice for this section be identified, it will need to directly relate to those exemptions that are engaged. (For further information on how to identify a class based exemption, please see **section 12.2** of this SOP.)

For both Section 1(1) (A) and 1(1) (B), all prejudice identified must be subject to a separate public interest test by the FoIA practitioner.

For Section 1(1) (A) the public interest consideration is if there is any tangible community benefit in confirming the requested information is held.

For Section 1(1) (B) the public interest considerations are directly related to the particular content of the information.

Once all prejudice and public interest considerations have been established (regardless of which exemption may be engaged), a decision on release can finally be made. It is crucial that a decision on disclosure is not made before the above process has been fully utilised.

As advocated by ACPO, the sequence of actions detailed in the following table should be followed as a template for the decision-making process:

Phase	Action	Next Phase
1	Ensure the pre-decision making tasks have been completed.	Go to phase 2.
2	Collect the information that has been requested.	Go to phase 3.
3	Establish: Is there any prejudice in confirming the information is or is not held?*	If yes, go to phase 5. If no, go to phase 4.
4	Establish: Is there any prejudice in disclosing the information?	If yes go to phase 5. If no go to phase 8.
5	Identify which exemptions are engaged and then filter them according to type.	If you decide to reply on absolute exemptions then go to phase 7. If a mix or only qualified exemptions apply then go to phase 6.
6	Conduct a public interest test for each of the exemptions*	If the PIT overcomes all of the exemptions in relation to phase 3 go back to phase 4. If the exemptions from phase 4 are overcome go to phase 8. If the balance in relation to either does not favour disclosure go to phase 7.
7	Ensure all of the information requested is actually exempt. If it is, prepare a full refusal notice. If not, consider redaction and prepare a partial refusal.	If full refusal, end the process. If partial refusal, move the non exempt material only to phase 8.
8	Release the information.	End.

**It is unlikely that decision-makers will be experts in the relevant business area of the information requested so it is imperative that as many stakeholders in disclosure as possible are identified and consulted where appropriate. This includes third parties that may be outside the*

organisation. Doing so will ensure that evidence of prejudice and public interest factors are robustly gathered.

To follow the process as directed by ACPO will ensure a fair and unbiased handling of the case. It will also guarantee legislation is consistently applied nationally by all police forces and provide an effective record of rationale and decision-making.

MPS FoIA Practitioners must consider in order the following when collating evidence of harm:

- The individual.
- The Community.
- The MPS/ Police Forces.
- Any other bodies/ third parties.

MPS FoIA practitioners must obtain evidence of Prejudice for their rationale by consulting with the relevant departments with specialist business knowledge on the particular subject matter of the request. Prejudice may be obtained from police staff or police officers. As advocated in the Lord Chancellors Section 45 Codes of Practice, third parties outside of the MPS may also need to be consulted to evidence harm, particularly if their interests may be affected by disclosure.

The only way of fully ascertaining Prejudice considerations and the balance of public interest is to view the requested information itself. **All IMs, DMs and PAO FoIA staff must have full unlimited access to the information requested** before any PIT / Prejudice / Balance considerations can be made. Arguments will not stand up to scrutiny if the information and its value the Service is trying to protect it is not considered fully in advance of any decision. Failure not to view the information (thus making a decision based on theory) will be treated as a failure of process / breach of the Act.

Identifying Prejudice

It is the responsibility of the decision maker and the Information Manager to collate evidence of all the potential prejudice that may result from disclosure of the information and subsequently to determine the likelihood of the prejudice occurring if it is not certain or probable.

11.4 PUBLIC INTEREST TEST (PIT)

Once any prejudice has been identified, FoIA Practitioners are required to identify the public interest considerations in disclosing the information and withholding the information. This is because engaged qualified exemptions are subject to the application of the public interest test.

The public interest is not what 'interests' the public, but is what would be of greater tangible benefit to the community as a whole, if disclosed.

MPS FoIA Practitioners are not to make a decision on disclosure prior to the completion of the PIT. This ensures a non-biased, balanced PIT is conducted.

MPS FoIA practitioners must base decisions on the fact information should be disclosed, unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

It is the position of the MPS that it is not in the public interest to disclose information that may compromise our ability to fulfil our core function of law enforcement.

MPS FoIA practitioners will apply the public interest in a proactive and positive manner in keeping with the spirit of the Act.

This is demonstrated by the fact that information requested under the Act will be disclosed unless the public interest in maintaining the relevant exemption outweighs the public interest in favour of disclosure.

To conduct a PIT, MPS FoIA practitioners must record on the MetRIC logging system all the factors they find which favour disclosure and considerations which favour non-disclosure of the requested information.

A PIT undertaken by a decision-maker should be objective and not unduly influenced by external influences and/ or ones own views and prejudices. The burden of proof lies with decision-maker to establish whether there are sufficient grounds to justify the exemption.

To conduct a balanced PIT, the decision-maker will need to locate a variety of opinions and research from as many sources and stakeholders as possible. This will lessen the risk that the views of the person providing the factors dictate the end result, rather than the true public interest.

ACPO provide a decision-making process guideline within the CRU MoG, which states:

1. Identify all the exemptions that are engaged with the disclosure of information.
2. Filter those exemptions to identify which are 'qualified' and which are 'absolute'. Ensure the appropriate exemptions are used only where the exemption is fully engaged and covers all the information requested.
3. For every qualified exemption, identify and outline the positives and negatives in disclosure in relation to each exemption. When considering the public interest factors in favour of maintaining the exemption, only consider the particular interest which the specific exemption seeks to protect. For example when applying Section 31 (law enforcement), stick to arguments relating only to law enforcement when considering non disclosure. On the other hand, public interest factors in favour of disclosure can include a wider variety of public interests, such as accountability and the promotion of transparency.
4. If the PIT clearly favours disclosure, the exemption considered should be disregarded.
5. The remaining exemptions need to be looked at as a whole to see if the balance of the PIT issues favour disclosure. A decision can now be made.

To be a valid factor/consideration in favour of non-disclosure, there must be a clear relationship between the factor, the information requested and the exemption. This must be clearly articulated in the response letter.
--

11.5 BALANCE TEST

Once the considerations favouring disclosure and non-disclosure have been recorded, the MPS FoIA practitioner must conduct a 'balance test' on the competing factors stated. Practitioners should refer to the PIT / Balance template found in **Appendix A** to assist this process.

Where MPS FoIA practitioners find there are public interest considerations, which favour non-disclosure of the requested information, the information will be exempt only if those considerations outweigh all PIT considerations favouring disclosure.

The decision must be made based on what are the most persuasive arguments in the public interest. This MPS SOP supports and encourages staff to make properly informed decisions, based on the evidence they have before them. To do this, the decision-makers must have full access to the requested information and to the background and history of everything relevant to the case.

MPS FoIA practitioners must consider each request on its own merits without adopting a blanket approach in respect of particular information. FoIA requests and decisions will therefore be dealt with on a case-by-case basis allowing scope for different case circumstances.

Note: *The final decision on the balance test must not just be based on whether there are more reasons identified to disclose the information, than to release it.*

The balance test must be conducted by comparing the strongest arguments on each side of the debate and deciding which factor is the most powerful and persuasive argument in the public interest.

12. ENGAGING EXEMPTIONS

12.1 CONSIDERATIONS WHEN ENGAGING EXEMPTIONS

If a FoIA Practitioner has identified prejudice and significant reasons to withhold the requested information the Act provides a number of exemptions which may be engaged to protect the requested information. A full list of these exemptions and their designations are provided in the below table.

It is a legislative requirement to include considerations of prejudice in the response letter if the exemption engaged under the Act is a “prejudice-based” exemption.

It is a legislative requirement to include considerations of the public interest test in the response letter if the exemption engaged is classed under the Act as a “qualified” exemption.

If the release of the prejudice / PIT considerations is itself harmful, then consider wording the arguments in such a way that does not present these issues. If in the rare occasion this is not possible, you may need to consider engaging a full NCND response under Section 17(4). Always contact the PAO for guidance on the application of an NCND stance.

12.2 LIST OF EXEMPTIONS

Key

Absolute	The MPS does not need to provide a public interest test in the response letter to the applicant
Qualified	The MPS must provide a public interest test in the response letter to the applicant
Prejudice-based	The MPS must evidence the prejudice/harm they have identified if the information was disclosed
Class-based	The MPS does not need to evidence any prejudice/harm identified they have identified if the information was disclosed

SECTION	EXEMPTION	TYPE	TYPE
Section 21	Information reasonably accessible by other means	Absolute	Class-based
Section 22	Information intended for future publication	Qualified	Class-based
Section 23	Information supplied by, or relating to, bodies dealing with security matters	Absolute	Class-based
Section 24	National security	Qualified	Prejudice-based
Section 26	Defence	Qualified	Prejudice-based
Section 27(1) Section 27(2)	International relations	Qualified	Prejudice-based if using the first subsection Class-based if using the second subsection
Section 28	Relations within the UK	Qualified	Prejudice-based
Section 29	The economy	Qualified	Prejudice-based

Section 30	Investigations and proceedings conducted by the public authority	Qualified	Class-based
Section 31	Law enforcement	Qualified	Prejudice-based
Section 32	Court records	Absolute	Class-based
Section 33	Audit functions	Qualified	Prejudice-based
Section 34	Parliamentary privilege	Absolute	Class-based
Section 35	Formulation of government policy	Qualified	Class-based
Section 36	Prejudice to the effective conduct of public affairs	Qualified	Prejudice-based
Section 37	Communication with Her Majesty etc and honours	Qualified	Class-based
Section 38	Health & safety	Qualified	Prejudice-based
Section 39	Environmental Information	Qualified	Class-based
Section 40	Personal information	Absolute	Class-based
Section 41	Information provided in confidence	Absolute	Class-based
Section 42	Legal professional privilege	Qualified	Class-based
Section 43(1)	Commercial interests	Qualified	Class-based
Section 44	Prohibitions on disclosure	Absolute	Class-based

13. MPS FOIA INTERNAL REVIEWS AND COMPLAINTS PROCEDURE

As per our duty within Section 12 of the Section 45 Codes of Practice (CoP), the MPS has a complaints procedure in place should an applicant wish to complain about the handling of their FoIA or EIR request or if they require an internal review of the original decision provided.

If a complaint or a request for an internal review is received from an applicant, this correspondence must be forwarded to the PAO immediately, after informing the applicant the complaint has been referred to the PAO for review and acknowledgement.

As is legislatively required, the MPS considers the Internal Review stage as an opportunity to consider a case completely afresh. The MPS is able to conduct a fair and balanced review process, as the FoIA Internal Reviews and Complaints Officer (IRC Officer) will be independent

from the original decision provided. However, if the information owners have any objections to the decision taken by the IRC Officer these must be raised with the FoIA Higher Information Access Managers or the Freedom of Information Act Officer directly. The decision made by the PAO is final.

The IRC Officer will send a formal written acknowledgement of receipt of the complaint and will provide the applicant with an indication of when a response may be expected.

The IRC Officer will aim to complete internal reviews within 20 working days from the receipt of the review. In exceptional cases a review may be extended to a total of 40 working days from the date of receipt of the complaint. Should there be any unforeseen delay in meeting this time frame, the applicant will be kept informed and updated as soon as possible.

All correspondence of the internal review must be logged on the MetRIC database system.

The applicant must be fully informed in writing of the outcome of the internal review. If revised exemptions or public interest tests are being engaged, a new Section 17 refusal notice must be issued.

The MPS FoIA practitioner who handles original requests must maintain a record of how the original decision was made and attach this rationale to the MetRIC database system.

The IRC Officer will need to review these thought processes and rationale of the original decision-maker, as it will provide valuable insight into how the case was originally handled and completed.

The internal review stage is not designed to quality assure the original decision provided, although ensuring the original decision complied with the Act is an important component of all internal reviews and complaint cases.

The IRC Officer will inform the applicant of the outcome of the Internal Review.

Should additional or amended exemptions be relied upon or a new Public Interest Test is provided, a new appropriate Section 17 refusal notice must be issued to the applicant.

An internal review can have the following five outcomes:

- The original decision upheld.
- The original decision is now varied.
- The original decision is fully set aside.
- Procedural complaint upheld.
- Procedural complaint not upheld.

In respect of all internal review and complaint decisions made by the IRC Officer, the applicant will be made aware of their additional right to appeal to the ICO.

The internal review decision will be sent to the applicant and recorded using the relevant MetRIC template, which provides full contact details for the ICO.

Where the review varies or sets aside the original decision, a post-review proforma will be completed by the IRC. This proforma will detail changes made at review stage and detail areas needing improvement on FoIA handling. This will ensure future compliance with the Act and the proforma will be sent to the original request handling section and the appropriate line management chain. If the same errors are repeated or if there are no improvements made since the previous review, the post-review proforma will need to be escalated to the Higher Information Access Managers for further assessment.

A full record of each FoIA request, including all aspects of the decision-making process, will be retained for two years from the conclusion of any internal complaint/ appeal process.

14. FOIA APPEALS TO THE ICO PROCEDURE

Under Section 50 of the Act, the applicant has a right to apply to the Information Commissioner for a decision on whether their request for information to the MPS has been dealt with in accordance with the requirements of the Act. This is known as a FoIA Appeal.

The ICO will normally write to the PAO to notify the MPS that they have received an Appeal. The FoIA Higher Information Access Manager (HIAM) handles all Appeals on behalf of the organisation and will acknowledge the receipt of this notice.

All correspondence regarding the Appeal is to be logged on the MetRIC database system.

As part of the Appeal process, the ICO will normally invite the Service to reconsider its original decision. The HIAM will undertake this consideration and review the request and process / decisions taken to-date. He/she will then decide whether the decisions taken previously are correct and upstanding in line with the legislation.

If when considering the Prejudice and PIT arguments already presented, the HIAM decides that the information should in fact be released, the HIAM will contact the information owners to notify them of this decision. If there are no sustainable prejudice / PIT considerations presented by the information owners at this stage the HIAM will negotiate a date for the release of the requested information to the applicant. The HIAM will also notify the ICO of this change of stance.

The decision made by the HIAM is final. However, if the information owners have any objections to the decision taken by the HIAM, these must be raised with the Deputy Freedom of Information Officer or the Freedom of Information Officer directly.

Where a decision was overturned in part or in full by the HIAM at this “reconsideration stage”, a post-Appeal proforma will be completed. This will include a detailed summary of the decision-making process and detail areas requiring improvement on FoIA handling. This will ensure future compliance with the Act and the proforma will be sent to the original request-handling section and the appropriate line management chain. If the same errors are repeated / there are no improvements made since the previous review the Review Summaries will need to be escalated to the Freedom of Information Officer for further assessment.

In incidences where the reconsideration stage does not fully satisfy the ICO, the ICO FoIA caseworker will contact the PAO to:

- Request a full copy of the requested information for their review;
- Request the full PIT and Prejudice rationale used to refuse the information (not just the arguments presented to the applicant);
- Request clarifications on the Service’s application of the legislation;
- Present a number of questions/ observations for the PAO to answer/ provide commentary on; and
- Request any other information believed to be relevant to their considerations.

This information is collated and presented by the HIAM on behalf of the organisation within the timescales stipulated by the ICO. In incidences where it is not possible to meet the timescales stipulated by the ICO, the HIAM will contact the ICO caseworker to negotiate a revised deadline. The HIAM will provide the ICO caseworker with regular updates on the case progress.

All exempt Section 23 or Section 24 information should not be disclosed to the ICO without full consultation with the appropriate bodies who 'own' the information. This consultation should be conducted in conjunction with the ACPO CRU.

Failure to meet the ICO information retrieval requirements listed above could lead to an **Information Notice** being issued, which requires the MPS Commissioner to release the information for scrutiny by ICO staff.

Once the ICO receives the above information they may issue a **Decision Notice**, which will set out the Information Commissioners view as to whether the Act has been complied with. A Decision Notice will detail the next steps the MPS will need to take to comply with the legislation (i.e. release the information) and the timescale with which the Service must meet this compliance requirement. This is a public document and is disclosed via the ICO website.

Additionally, where the ICO believes there is enough evidence to suggest the Service is failing to meet any of the requirements in Part 1 of the legislation, an **Enforcement Notice** can be issued. This will require the Service to improve in its legislative compliance within a set timeframe.

The ICO also have the power to issue **Practice Recommendations**, for example should they find the organisation has failed to conform to the Section 45 Codes of Practice detailed within the FoIA.

Failure to adhere to an Information, Decision and/ or Enforcement Notice will be dealt with as a contempt of court.

A full record of each FoIA request, including all aspects of the decision-making process, will be retained for two years from the conclusion of any Appeal process.

15. FOIA APPEALS TO THE INFORMATION TRIBUNAL

Where the applicant or the MPS are dissatisfied with the decision taken by the ICO both parties have a right to appeal to the Information Tribunal (IT). The Directorate of Legal Services (DLS) in conjunction with the Freedom of Information Officer will handle all cases pursued by the organisation to the Tribunal.

It is estimated the total cost of pursuing a case to the IT can, in certain instances, amount to £40,000. Therefore, any decision to appeal a case will be taken based on the public interest in maintaining the position to withhold the information along with DLS and Counsel's opinion on the likelihood of the Service succeeding with the appeal.

16. MPS PUBLICATION SCHEME

The MPS Publication Scheme exists to proactively publish information held that is considered to be of 'interest to the public', now or in the future.

The Metropolitan Police Service is required under section 19 of the Act to publish information the Information Commissioner deems to be appropriate for proactive and routine release by all police forces across the country on a Publication Scheme. From 1 January 2009 the MPS has applied new standards to best meet the statutory and public objectives for the release of information to the Publication Scheme.

By proactively making an increasing range of information available through the Scheme, we can help the MPS reduce the administrative burden of dealing with general right of access requests under the Act.

The MPS Publication Scheme is principally an internet facility that allows the public to view and download documents. It can best be thought of as a catalogue of information - a list of material that the MPS has chosen to publish or is intending to publish, either free of charge or at cost. Just as a catalogue is divided into different sections, the Publication Scheme is divided into a number of Information Classes:

- Who we are and what we do.

- What we spend and how we spend it.
- What our priorities are and how we are doing.
- How we make decisions.
- Our policies and procedures.
- Lists and registers.
- Services provided.

The above Information Classes refer to the Information Commissioner's Office definition document for the Model Publication Scheme for police forces, details for which can be found on the [ICO website](#).

As a result of the ICO definitions document, ACPO produced a Guide to Police Service Publication Schemes (see **Appendix C**)

The Publication Scheme is accessed from the '[Your right to Information](#)' link on the home page of the [Metropolitan Police website](#).

All documents created by the Service must include the following Metadata table at the very beginning with all boxes completed correctly in line with the MetSec Code:

Freedom of Information Act Publication Scheme	
Protective Marking	[See GEN1 of the METSEC Code]
Publication Scheme Y/N	
Title	
Version	
Summary	
(B)OCU or Unit, Directorate	
Author	
Review Date	
Date Issued	

Please ensure that you fully consider the protective marking and publication scheme boxes above as common mistakes such as applying a protective marking of Protect (and above) to

documents, which are also marked as suitable for publication (any document suitable for publication should not have a protective marking).

The Section 19 Requirements of All OCUs and BOCUs:

All OCUs and BOCUs must forward to the Publication Scheme Team all documents, which are identified by the ICO and ACPO as compulsory proactive disclosures. The full breakdown of the documents required can be found in **Appendix C** of this document.

Failure to provide such documentation will lead to enforcement action taken by the ICO against the MPS Commissioner. It is therefore imperative that all units proactively seek to publish in accordance with this SOP.

16.1 FEES AND CHARGES

It is ACPO policy that a charge should be made only in exceptional circumstances and only where the charge can be fully justified.

The expectation of the ICO and MPS is that information will be provided free of charge. A charge can be made in exceptional circumstances and this should be made clear in the Guide to Published Information. Charges can be made for disbursements, (E.g. photocopying, postage), or where the authority is legally authorised to charge.

Information published on the MPS website will not attract a fee (including disbursements) if it is requested in hard copy format.

Information that is 'made available' can attract a fee for disbursements where the document is large or where the person requests that it is made available in a particular format, e.g. copied to disk or CD.

16.2 PUBLICATION SCHEME COMPLAINTS PROCEDURE

There is information on the MPS website to include details of how to make a complaint about how the MPS is operating its publication scheme. In the first instance, such complaints should be directed to the Publication Scheme Coordinator whose responsibility it will be to establish whether the complaint is upheld and provide a written

response to the complainant within 20 working days. The written response will include details of how to complain to the ICO if the complainant is not satisfied.

17. RESPONSIBILITIES

- The Information Board own this SOP.
- All MPS personnel are responsible for implementing the SOP.
- The Public Access Office is responsible for monitoring and reviewing the SOP.

18. ASSOCIATED DOCUMENTS AND POLICIES

- **Information Management Policy:**

http://www.met.police.uk/foi/pdfs/policies/information_management_policy.pdf

- **ACPO Manual of Guidance (Version 6):**

http://www.met.police.uk/foi/pdfs/other_information/corporate/acpo_foi_guidance.pdf

- **ACPO FOI Request received process:**

http://www.met.police.uk/foi/pdfs/other_information/corporate/acpo_foi_guidance_request_received_process.pdf

- **ICO EIR Overview:**

http://www.ico.gov.uk/what_we_cover/environmental_information_regulation.aspx

- **DEFRA EIR Quick Reference Guide:**

<http://www.defra.gov.uk/corporate/policy/opengov/eir/pdf/publicity/leaflet-publicauthorities.pdf>

Appendix A

Public Interest / Balance Test Table

NB: These headers are for guidance only and it is for the local unit to clearly identify PIT considerations appropriate to the request in hand.

This form can be used by FoIA practitioners to assist with building a rationale on the disclosure or non-disclosure of information.

Key: L = Low M = Medium H = High

Considerations to Withhold		Risk Rating			Considerations to Disclose		Risk Rating		
Consideration Headings	Case By Case Arguments	L	M	H	Consideration Headings	Case By Case Arguments	L	M	H
Efficient And Effective Conduct Of The Service/A Force					Accountability				
Existing Procedures					Human Rights, Morals And Ethics				
Flow Of Information To The Service Or A Force					Improper Actions Of Public Officials				
Human Rights, Morals And Ethics					Public Awareness And Debate				
Interests Of Third Parties					Public Participation				
Investigations					Public Safety				
Public Safety					Research				
Timing Of Request					Use Of Public Funds/Resources				
Tortuous Duty					Other				
Other					Other				

Appendix B

ACPO FoIA Refusal letter Quality Assurance Checklist

ITEM	REASON FOR CHECK	YES, NO OR N/A	COMMENTS
Date request was sent	<i>Confirms 20 day calculation</i>		
Date request was received	<i>As above</i>		
Request repeated in full	<i>Ensures full response</i>		
Result of search of information	<i>Compliance with s1(1)(a)</i>		
Has s17 been quoted?	<i>Corporate and legal requirement</i>		
If s12 excess cost has been used, has an offer been made for what can be assessed?	<i>Legal requirement</i>		
Are the relevant exemptions listed by number, subsection and title?	<i>Legal requirement and assists applicants understanding (plain English)</i>		
Are the exemptions explained?	<i>Understanding and plain English</i>		
If prejudice based exemptions is the Prejudice correctly explained?	<i>Legal requirement and plain English</i>		
Does the Prejudice justify the exemptions?	<i>Legal requirement</i>		
Ensure Prejudice contains no exempt information	<i>Professional and corporate requirement</i>		
If qualified based exemptions is there a PIT?	<i>Legal requirement</i>		
Is the PIT valid, balanced, case specific and as per ACPO MOG?	<i>Legal and professional corporate requirement</i>		
Does the balance test take into account both sides of the argument?	<i>Legal and professional corporate requirement</i>		
Have all the questions in the request been answered?	<i>Legal requirement</i>		
Has 'who is the applicant?' been reviewed to see if they have a unique s21 opportunity?	<i>Legal and corporate requirement</i>		
Has letter been proofread?	<i>Professional corporate requirement</i>		
Is the appeal information included?	<i>Legal requirement</i>		

APPENDIX C

ACPO Guide to police service Publication Scheme

For Introduction: 1st January 2009

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
	Forces are required to publish the following information only if it is held. Information or parts thereof listed below may be withheld from publication if exemptions apply. Terminology is as generic as possible but there may be local variations The information published on 1 Jan 09 will be that which is in existence on that date. E.g. if your Business Interest Register was last updated on 1 July 08 that is the version to publish. If you are creating information in order to publish it, it should be up to date as of 1 Jan 09.		
Who We Are and What We Do			
<i>Force structure</i>	- Map of the force area with the ability to identify the geographical area covered by each Safer Neighbourhood Team. - Organisational Chart showing Chief Officers areas responsibility and the generic Department titles, e.g. Finance, ICT, Scientific/Forensic Services Suitable	Updated when changes occur As above	Care should be taken so that detail of sensitive units is not provided.

	examples include: http://www.merseyside.police.uk/html/aboutus/departments/index.htm http://www.dyfed-powys.police.uk/en/aboutus/structure/ http://www.met.police.uk/about/charts/MPSOrgChartMay2008.pdf • Officer and police staff establishment at force level.	Updated quarterly	
<i>Profiles of chief and senior officers</i>	• Photograph and brief career outline. All senior officers down to head of BCU/OCU/Borough/Dept as per Force Structure above.	Updated within 3 months of changes occurring	Should be links within force structure to this information if possible.
<i>Identity of senior civilian staff</i>	• Photograph and brief career outline for heads of departments as listed in the force structure.	Updated when changes occur	
<i>Location of police stations (including mobile units) and public opening hours</i>	• Addresses and opening hours. • Mobile police stations – dates, times, location.	Updated when changes occur Update when changed.	Should be links to and from map of force area if possible.
<i>Contact details</i>	• Emergency and non-emergency telephone numbers. • Text number for general enquiries. • Email address for general enquiries. • Postal Address for general enquiries. • Contact details for local SNT. • How to report a crime. • How to make a complaint. • Firearms Licensing. • Freedom of Information requests. • Subject Access requests.	All updated when changes occur	
<i>Relationships with other authorities</i>	• List the authorities/agencies, the force's relationship and where possible provide a link to a relevant web-site. Examples are: • Crime & Disorder Reduction Partnerships	Updated when changes occur	

	- Local Criminal Justice Board - Local Safeguarding Children Board - MAPPa - Casualty Reduction Partnership - Collaborative arrangements - Information sharing arrangements (subject to redaction to protect tactical/operational information where necessary). NB. Forces will be creating a Central Repository of ISAs as part of MoPI compliance for 2010. - Police Authority		
<i>Arrangements for special constables and civilian volunteers</i>	Link to force's information/recruitment pages.	Updated when changes occur	
<i>Sponsorship arrangements with business</i>	- Link to force policy on sponsorship arrangements (policies and procedures). - List any private company who provides sponsorship, what that sponsorship entails, and its monetary value (See ACPO Income generation Guide).	Updated when changes occur	

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>What We Spend and How We Spend It</i>	All of the below may be subject to exemption/redaction to protect commercial and law enforcement interests where appropriate (purchase of covert equipment).		
<i>Annual Statement of Accounts</i>	- Normally available on the Police Authority web-site. - If not, force to publish.	Audited accounts for last 3 financial years	
<i>Force budget (as agreed by Police Authority or</i>	- Link to Police Authority web-site. - If not on Authority website, force to publish.	Budget for current and previous 2 financial years	

<i>Board)</i>			
<i>Procurement procedures</i>	- Force policy and procedure on procurement (link to policies and procedures). - Link to sites where your force advertises contracts for tender.	Updated when changes to procedures occur	
<i>Details of contracts currently being tendered</i>	Link to sites where your force advertises contracts for tender or framework solutions exist e.g. Catalist (OGCbuyingsolutions.gov).	Current information provided	
<i>List and value of contracts</i>	Contracts that have been through the formal tendering process, to include: - The service provided. - The name of the supplier. - The value of the contract	Updated when changes occur	Locally consider S31, S41 and S43 issues although provision should be the norm.
<i>Expenses paid to chief officers</i>	Per Chief Officer, ACPO rank officers and police staff equivalent: - Relating to personal use on corporate business. (Includes for example, travel to a conference, hotel room whilst attending a conference, parking costs for attending a meeting. Excludes the cost of a corporate event organised on behalf of the Chief Constable). - Total amount spent. (Spent will include amount claimed and amount spent using a corporate credit card. You must indicate whether the published amounts include VAT). Breakdown into travel, accommodation, food & drink	Published quarterly – last four quarters to remain.	Not to be broken down into individual claims. Consider S31/38 if detail places at risk. But unlikely as now no requirement for details of each event.
<i>Evaluation of police use of resources.</i>	- Any reports additional to the Annual Statement of Accounts, evaluating how the force spends it budget. - Provide link to HMIC website.	Reports covering the last 3 financial years	
<i>Support for the provision of Police Community Support Officers</i>	Your annual budget and source for the funding of PCSOs Home Office ring-fenced funding, local authority schemes where another agency, public body or private company have provided funding for the provision of PSCO's.	Current and previous 2 financial years	
<i>Financial regulations</i>	List of regulations police forces are subject to. (Confer with Finance Depts.)		

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>What Our Priorities Are and How We Are Doing</i>	All of the below may be subject to exemption/redaction to protect operation and covert activities.		
<i>Strategic Plan</i>	Force Strategic Plan.	For current and previous 2 financial years	
<i>Annual Policing Plan</i>	Annual Policing Plan/Force Control Strategy	For current and previous 2 financial years	
<i>Area Policing Plans</i>	Policing plans/Control Strategies to OCU/BCU/Borough level.	For current and previous 2 financial years	
<i>Chief officer's Annual Report</i>	Chief Officer's Annual Report (may be published by Police Authority in which case, a link should be provided).	For current and previous 2 financial years	
<i>Police performance assessments</i>	- Assessment of performance against the policing plan and performance indicators for current and 2 previous financial years. - HMIC Reports	- For current year, quarterly reports as soon as possible after completion - For previous financial years, the end-year assessment	Link to force reports on HMIC website is recommended.

<i>Police force statistics</i>	• Publish in accordance with the Home Office Crime Mapping Project. • Link to the Home Office police service strength report. • Link to Home Office annual crime figures & British Crime Survey. • Any other statistical information produced by the force that is suitable for public release. • Provide links to statistical information published by the Police Authority as part of Committee papers and minutes.	• Link to most recent report and reports for previous two financial years • As above • As above Updated as per Police Authority procedures	More information linked to the crime mapping project will be made available as it is produced. The Code of Practice for Public Access to Local Crime Information being imminent.
<i>Neighbourhood policing arrangements</i>	• Links to Safer Neighbourhood Policing Teams areas of force website.	• Updated as changes occur	
<i>Reports from independent custody visitors</i>	• Link to information published on their Police Authority website. If not currently published, forces should arrange for this with their Police Authority. • Provide link.	• Reports for most recent financial year and previous two financial years	
<i>Monitoring record of 'Stop and Account' and Stop and Search'</i>	• May be published by the Police Authority, in the force Annual Report. • Statistical breakdown by OCU, to include number of stops under PACE and ethnicity monitoring. • Should NOT include use of S.44 Terrorism Act powers, unless in the Metropolitan Police area.	• Minimum annually	

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>How We Make Decisions</i>			

<i>Agenda and minutes for the senior decision making committee</i>	- ACPO executive meetings and senior management team meetings of those departments listed in the organisational chart. - Only open sessions of meetings minuted (or Action Sheets) in accordance with the FOI Minute Taker's Guidance or own force's minute taking procedures. - Only information relating to strategic or policy decisions to be included.	- Minutes are published once agreed at the next subsequent meeting - Minutes from the current and previous two financial years	An update to the 2003 Minute Takers Guidance will be issued shortly.
<i>Feedback from public consultation and surveys</i>	- For example, public opinion surveys, customer satisfaction surveys and any other public feedback reports. - Published results should not include personal data.	Published as reports become available	

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>Policies and Procedures</i>	<u>All</u> policies should be suitable for publication on the force website. However, a case-by-case review of procedures must be undertaken to protect law enforcement and health and safety considerations		
<i>For the conduct of police force business</i> <i>For the provision of policing services</i> <i>About recruitment and employment</i>	- Policies are why we do things and procedures are how we do them. - Policies WILL be published. - Procedures will be published where to do so will not compromise that area of business. - Forces that produce combined policy and procedure documents will need to assess each one and redact any sensitive procedural information as above - Current Vacancies in the organisation.	Updated as changes occur	Locally assess and remove information where sections 23/24/30/31/38/44 would normally be engaged. Subsequent requests for the missing information will then be assessed on a case by case basis.

<i>of staff</i>			
<i>Records management and personal data policies</i>	• Policies in accordance with requirements under the Code of Practice for the Management of Police Information. • Copy of Code of Practice.	• Updated as changes occur	
<i>Customer service standards and complaint procedure</i>	• How to make a complaint. • Link to the IPCC. • Handling requests for information. • Charter Mark procedures. • Response times. • Cost recovery policy. • Other Local Initiatives	• Updated as changes occur	
<i>Charging regime and policies</i>	• Any service for which the public are charged, including the rates and how they are calculated, e.g. road traffic collision reports, subject access requests, police officer interviews/statements, and any local charging regimes.	• Updated as changes occur	

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>Lists and Registers</i>			
<i>Information held in registers by statute</i>	• Currently there are no registers that the police service is required to publish by statute.		
<i>Asset registers and information asset register</i>	• Where forces already hold an Asset Register, after careful consideration of sensitive operational issues, this should be published. There is no requirement to create new information if not already held. • Your Police Authority may hold information subject to the	• Updated at least annually • Updated at least annually	Locally assess and remove information where sections 23/24/30/31/38/44 would normally be

	Re-Use of Public Sector Information Regulations, and you could provide a link to that information. Producing an Information Asset Register is a requirement under the Code of Practice for the Management of Police Information and the Community Security Policy. After careful consideration of sensitive operational issues, this should be published.		engaged. Subsequent requests for the missing information will then be assessed on a case by case basis.
<i>Register of interests</i>	The Force Register of Business Interests, to include the type of business and the number of staff registering this type of interest, but not to a level that would identify individuals. Do not include business names, locations, or staff names and use generic groupings/headings, e.g. children's entertainer, consultancy.	Updated at least annually	Subsequent requests for more detail will need to be assessed on a case-by-case basis.
<i>Register of gifts and hospitality provided to senior personnel</i>	'Senior personnel' is defined as those whose profiles are included in the chief, senior officer and police staff section.	Updated at least annually	
<i>FOI disclosure log</i>	- It is an ICO and ACPO best practice recommendation that all forces should operate and publish an FOI disclosure log. The level of detail held in the log will be a matter for each force. - Forces are encouraged to work towards the publication of a Disclosure Log by Jan 2012 - ACPO will be issuing guidance on the management of a FOI disclosure Log.	Updated at least quarterly	

LAWFUL REQUIREMENT ICO POLICE SECTOR DEFINITIONS DOCUMENT	ACPO MINIMUM STANDARDS TO ENSURE COMPLIANCE	SCHEDULE	GUIDANCE NOTES
<i>Services Provided by the</i>			

Police Force			
<i>Advice and guidance for the general public</i> <i>Firearms and explosives licensing, firearms dealers licensing, abnormal loads escort, keyholder services</i> <i>Police college or learning centre</i> <i>Ceremonial duties</i> <i>Museum</i> <i>Local campaigns</i> <i>Media releases</i> <i>Details of the services for which the police force is entitled to recover a fee together with those fees.</i>	Forces will be expected to provide information or links to information relating to local initiatives and service provision, for example: • Links to local campaigns, e.g. drink driving, road safety, crime prevention, weapons amnesties. • Link to processes for obtaining licences or services provided to the public. • Provision of any training services to the public. • Policing of events and the fees charged – link to ACPO policy and any local arrangements. Forces would be expected to publish details of events for which they have provided policing resources in excess of 300 officers, excluding VIP and Royalty protection, royal visits and security at sensitive locations such as military establishments. Would include community events such as football matches, fairs & fetes, processions. • A link should be provided to all press releases.	• Updated as changes occur • Remove once campaign has ended	Reminder of the need to refer any requests for more detail of VIP/Royalty protection regardless of previous disclosures.

APPENDIX D
MPS Verbal Request Form for EIR Enquiries

Name of applicant	
If the applicant is requesting info on behalf of a third party, third party's name	
Address for the information to be sent to	
E-mail	
Phone	
Date of request	
Request taken by	
Information requested	
Preference of form/ format of the information	

APPENDIX E

ACPO CRU Criteria v4

Central Referral Unit Referral Criteria V4

- **All** requests as specified below should be sent to the CRU.
- A **fully** completed referral form must accompany your request.
- The criteria is broken down by 'risk', which indicates the severity of harm that the public and/or the police service could suffer at a national level if the request is not subjected to appropriate consideration. 'Low Risk' is an indicator that detriment **may** still occur, but only at a local level.
- Accordingly, any individual and/or force deciding not to comply with the criteria may have to account for any adverse effect caused without the support of national business leads and/or senior partner agencies.

Risk	Subjects
High	Firearms (police or criminal), CBRN and explosives.* National Systems (e.g. ANPR, PNC, PND etc.)* Information originating from ACPO/S (i.e. Manuals of Guidance)* RSO or MAPPA.* Ongoing High profile/National investigations or Operations. (i.e. Op Ore, 2012 Olympics)* ----- Witness Protection. ** Information originating from or relating to the Security Services/SOCA/ SCDEA.** VIP/Royalty Protection. ** CHIS/Informants. ** Terrorism or domestic extremism. ** Surveillance/RIPA**
Medium	Information sent to or from a national body (i.e. Home Office).* Completed High Profile/National investigations or Operations. (i.e. Pentameter 1, G8)*
Low	Unpublished statistics, resource or finance information which is not subject to Home Office/Scottish Exec returns. Any request being made Vexatious (indicate whether advice is needed or if submission is for recording purposes only)
*	Unless already published or disclosed within last 12 months.
**	Must always be referred regardless of previous disclosures or advice

In addition to the above the following should also be referred:

- Requests for an internal review of a previously CRU referred request.
- An appeal with the ICO or Tribunal case, regardless of whether it has been referred before.

Forces may also refer any other request which they require assistance in responding to or are have concerns about.

Provided they specify exactly what service is required from the CRU.

Once referred, if no advice has been received, please do not send a response to the applicant without discussing the matter with the CRU caseworker.

APPENDIX F

ACPO CRU Template V2

- When submitting a request to the Central Referral Unit all fields on this form must be completed as fully as possible.
- If answers are not yet known please indicate when information will be provided.
- There is no requirement to complete this form if responding to a CRU circulated request.

1. Your Force Reference:	
2. Date Request Received:	
3. Is this an initial submission/Internal Review/ICO Appeal/Tribunal.	
4. Details of the applicant: • Name • Company/Organisation • Address • E-Mail • Phone	
5. Actual wording of Request (<i>do not attach a PDF, word or e-mail only</i>)	
6. Referral Subject Area:	
7. Person Dealing with Request:	
8. Initial thoughts on disclosure or any other information about the case which may assist.	
9. What service is required from the CRU?	