

Freedom of Information Procedure Manual

Including: Environmental Information Regulations

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1. Introduction

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

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

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

The manual is not a guide to FOI legislation but such guidance can be found on the Invest NI intranet site. Periodic training will also be provided to all staff on this topic, including at induction. Guidance on specific requests can be sought from the Information Management & Governance Team [IMG] via the mailbox foi@investni.com.

2. FOI Policy Statement

Invest Northern Ireland will –

- Comply with the Freedom of Information Act 2000 and the EIRs.
- Continue to protect the personal data entrusted to it, by disclosing information only in accordance with the provisions of the Data Protection Act 1998.
- Seek to respond to all FOI requests promptly and within 20 working days.
- Work with its partners, service providers and contractors to ensure that they assist Invest NI in meeting its FOI obligations, including the disclosure of any information that they hold on Invest NI's behalf.
- Apply the exemptions provided in the FOIA and, where qualified exemptions apply, disclose the information unless the balance of public interest lies in withholding it.
- Consult with third parties before disclosing information that could affect their rights and interests bearing in mind that in accordance with the Act, the final decision on disclosure rests with Invest NI.
- Record all FOI requests and responses and monitor its performance in handling requests and complaints.
- Maintain a comprehensive publication scheme that provides information which is readily accessible without the need for a formal FOI request.
- Ensure that all staff are aware of their obligations under FOI and include FOI training in the induction of all new staff.

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3. Recognising a FOI or EIR request

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

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

EIR requests

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

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

Business as Usual

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

4. Processing a Request

The Information Management & Governance Team [IMG]

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

Tracking System

IMG tracks all Access to Information requests using the FOI monitoring log. In addition a series of template letters have been developed to be used for the purposes of handling requests under FOI and EIRs.

Template Letters

The use of the template letters is essential to promote corporate consistency and ensure that all aspects of a request are fully addressed. Templates are available on the FOI section of the intranet.

Timescale

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

Logging & Allocating the Request

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

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process.

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

Step 1: Acknowledgement

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

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

Step 2: Accessible by other means

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

Timescale: Between day 1 and day 4 of receipt

Step 3: Clarify nature of request if necessary

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

Timescale: Between day 1 and day 4 of receipt

Step 4: Fee Regulations (FOI only)

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

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

Once any redefined request, falling within the scope of the fees regulations, has been received then proceed to the next step. If no clarification has been received within 3 months close the request by notifying IMG so that the FOI monitoring log can be updated.

Timescale: Within 4 working days of receipt.

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Step 5: Retrieve records and Prepare Release Schedule

The Decision Maker must, **as soon as possible**, arrange for the search and retrieval of the relevant records. This search should cover **all** information storage areas (Meridio, paper files, PC and Network drives) across the organisation. This may involve contacting other teams/divisions to establish if they have records pertinent to the request.

If the records gathered to respond to the request are numerous, a schedule of information items (containing an index and a brief description of the records covered by the request) must be prepared [Use Template on intranet]. Its purpose is to assist Decision Makers to discharge their duties by:

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

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

Timescale: Between day 1 and day 10 of receipt.

Step 6: Review Release Schedule considering possible exemptions/exceptions

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

The Decision Maker will carry out this evaluation seeking guidance from the Information Governance Manager / Information Governance Management Officer.

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

If no Exemptions apply the record is considered disclosable.

If one or more Exemptions apply the Decision Maker should establish whether the exemption is subject to a public interest test. If the Exemption is absolute, or withholding disclosure of the information on the basis of a particular Exemption is supported by the public interest test, then the item will be withheld. The Decision Maker will review which Exemption is being invoked and, if appropriate, consult with IMG on whether the duty to confirm or deny that the information is held by Invest NI applies.

Timescale: Between day 1 and day 10 of receipt.

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Step 7: Consult any third parties

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

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

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

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

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

The response should also include the schedule of records for release. If requests are made for information where the duty to confirm or deny is applicable, there is no need to refer to these records in the schedule.

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

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

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

Timescale: At the very latest within 15 working days

Step 9: Consideration by IMG, Communications & ELT

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

This consideration is an assurance that all requirements of the response are made in line with the legislation, including application of exemptions, and to review the response from a corporate communications perspective. The final draft response

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may also be sent to ELT for consideration depending on the nature of the FOI request.

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

Step 10: Response is issued

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

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

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

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

5. Fees Regulations

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

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

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

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

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

Cumulative or Campaign Requests:

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

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

- two or more requests relating to same or similar information and

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- these must have been received within any 60 consecutive working day period

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

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

6. Exemptions / Exceptions & the Public Interest Test

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

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

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

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

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

7. Datasets

From the 1 September 2013, the Protection of Freedoms Act 2012 adds new provisions to the FOIA regarding datasets. A dataset is defined as a collection of factual information in electronic form related to the services and functions of Invest NI that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered.

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

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

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Further guidance on Datasets can be found on the intranet and specific guidance can be sought from IMG via foi@investni.com.

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

8. Internal Review Process

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

Within Invest NI there is a designated Internal Review Panel consisting of members of SMT. The senior manager responsible for the review panel is Steve Chambers, Head of Internal Operations.

Step 1: Log, Acknowledge & Allocate

The IMG will:

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

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

Step 2: The Review

The review is a fresh decision making process and the reviewer must start from scratch in terms of the evaluation of the evidence and the application of the Act. The reviewer can consider new arguments put forward by the applicant.

The reviewer will review the request and the original decision alongside the information gathered in response to the request. They will come to a decision as to whether the information should be disclosed.

When it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the applicant will be informed and the reason for the delay explained.

It is recommended that the reviewer discuss details of the case under review with the Information Governance Manager and/or the original Decision Maker. The result of the review process will be recorded on the tracking system by the Information Management & Governance Team.

*Timescale: The target for completion of Internal Reviews is **15 working days**. No review should take longer than 20 working days.*

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9. Publication Scheme

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

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

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

Version Control

Version	Author / Reviewer	Approver	Review Date	Reason for change
1.0	Amanda Latimer	Liam Hagan	Dec 2004	Publication
2.0	Danny Smyth	Charles Hamilton	June 2009	Update
3.0	Danny Smyth	Charles Hamilton	Oct 2010	Update
4.0	Danny Smyth	Nigel McClelland	Dec 2013	Revision [title & content]
5.0	Danny Smyth	Nigel McClelland	Apr 2016	Update

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