

Police Service of Northern Ireland

ABSTRACT – This Policy Directive applies to all Police Officers and Police Staff and sets out the commitment of the Police Service of Northern Ireland (PSNI) to full implementation of and compliance with the Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations (EIR) 2004

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POLICY DIRECTIVE

FREEDOM OF INFORMATION POLICY

1. POLICY IDENTIFICATION

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POLICY OWNERSHIP:

DEPARTMENT Operational Support
BRANCH Corporate Development

POLICY APPROVED BY:

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2. POLICY STATEMENTS

- (1) Police Service of Northern Ireland (PSNI) will comply with the Freedom of Information Act 2000 (FOI Act), the Environmental Information Regulations 2004 (EIR), Association of Chief Police Officers (ACPO) Manual of Guidance on Freedom of Information and the Codes of Practice issued by the Ministry of Justice. It will also take into account guidance as issued by the Ministry of Justice, Information Commissioner's Office (ICO), National Archives and Public Records Office Northern Ireland (PRONI).
- (2) Where a request pertains to personal data about a living individual and the requester is the data subject, the request will be dealt with in accordance with the PSNI Data Protection Act Subject Access Policy. This Policy therefore links to the Records Management Policy, PD 06/04 and PSNI Data Protection Policy, PD 06/08.
- (3) PSNI will endeavour to ensure that robust information and records management infrastructure is established which is regularly audited and adheres to best practice approaches.
- (4) PSNI will endeavour to ensure that all staff are aware of their obligations under the FOI Act and EIR.
- (5) PSNI will monitor the effectiveness of its compliance with the FOI Act, the EIR and its performance and implementation of this Policy Directive.

3. INTRODUCTION

(1) Summary

- (a) This Policy Directive sets out the commitment of the PSNI to full implementation of and compliance with the FOI Act 2000 and the EIR 2004; and to conformity with the Codes of Practice issued under Sections 45 and 46 of the FOI Act and Regulation 16 of the EIR.
- (b) It reinforces the commitment of the PSNI to take into account the practical guidance on the interpretation and implementation of their statutory obligations issued from time to time by the Ministry of Justice, the Information Commissioner, National Archives, Public Record Office Northern Ireland and ACPO.
- (c) The FOI Act (and EIR) give the right of access to information held by PSNI subject to exemptions and exceptions. The right of access came into effect from 1 January 2005 and is fully retrospective.
- (d) The underlying principle of the legislation is that all information held by a public authority should be freely available except where an applicable exemption (or exception) or other relevant legislation applies. The Act contains 2 basic rights:
 - (i) To be informed in writing by a public authority whether it holds the information requested (unless to do so would itself release exempt information);
 - (ii) To have that information communicated to the person making the request (unless an exemption applies).
- (e) The FOI Act or the EIR will apply to all information held by PSNI.

(2) **Legal Basis**

The legal basis for this Policy is the FOI Act 2000 which makes provision for the disclosure of information held by public authorities or by persons providing services for them and to amend the Data Protection Act 1998 (DPA), the Public Records Act 1958 and the Public Records Act (NI) 1923.

4. IMPLICATIONS OF THE POLICY

(1) **Transparency**

The FOI Policy Directive supports the principle that transparency should be the norm in public life. PSNI endeavours to create a climate of openness and improved access to information about policing which will facilitate the development of such an environment.

(2) **Privacy**

Individuals have a right to privacy and confidentiality. The FOI Act does not alter the legislative provisions in the Human Rights Act, or the provisions of the PSNI Code of Ethics, the Civil Service Code or statutory provisions that prevent disclosure of personal data. The release of such information is still covered by the subject access provisions of the DPA 1998 (where the requester is the data subject), disclosure obligations/safeguards under the Criminal Procedure and Investigations Act (CPIA) 1996 and is dealt with in other PSNI Policy documents.

(3) **Information Sharing**

A substantial amount of PSNI information is held by other public authorities. Any such information that is held on behalf of the PSNI is subject to the provisions of the FOI Act and PSNI therefore has a duty to respond. If PSNI does not hold requested information but is aware that it is held by another public authority, PSNI should consider the transfer advice contained in Part III at Section 45 code of practice. The Head of FOI will, where necessary develop information sharing protocols with relevant Public Authorities utilising the template attached at Appendix 'D'.

(4) **Exemptions/Exceptions**

PSNI is required to discharge its functions effectively. This means that where appropriate PSNI will consider the absolute and qualified exemptions contained in the FOI Act 2000 or the exceptions (all of which qualified) in the EIR 2004.

(5) **Training**

PSNI believes that staff should have access to expert knowledge to assist and support them in understanding the implications of the FOI Act and the EIR. The FOI Policy Directive sets out a framework to provide this knowledge. The Head of FOI will liaise as required with internal/external sources of training to ensure that appropriate levels of training are delivered to staff who require it.

(6) **Publication Scheme**

PSNI has adopted a model Publication Scheme developed by ACPO and approved by the Information Commissioner. This is permissible under Section 20 of the FOI Act and ensures compliance with Section 19 of the legislation. A full outline of the Scheme is included at Section 7, paragraph 3.

(7) Consultation

This Policy has been distributed for consultation with:

- (a) Chief Constable/Deputy Chief Constable (DCC);
- (b) Assistant Chief Constables (ACCs)/Heads of Departments;
- (c) Legal Adviser;
- (d) Head of Professional Standards Department (PSD);
- (e) Corporate Diversity Manager;
- (f) Human Rights Adviser;
- (g) Chief Police Officers Staff Association (CPOSA)/Superintendents' Association for Northern Ireland (SANI)/Police Federation for Northern Ireland (PFNI)/Northern Ireland Public Service Alliance (NIPSA);
- (h) District Commanders;
- (i) Head of Training; and
- (j) Information Commissioner (2008).

5. HUMAN RIGHTS/UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)/EQUALITY/CODE OF ETHICS/FREEDOM OF INFORMATION

- (1) The FOI Policy is deemed to be Human Rights compliant and has no United Nations Convention on the Rights of the Child (UNCRC) issues.
- (2) The FOI Policy complies with the PSNI Code of Ethics and has been screened for Section 75 of the Northern Ireland Act 1998 considerations. The PSNI was designated under Section 75 of the Northern Ireland Act on 4 November 2001. This means the PSNI is obliged to specify how the services it provides are open to everyone. An Equality Scheme, as required by the legislation, has been prepared which includes an annex listing PSNI key policies. PSNI is required to consult with those affected by the policies, to assess their equality impact and publish the outcomes. PSNI will also make those policies and the impact assessments available on request as recommended in the Equality Commission Guidelines.

Information should be available on request in accessible formats such as Braille, disc, audiocassette and in minority languages.

- (3) This FOI Policy and supporting procedures/guidance are suitable for publication under the FOI Act 2000. They will be made available on the PSNI internet website.

6. REVIEW

This Policy will be reviewed every 2 years by the ACC Operational Support Department (OSD).

SECTION 7

PROCEDURES AND GUIDANCE

1. Introduction

- (1) It is crucial that there is a consistency of approach in decisions around the release of information under the FOI Act or the EIR and also in the application of FOI exemptions and EIR exceptions.
- (2) ACPO has produced a Manual of Guidance regarding the FOI Act. The ACPO procedures and guidance should be used as a reference document in conjunction with the PSNI procedures and guidance. This documentation will ensure that practitioners have access to a comprehensive resource in FOI decision-making.
- (3) Where a request for information appears to be of national significance, reference will be made to the National ACPO Central Referrals Unit. This will allow strategic monitoring of requests and will ensure that requests for information that have national implications for police services or require a nation-wide response are identified, recorded and managed. Not only will this approach assist in the identification of possible mosaic attacks, it will seek to protect sensitive and vulnerable material from inappropriate release where an exemption or other relevant legislation applies.

2. General Right of Access

- (1) Section 1 of the FOI Act gives a general right of access from 1 January 2005 to recorded information held by PSNI, subject to certain conditions and exemptions contained in the FOI Act. Any applicant making a request for information to the PSNI is entitled:
 - (a) to be informed in writing whether the PSNI holds the information of the description specified in the request (referred to as the 'duty to confirm or deny'); and
 - (b) if the PSNI holds the information to have that information communicated to them.
- (2) These provisions are fully retrospective and apply to all recorded information (subject to the certain conditions and exemptions), including that held prior to the commencement of the FOI Act or the EIR. PSNI will ensure that operational procedures and systems are in place to facilitate access by the public to recorded information from this date.
- (3) In accordance with Section 8 of the FOI Act, a request for information under the general rights of access must:
 - (a) be in writing;
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) describe the information requested.
- (4) For the purposes of general rights of access, a request is to be treated as made in writing if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

3. PSNI Publication Scheme

(1) Publication Scheme (Background)

- (a) The Publication Scheme is a key requirement under the FOI Act 2000. Section 19 of the FOI Act places a duty on all public authorities to adopt, implement, operate and maintain a publication scheme. (This **may** also include Environmental Information as required under the Environmental Information Regulations 2004 – EIR, 2004).
- (b) A publication scheme sets out the kinds of information that a public authority should make routinely available. The information should be easy for the authority and any individual to find and use.
- (c) To reduce duplication and bureaucracy and to ensure consistency in the release of information, the ICO has developed a model publication scheme that any public authority can use. Public authorities **must** adopt a publication scheme approved by the Information Commissioner. The PSNI follows the ACPO Model Publication Scheme definition document, approved by the Information Commissioner.
- (d) In operating the PSNI Publication Scheme, we have produced a 'definition document' which provides a guide to information, giving details of:
 - (i) the information we will routinely make available;
 - (ii) how the information can be accessed; and
 - (iii) whether or not a charge will be made for it.

(2) Model Publication Scheme

- (a) The PSNI updated its publication scheme on 1 January 2009 in compliance with the new publication scheme model produced by the ICO for police services in the United Kingdom.
- (b) The model scheme classifies information at a high level and broadly states the way authorities can provide information and what they can charge for.
- (c) The model specifies 7 classes of information. Most information that a public authority holds falls into the 7 classes. However, this does not mean that we must routinely release all the information covered by the broad definitions in the definition document for that sector.
- (d) The scheme sets out the circumstances under which an authority would not be required to make information routinely available. These are when:
 - (i) the information is not held;
 - (ii) the information is exempt from disclosure, for instance personal data or commercial interest; or
 - (iii) the authority cannot easily access the information;
 - (iv) it would be impractical or resource-intensive to prepare the material for routine release.
- (e) Routinely published information will be available as part of our normal business. The information will be easy to access through our website or, for those without internet access, be easily and quickly sent out by a member of our staff.

(3) Classes of Information

The Classes of Information included in the PSNI publication scheme are as follows:

- (a) **Who we are and what we do** – Information on organisational structures, locations and contacts. This will include our service structure, profiles of key personnel, locations of police stations and opening hours/contact telephone numbers, relationships with other authorities and sponsorship arrangements with local businesses;
- (b) **What we spend and how we spend it** – Financial information relating to projected and actual income and expenditure, procurement, contracts and financial audit. This will include our service budget, annual statement of accounts, procurement procedures and details of contracts currently being tendered/awarded, chief officers' expenditure, evaluation of police resources and financial regulations;
- (c) **What our priorities are and how are we doing** – Strategies and plans, performance indicators, audits, inspection and reviews. This will include service policing plans, area policing plans, Chief Constable's annual report, police performance assessments, statistics, neighbourhood policing arrangements, independent custody visitor reports and stop search statistics;
- (d) **How we make decisions** – Decision-making processes and records of decisions – This will include the agenda and minutes of the Chief Constable's forum and feedback from public consultation and surveys;
- (e) **Our policies and procedures** – Current written protocols, policies and procedures for delivering our services and responsibilities. This will include policies and procedures for the conduct of police service business, the provision of policing services, the recruitment and employment of staff, records management and personal data, customer service standards, complaint procedures and charging regimes;
- (f) **Lists and Registers** – This will include registers of assets, interests, gifts and hospitality provided to senior personnel and disclosure logs listing responses provided under FOI;
- (g) **Services provided by the Police Service** – Information about the services provided by the police service, including leaflets, guidance and newsletters produced for the public and businesses. In addition to general advice and guidance for the public this will include details of the police college, police museum, 'costing' details in respect of the policing of public/private events that are of public interest, local campaigns, media releases and details of the services for which the police service are entitled to recover a fee together with those fees.

(4) Maintained By

- (a) The PSNI scheme will be maintained by the FOI Publication Scheme Manager, PSNI Headquarters (HQ), Brooklyn, Belfast, extension number 22653. The assistance of the PSNI Webmaster will be sought as/if necessary.
- (b) Furthermore each department/district has appointed an 'information champion' who are responsible for their department's/district's information and are committed to:
 - (i) providing/publishing the information as required;
 - (ii) ensuring its availability for release; and
 - (iii) regularly reviewing and maintaining it.

(5) Monitoring/Reviews

- (a) The FOI Act states that a publication scheme should be reviewed from time to time. The ICO will regularly review the model scheme and definition guidance. In addition they will proactively monitor adoption and publication by all public authorities.
- (b) The PSNI publication scheme will be reviewed regularly by the Publication Scheme Manager in compliance with current ICO guidelines.
- (c) There are various stages of review:
 - (i) an ongoing review of all information published under the scheme to ensure accuracy and currency;
 - (ii) a detailed review, every 6 months, to ensure that the publication scheme reflects the information being requested and whether any new information or new information classes should be added.
- (d) The review will focus on information available through the information classes including checking that:
 - (i) any links to other sites/pages are still current;
 - (ii) the latest versions of documents are displayed; and
 - (iii) any old material has been archived appropriately.
- (e) Any reviews completed and changes made will be recorded formally on Tower Records and Information Management (TRIM).

(6) Disclosure Logs

Following a request under 'Right of Access', any information released to an applicant becomes publicly available and will be considered for inclusion on the PSNI publication scheme.

(7) Timescales

- (a) Information on the PSNI publication scheme can immediately be accessed through our website; however there may be occasions when the information sought may need to be posted.
- (b) We will ensure that the information requested is sent promptly and within five working days as a minimum. If the information is unable to be posted and needs to be viewed we will contact the requester within five working days to arrange an appointment convenient to both parties.

(8) Archiving

All information published will be available for a minimum of 1 year and thereafter as per ICO guidelines. Following that time, a list of archived information will be available so that the public can still view what has been previously provided and what would be available upon request.

(9) Fees and Charges

- (a) Information available through our publication scheme is normally free however there are occasions when charges may be applied. If we have to apply a charge for routinely published information, we will ensure that the charges are justifiable, clear and kept to a minimum.
- (b) Charges **may** be made for:
 - (i) actual disbursements such as photocopying postage etc;
 - (ii) information that the authority is legally authorised to charge for.
- (c) Anyone requesting information will be informed of any charge before the information is provided and we may ask for payment before providing the information.

(10) External Links

- (a) The PSNI will not provide information that is “reasonably accessible to the applicant by other means” (Section 21). However, the Service will provide “advice and assistance” (Section 16) to anyone who is looking for such information.
- (b) To achieve this some “useful links” will be provided within the publication scheme to direct the public to routinely published information and other areas of particular interest.
- (c) The PSNI are not responsible for the content or reliability of the linked websites. Listing should not be taken as endorsement of any kind. We cannot guarantee that these links will work all the time and we have no control over the availability of linked pages.

(11) Publicising the Scheme

- (a) The Publication Scheme Manager will ensure that all officers/staff, particularly those in ‘public facing roles’ are aware of the scheme. This can best be obtained by raising awareness on PoliceNet and internal communications as appropriate (Callsign etc).
- (b) The Publication Scheme Manager will ensure that the details of the scheme, including contact details for those members of the public without Internet access, are published in the Chief Constable’s Report. The report is delivered to every household in Northern Ireland and replaces the publication of an information leaflet, which has limited catchment.

(12) Making a complaint

Complaints (comments) regarding scheme content should be made to:

Publication Scheme Manager
Freedom of Information Team
Corporate Development
Brooklyn
65 Knock Road
Belfast
BT5 6LE

4. Processing Requests

- (1) The FOI Team (see Appendix 'C' for role definition) will ensure that requests received adhere to the following criteria:
 - (a) are in writing, which includes email;
 - (b) clearly describe the information being sought; and
 - (c) contain the name of the applicant and an address for correspondence.
- (2) ACPO has defined a number of 'business as usual' processes where police services provide information, whether for payment or not, on request. Such requests will not be treated as FOI requests.
- (3) Where a request is being considered under FOI it must be communicated to the central FOI Team within PSNI before any processing is undertaken. In this regard the process as detailed at Appendix 'A' will be adopted.
- (4) Where PSNI has previously complied with a request for information which was made by any applicant, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
- (5) Under Section 14(1) of the FOI Act the PSNI is not obliged to comply with a request for information if the request is vexatious. A vexatious request may be:
 - (a) repetitious, where it contains nothing new in its content and has been dealt with, withdrawn, or resolved at the time of the last request. However, new concerns not expressed in the original request can also be raised constantly in an attempt to keep the correspondence going;
 - (b) unreasonable or focuses on a trivial matter; and
 - (c) one that is aggressive or threatening in its tone.
- (6) The refusal letter based on these grounds will be generated from a template in the FOI Tracking System and either sent via email or by post to the applicant.
- (7) The FOI Team will log all requests in the FOI Tracking System and perform searches for previous requests of a vexatious or mosaic nature.
- (8) The FOI Team will produce a cost form generated from the FOI Tracking System. This form will be emailed for the relevant district or department to complete the request. The form will provide 2 sections, one for estimated costs/time and one for actual costs/time. The Record Owner (see Appendix 'C' for role profile) in the relevant District or HQ Department must arrange to use the estimated cost section in order to determine the likely time to retrieve the data and extract the information relevant to the request. The Record Owner must then immediately communicate the estimated figures back to the FOI Team who will determine whether the request will exceed the prescribed maximum.
- (9) If, however, it is obvious that the cost of retrieving and extracting the relevant information will not exceed the limit as determined by the Secretary of State, then the Record Owner should endeavour to retrieve the information and provide same, along with an appropriate "Harm Test" (detailing the likely harm that release would cause to – an individual – the organisation or the public). When the request necessitates issue to multiple Record Owners, the FOI Team will advise Record Owners of this, and request urgent attention to the cost estimate.

- (10) When the FOI Team notify the District or HQ Department that they may proceed to locate the information **they must** record on the form the actual time and costs spent compiling the information for the request. This form must be returned with the information to the FOI Team.
- (11) Where possible the District or HQ Department should send back the information and the form in electronic format.
- (12) Where information may require redaction the District or HQ Department concerned should highlight the appropriate areas to the FOI Team and demonstrate the “Harm” and reasons for withholding the information. The FOI Team will review all information and perform any required redaction in accordance with the exemptions before communication to the applicant.
- (13) The Head of FOI will ensure an effective quality assurance function on all information and responses provided via the introduction of 2 Executive Officer I posts as team leaders.

5. Acknowledging Requests

- (1) FOI Team will ensure all requests are acknowledged on receipt, the acknowledgement will include the date the request was received and an indication of the estimated time within which the request will be processed.
- (2) The acknowledgement letter will be generated from a template and sent using the FOI Tracking System either via email or post.
- (3) If necessary the FOI Team will attempt to contact the applicant to clarify the information required. Where an applicant is unable to make a request in writing (for instance due to illiteracy, disability or illness), the FOI Team will provide advice as to where appropriate help and support can be found. In exceptional circumstances, the FOI Team will make a note of the request on behalf of the applicant and send it to them for confirmation. These steps are considered good practice in seeking to support those making FOI or EIR requests.
- (4) Where a request is ambiguous or the information is unidentifiable, the FOI Team will provide assistance to the applicant to clarify the request.
- (5) If advice and assistance has been provided and the FOI Team are still unable to identify and locate the requested information, PSNI will not seek further clarification and the request will be closed.

6. Conditions and Exemptions

- (1) The duty to confirm or deny is subject to certain conditions and exemptions. Under Section 1(3) PSNI are not obliged to comply with a request where it:
 - (a) reasonably requires further information in order to identify and locate the information requested; and
 - (b) has informed the applicant of that requirement.
- (2) Section 45 of the Act makes provision for the issue and revision of Codes of Practice that provide guidance to Public Authorities, which is desirable for them to follow. This relates to the:
 - (a) provision of advice and assistance to those making requests;
 - (b) transfer of requests by one public authority to another;
 - (c) consultation with persons to whom information requested relates or those whose interests are likely to be appealed;

- (d) inclusion of contracts entered into by public authorities of terms relating to the disclosure of information;
- (e) provision by public authorities of procedures for dealing with complaints about the handling of requests.

The EIR Code of Practice includes similar provisions.

- (3) Under Section 2 of the FOI Act the PSNI does not have to comply with a request for information if any of the provisions of Part II of the FOI Act, Sections 21 to 44 (Exemptions), state that:
 - (a) the duty to confirm or deny does not arise in relation to the information; and/or
 - (b) the information is exempt.

The Part II Exemptions are listed in Appendix 'B' of this Policy.

- (4) The PSNI does not have to comply with a request for information if a Fees Notice has been issued to an applicant and the fee has not been paid within the period of 3 months beginning on the day on which the Fees Notice is given to the applicant.
- (5) The duty to comply with a request for information does not arise if the PSNI estimates that the cost of compliance with the request will exceed the appropriate limit that is laid down in the Fees Regulations. The PSNI will work with applicants to keep compliance costs to a minimum but reserves the right to refuse the communication of information that exceeds this limit. Assistance will however be provided to help refine what can be provided within the fees limit.
- (6) Under Section 14(1) of the FOI Act, the PSNI is not obliged to comply with a request for information if the request is vexatious, [see paragraph 4(5) above]. Where the PSNI has previously complied with a request for information, which was made by any applicant, it is not obliged to comply with a subsequent identical or subsequently similar request from that applicant unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. The PSNI will log all requests for information for monitoring purposes and will be able to identify repeated or vexatious requests.

- 7. (1) **Charges and Fees (This Section of the Policy may be subject to change as a result of ACPO Guidance)**
 - (a) The PSNI will follow the Fees Regulations for general rights of access under the FOI Act. These will set an appropriate limit on costs of compliance, and the manner in which an appropriate cost may be calculated. The Fees Regulations do not apply to the EIR so there is no appropriate limit in relation to requests under this legislation.
 - (b) The PSNI will generally not charge for information that it has chosen to publish in its Publication Scheme, however charges may be levied for hard copies, multiple copies or copying onto media such as a CD-ROM, dependant upon volume.
 - (c) Where a request for information is refused under Section 12 because it exceeds the cost of compliance set out in the Fees Regulations, a notice will be issued within 20 days. The FOI Team will also ensure that the applicant is offered appropriate advice and assistance to refine the request, notified of the internal procedures for dealing with complaints about the handling of the request and given details of the right to appeal to the Information Commissioner.
- (2) **Standard Hourly Rate**
 - (a) A standard hourly rate of £25 per hour is defined in the Fees Regulations and will be used by the FOI Team to estimate the costs of complying with FOI requests.

- (b) All costs must be recorded in the FOI Tracking System to enable statistical information to be produced and to allow fees notices to be calculated and automatically populated with the information.

(3) **Estimated/Actual Costs**

- (a) The process dealing with estimated/actual costs is contained in Para's 4(8), 4(9) and 4(10) above.
- (b) When estimated fees are likely to exceed the maximum amount the FOI Team must:
 - (i) contact the applicant to ascertain whether they would like part of the information up to the prescribed maximum;
 - (ii) ascertain whether the applicant would like a summary or digest of the information request;
 - (iii) ascertain whether the applicant would like to view the information should the cost of providing the information in permanent form be too costly;
 - (iv) contact the applicant to ascertain whether they would like the authority to provide all the information and would be willing to pay for the additional work at full cost recovery;
 - (v) assist the applicant in refining the request to bring it within the appropriate limit or to reduce the fee; or
 - (vi) refuse to comply with the request.

8. Time Limits for Compliance with Requests

- (1) The PSNI will establish systems and procedures to ensure that the organisation complies with the duty to confirm or deny and to provide the information requested within twenty working days of a request in accordance with Section 10 of the FOI Act. A 'working day' is defined as any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day that is a Bank Holiday.

(2) **Management of the Legislative Time frame for Freedom of Information requests**

Under Section 1(1) of the Freedom of Information Act (FOIA) 2000, any person making a request for information to a public authority is entitled:

- (a) To be informed in writing by the public authority whether it holds information of the description specified in the request; and
- (b) If that is the case, to have that information communicated to the person making the request.

Section 10(1) of the FOI Act states that, 'A public authority must comply with Section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt'. To enable the PSNI FOI central team to process requests in compliance with the legislation the process set out below will be strictly complied with by the relevant District Commander or Head of Branch.

The identification, location and retrieval of information, followed, in appropriate cases by:

- (a) The application of a harm test;
- (b) Consideration with regard to the use of exemptions; and
- (c) Completion of a PIT - in preparing a response is a challenging schedule.

Best practice indicates that introducing a timeline, of a set number of days for each stage of the process, is necessary to ensure compliance with legislation. Set out below is the 5-stage process that has been identified by the PSNI to assist with 'statutory compliance'.

Stage 1 – Upon receipt of a FOI Request by the FOI central team at Brooklyn a member of the team will be appointed as the 'case manager' of the request. An assessment will take place to identify the Record Owner. Where the Record Owner is identified to be COD, Professional Standards Department (PSD) or the Historical Enquiries Team (HET) then the request will be forwarded for action by the satellite FOI Teams within these respective areas. All other requests will be forwarded for the urgent attention of the Record Owners eg the District Commander or Head of Branch concerned. The request will be forwarded by email from a clearly identified FOI team member nominated as the case manager. The District Commander or Head of Branch will be the accountable person for ensuring timely compliance and monitoring the quality of the response provided to FOI.

A strict time frame of **9 working days** will be allowed for the district or branch to identify, locate and retrieve all information that is held within that area, and to provide that information together with a completed harm test to the identified case manager within the FOI Team. If, however, it is clear that the request will involve significant cost (currently estimated to be over £450) to identify, locate and retrieve the information, or multiple searches will be required in several areas involving different districts or branches, then an urgent cost estimate to identify, locate and retrieve the information should be carried out and forwarded to the FOI case manager.

Stage 2 - Should the requested information not be received within 9 days the FOI Staff Officer with the central team will issue an email to the District Commander or Head of Branch indicating that the time limit provided for the provision of information has not been complied with. An explanation will be sought for the non-compliance and the explanation will be recorded on the case management system to maintain a full audit trail. The personal assistance of the District Commander or Head of Branch will be sought to ensure that all information that is the subject of the request is provided to the FOI case manager not later than **13 working days** from the date the request was received.

Stage 3 – Should the requested information not be received within 13 days the Head of FOI and Data Protection will issue an email to the ACC or senior support staff director for the area in question. This will identify the nature of the request, the date when issued, any previous explanation provided and outline that information requested remains outstanding and must be supplied without further delay. In certain instances, the request may relate to a complex issue involving extensive search and the examination of substantial material, which might ultimately enable a justified application for extension to enable exemptions to be applied by the FOI case manager. The ACC or senior support staff director will seek to ensure that all available information is made available to the FOI case manager not later than **15 working days** from the date of the original request.

Stage 4 – Where the requested information has still not been provided to the FOI case manager by the 15th working day, then there is a **significant corporate risk** that the PSNI will fail to provide the requested information within the time set down by the Act at section 1(1). ACC, OSD, will be advised of the non-compliance and will:

- (a) Raise non-compliance cases in the form of an Executive Action Report;
- (b) Give consideration to remedial action to minimise the opportunity of a recurrence;
- (c) Consider whether issues of internal discipline arise.

Stage 5 – When responses to requests under FOI are forwarded to the requester within 20 working days, the audit trail comes to an end. When, however, requests breach Section 10(1), become overdue and are not subject to formal extension then the audit trail will continue:

- (a) Individual overdue files will continue to be monitored by the case manager and full audit trail will be maintained.
- (b) The ACC or Senior Support Staff Director will be responsible for ensuring compliance with the request, and will examine all issues currently blocking compliance.
- (c) The ACC or Senior Support Staff Director will provide an immediate position report to ACC, OSD outlining the existing reason(s) for non-compliance together with the date of expected submission.
- (d) The ACC, OSD will brief the DCC with regard to any trends observed in respect of overdue requests.
- (e) Overdue requests which may subject the organisation to **corporate risk**, or which are the subject of complaint to the Information Commissioner will immediately be brought to the attention of the DCC and Chief Constable.

A process map reflecting the elements of the 5-stage process is set out at Appendix 'A'.

By virtue of Section 77 of the FOI Act it is an offence if any person alters, defaces, blocks, erases, destroys or conceals any record held by a public authority with the intension of preventing disclosure.

- (3) 'Business as Usual' requests, as defined by ACPO will be dealt with as part of the normal business processes of the Service, [see paragraph 5(2) above].
- (4) All PSNI staff will be required to comply with the requirements of these procedures.
- (5) If the PSNI chooses to apply an exemption to any information or to refuse a request as it appears to be vexatious or repeated, or exceeds the appropriate limit for costs of compliance, a notice shall be issued within twenty working days informing the applicant of this decision. (See paragraph 10).
- (6) The FOI Team must ensure that all actions are updated on the FOI Tracking System so that requests can be managed and monitored centrally.

9. Means by which Information will be conveyed

- (1) When an applicant, on making their request for information, expresses a preference for communication by any one or more of the following means, namely:
 - (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant;
 - (b) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant; and
 - (c) the provision of a reasonable opportunity to inspect a record containing the information where practical:

PSNI shall so far as reasonably practicable give effect to that preference in accordance with Section 11 of the FOI Act.

- (2) The PSNI will consider all the circumstances in determining whether it is reasonably practicable to communicate information by a particular means. If the PSNI determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the PSNI will notify the applicant of the reasons for its determination and will provide the information by such means as it deems to be reasonable in the circumstances.
- (3) The FOI Team will comply with the communications preference of the applicant as far as it is reasonably practicable. In determining whether it is reasonably practicable, the FOI Team must have regard to all the circumstances, including the cost of doing so.
- (4) Where no preference is specified for the method of communication, the information can be communicated by any means reasonable in the circumstances.
- (5) The FOI Tracking System must be updated in relation to any communication of information regarding a request.
- (6) Any documents where information contained therein is exempt and should not be disclosed will be redacted accordingly. Recipients must not be able to work out from the context of the remaining text what has been removed. This may mean removing whole paragraphs and not just sentences or words. Provision of information under the FOI Act does not mean that the copies of documents have to be disclosed if it is not reasonably practicable to do so. Where documents have to be extensively redacted, it may be more appropriate to consider communicating the information in some other form, such as a digest or summary.
- (7) The FOI Team must ensure that any document marked 'Secret' or above is redacted before it is scanned onto the FOI Tracking System. The FOI Tracking System is only rated to confidential level and hence any document stored must not be rated at a higher level, unless it has firstly been redacted to alter its security marking to confidential level or below.

10. Refusal of Requests

- (1) As indicated above, the duty to comply with a request for information does not arise if PSNI:
 - (a) applies an exemption as per Section 2 or Part II of the FOI Act, as illustrated in Appendix 'B';
 - (b) estimates that the cost of compliance with the request for information exceeds the appropriate limit as per Section 12 of the FOI Act;
 - (c) can demonstrate that the request for information is vexatious or repeated, as indicated by Section 14 of the FOI Act.
- (2) If the PSNI chooses to refuse a request for information under any of the Sections within the Act, the applicant will be informed of the reasons for this decision within twenty working days. As set out in Section 17(7) the applicant will also be informed of the procedures for making a complaint about the discharge of the duties of the PSNI under the FOI Act, and of the right conferred by Section 50 of the FOI Act (to appeal to the Information Commissioner).
- (3) If the PSNI is to any extent relying on a claim that any provision of Part II of the FOI Act, relating to the duty to confirm or deny, is relevant to the request; or on a claim that information is exempt information, a notice will be issued within twenty working days under Section 17 of the FOI Act. The notice will:
 - (a) state that PSNI consider the information requested to be exempt;
 - (b) specify the relevant exemption;
 - (c) state (if not otherwise apparent) why the exemption applies; and
 - (d) explain the balance of the PIT (where a qualified exemption is applied).

- (4) Where PSNI applies:
- (a) a qualified exemption to the duty to confirm or deny; or
 - (b) a qualified exemption to the information requested; and
 - (c) at the time that the refusal notice is given to the applicant, they have not determined the balance of PIT;

the refusal notice should advise that no decision regarding the PIT balance has yet been made and should contain an estimate of the date by which the decision will be made.

ICO guidance states that in these exceptional cases an extension to the time for the PIT of 20 working days is permissible but that in no case should exceed 40 working days.

- (5) In accordance with the Lord Chancellor's Code of Practice issued under Section 45 of the FOI Act, such estimates as described above should be realistic and reasonable and compliance is expected unless there are extenuating circumstances. If an estimate is exceeded, the applicant will be given the reason(s) for the delay. If the PSNI finds that the estimate is proving unrealistic, the applicant will be kept informed.
- (6) If applying a qualified exemption under sub-section (1)(b) or (2)(b) of Section 2 of the FOI Act the PSNI will, either in the notice issued or by a separate notice given within such a time as is reasonable in the circumstances, state the reasons for claiming:
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the PSNI holds the information; or
 - (b) that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- (7) The statement should not involve the disclosure of information which would itself be exempt information.
- (8) If the PSNI is relying on a claim that Section 12 (cost of compliance exceeds appropriate limit) or 14 of the FOI Act apply, the notice will state that fact. If the PSNI is relying on a claim that the request is vexatious or repeated under Section 14 of the FOI Act, and a notice under Section 17 has already been issued to the applicant stating this fact, a further notice is not required.
- (9) When refusing a request the FOI Team must ensure that the following are provided:
- (a) the decision;
 - (b) the date on which it was made;
 - (c) the name and designation of the person dealing with the request;
 - (d) the grounds for refusing the request, eg the application of an exemption, cost of compliance;
 - (e) where appropriate the specific exemption used and the rationale. If more than one exemption is applicable, details of the other exemptions must be cited.
 - (f) if the PIT has been considered and applied, the rationale for the decision;
 - (g) any other issues relevant to the decision or matters that were taken into consideration; and
 - (h) the applicant's rights to complain including details of the internal complaints procedure and the applicant's right to appeal to the Information Commissioner.
- (10) Where a decision has been taken to deny the release of requested information, the rationale for the decision will reflect all applicable exemptions.

- (11) A template letter detailing the above information will automatically be generated by the FOI Tracking System and forwarded to the applicant.
- (12) A record should be maintained for monitoring purposes where information has been withheld. The FOI Tracking System will automate the collection of information and actions and will enable statistical reports to be produced.

11. Exemptions/Exceptions

- (1) When an FOI or EIR request is made, there is a presumption that the information will be disclosed subject to exemptions or exceptions and any other relevant legislation.
- (2) The FOI Act contains a series of exemptions that should be considered when processing any request under FOI for information. Similarly, the EIR contain exceptions for consideration when processing requests under this legislation.
- (3) The onus is on the FOI Decision-Maker to provide a structured and valid argument to justify the application of exemptions and the subsequent non-release of information. Where appropriate this argument must include a balanced assessment of the likely harm should the information be disclosed. This balanced assessment will be based on the reasoned arguments provided by the Records Manager.
- (4) This review process must be fully documented and applied in every case where exemptions may be enforced. The thought processes associated with applying one or more exemptions must be clearly recorded, fair and transparent. They must be rigorous enough to stand up to future scrutiny should the decision to withhold be challenged.
- (5) The FOI Tracking System provides the capability for this process to be fully documented and also for online redaction of documents and stamping with the relevant exemption.
- (6)
 - (a) There are 23 exemptions under the Freedom of Information Act 2000. They fall into one of 2 categories:
 - (i) Absolute Exemptions;
 - (ii) Qualified Exemptions.
 - (b) Two of the 23 provisions confer a mixture of absolute and qualified exemptions depending on the nature of the information or, in the case of Section 40, the identity of applicant.
 - (c) Appendix 'B' provides more information on the exemptions.
 - (d) The FOI Team must consider all exemptions that are engaged and carry out a public interest balance test (where appropriate) in the process of arriving at a decision of disclosure or non disclosure.
- (7) The FOI Team must ensure that all redactions made either manually or via the FOI Tracking System have been 'stamped' with the relevant exemption where appropriate.

12. Duty to Provide Advice and Assistance

- (1) The PSNI will ensure that the systems and procedures that are deployed to meet the Section 16 duty to provide advice and assistance also conform to the Code of Practice issued under Section 45 of the FOI Act. Reference to Section 45 and the 'Codes of Practice' is set out at paragraph 6(2) of this Directive.
- (2) Where the PSNI is unable either to advise the applicant that it holds, or may hold, the requested information; or which public authority may hold the requested information; or it is not possible to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it will consider what advice, if any, it can provide to the applicant to enable them to pursue their request (in accordance with - Section 45 Code of Practice).

13. Transferring Requests for Information

- (1) A request can only be transferred where the PSNI receives a request for information which it does not hold, as prescribed by Section 3(2) of the FOI Act, but which is held by another public authority. If the PSNI is in receipt of a request and holds some of the information requested itself, a transfer can only be made in respect of the information it does not hold (but is held by another public authority). The PSNI recognises that 'holding' information includes holding a copy of a record produced or supplied by another person or body [but does not extend to holding the original record on behalf of another person or body as provided for in Section 3(2)(a) of the FOI Act].
- (2) Upon receiving the initial request for information, the PSNI will process it in accordance with the FOI Act in respect of such information relating to the request as it holds. The PSNI will also advise the applicant that it does not hold part of the requested information, or all of it, whichever applies. Prior to doing this, the PSNI must be certain as to the extent of the information relating to the request, which it holds itself.
- (3) If the PSNI believes that some or all of the information requested is held by another public authority, the PSNI will consider what would be the most helpful way of assisting the applicant with the request. In most cases this is likely to involve:
 - (a) contacting the applicant and informing them that the information requested may be held by another public authority;
 - (b) suggesting that the applicant reapplies to the authority which the PSNI believes to hold the information; and
 - (c) providing them with contact details for that authority – if readily available.
- (4) If the PSNI considers it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold, consultation will take place with the other authority with a view to ascertaining whether it does hold the information and, if so, consider whether it should transfer the request to it. A request (or part of a request) will not be transferred without confirmation by the second authority that it holds the information.
- (5) Prior to transferring a request for information to another authority, the PSNI will consider:
 - (a) whether a transfer is possible;
 - (b) if it is, it should consider whether the applicant would have any grounds to object to the transfer;
 - (c) if PSNI reasonably concludes that the applicant would not object, it may transfer without going back to the applicant, but should tell them it has done so; and
 - (d) where there are reasonable grounds to believe an applicant will object, the authority should only transfer with their consent. If there is any doubt, the applicant will be contacted with a view to suggesting that they make a new request to the other authority.

- (6) All transfers of requests will take place as soon as is practicable, and the applicant will be informed as soon as possible once this has been done.
- (7) The FOI Team will advise the applicant that it does not hold all or part of the requested information. The applicant will be informed as soon as possible once a request has been transferred. A template letter will be generated by the FOI Tracking System and sent to the applicant via email or manual means.
- (8) When the FOI Team is unable to advise which public authority holds, or may hold, the requested information or does not feel it appropriate to transfer a request, they will inform the applicant.
- (9) The FOI Team will consult the second authority to ensure it holds the information. A request will not be transferred without confirmation that the second authority holds the information.

14. Consultation with Third Parties

- (1) In some cases the disclosure of information pursuant to a request may affect the interests or legal rights of a third party. However unless an exemption provided for in the FOI Act applies in relation to any particular information, the PSNI will disclose that information in response to a request.
- (2) Where a disclosure of information cannot be made without the consent of a third party (for example, where information has been obtained from a third party and the disclosure of the information without their consent would constitute an actionable breach of confidence, such that the exemption at Section 41 of the FOI Act would apply), the PSNI will consult that third party seeking their consent to the disclosure, unless such a consultation is not practicable.
- (3) Where information constitutes 'personal data' within the meaning of the Data Protection Act 1998, the PSNI will have regard to Section 40 of the FOI Act.
- (4) Where PSNI determines that:
 - (a) the views of the third party may assist the PSNI to determine whether an exemption under the FOI Act applies to the information requested; or
 - (b) the views of the third party may assist the PSNI to determine where the public interest lies under Section 2 of the FOI Act.

It will undertake the necessary consultation unless the cost of consulting with third parties would be disproportionate. In such cases, the PSNI will consider the most reasonable course of action in light of the requirements of the FOI Act and the individual circumstances of the request.

- (5) Consultation will be unnecessary where:
 - (a) the PSNI does not intend to disclose the information relying on an applicable exemption under the Act or other relevant legislation; or
 - (b) the views of the third party can have no effect on the decision of the PSNI, for example, where there is other legislation preventing or requiring the disclosure of this information; or
 - (c) no exemption applies and so under the provisions of the FOI Act, the information must be provided.
- (6) Where the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation, which can express views on behalf of those parties, the PSNI will, if it considers consultation appropriate, consult with that representative organisation. If there is no representative organisation, the PSNI may consider that it would be sufficient to consult a representative sample of the third parties in question.

- (7) In all cases, it is for the PSNI, not the third party (or representative of the third party) to determine whether or not information should be disclosed under the FOI Act. The fact that the third party has not responded to consultation does not relieve the PSNI of its duty to disclose information under the FOI Act, or its duty to reply within the time specified in the FOI Act.

15. Public Sector Contracts

- (1) Unless an exemption provided for under the FOI Act or other relevant legislation is applicable in relation to any particular information, the PSNI will be obliged to disclose that information in response to a request, regardless of the terms of any contract. When entering into contracts the PSNI will refuse to include contractual terms, which purport to restrict the disclosure of information held by the PSNI and relating to the contract beyond the restrictions permitted by the FOI Act.
- (2) When entering into contracts with non-public authority contractors, the PSNI may be requested to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Lord Chancellor's Department, the PSNI will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the PSNI will investigate the option of agreeing with the contractor a schedule of the contract, which clearly identifies information, which should not be disclosed. The PSNI will take care when drawing up any such schedule, and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the FOI Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner.
- (3) The PSNI will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Lord Chancellor's Department indicates that the exemption provided for in Section 41 only applies if information has been obtained by a public authority from another person, and the disclosure of the information to the public, otherwise than under the FOI Act would constitute a breach of confidence actionable by that, or any other person.
- (4) It is for the PSNI to disclose information pursuant to the FOI Act, and not the non-public authority contractor. The PSNI will take steps to protect from disclosure, by the contractor, information that the authority has provided to the contractor, which would clearly be exempt from disclosure under the FOI Act, by including appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible, and according to the individual circumstances of the case. Apart from such cases, the PSNI will not impose unnecessary terms of secrecy on contractors.

16. Accepting Information in Confidence from Third Parties

- (1) The PSNI will only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any PSNI functions and it would not otherwise be provided.
- (2) The PSNI will not agree to hold information received from third parties 'in confidence' which is not confidential in nature. Again, acceptance of any confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

17. Complaints

- (1) The PSNI will implement a procedure for dealing with complaints or appeals about the discharge of the duties of the PSNI under the FOI Act, including the handling of requests for information.
- (2) The procedure will refer applicants to the right under Section 50 of the FOI Act to apply to the Information Commissioner if they remain dissatisfied with the response from the PSNI following exhaustion of the appeals process.

- (3) Any written communication from an applicant expressing dissatisfaction with the process, complaints relating to the Publication Scheme or how requests made under the general rights of access have been addressed, will be formally reviewed. On receipt of such complaints details must be recorded in the FOI Tracking System and an FOI Reviewer (see Appendix 'C' for role description) appointed to consider the matter.
- (4) The FOI Reviewer will consider the following:
 - (a) Whether timescales were adhered to;
 - (b) Whether the applicant was kept informed (where appropriate);
 - (c) Was the applicant helped to locate information if not held by PSNI;
 - (d) Was the response communicated in the format preference of the applicant? If not, why not;
 - (e) Was a transfer or partial transfer of request made? If so, was this handled correctly and in line with Code of Practice;
 - (f) Was a Fees Notice served and the principles of the charging regime applied?
 - (g) Was a Refusal Notice served and was it adequate?
 - (h) Where the request appeared to be vexatious, undertake a review of the procedure and decision.
 - (i) Was the information sourced correctly;
 - (j) Was there a need to obtain additional information;
 - (k) Were all systems and information directories searched in response to the information request;
 - (l) Were any problems encountered in obtaining the information from the information owners?
- (5) They must also examine the decision-making process for the request:
 - (a) Analyse the decisions made by the relevant FOI Decision-Maker in relation to any exemptions applied.
 - (b) Analyse the application of the PIT and the resulting decision.
 - (c) Consider the comments made by Record Owners (if any) regarding disclosure of the information.
 - (d) Discuss with relevant FOI Decision-Maker the record of the decision-making process.
- (6) They must then make a decision, documenting their findings, whether to uphold the original decision or not as the case may be. If further disclosure is required the applicant will be furnished with the relevant information as soon as is practicable. The relevant Decision-Maker will be advised of the outcome.
- (7) The letter regarding the complaint will be generated from a template in the FOI Tracking System and either sent via email or by manual means to the applicant. It will also detail how the applicant can apply to the Information Commissioner.
- (8) It is considered by the ICO that the target time for responding to appeals and complaints should be 20 working days and only in exceptional circumstances 40 working days. This timeframe is endorsed by the ACPO CRU.
- (9) Where the complaint concerns a request for information under the general right of access, the review will be handled by a FOI Decision-Maker who was not a party to the original decision.
- (10) Where a request for information falls under any of the ACPO defined 'Business as Usual' processes and a complaint is received, this should not be dealt with under the FOI complaints process.

18. Appeals Panel

Where the FOI Reviewer considers that due to operational significance, public interest or the complexity/sensitivity of the information requested the matter requires further consideration the Head of FOI will determine whether the matter should be referred to an appeals panel. The panel will consist of the ACC/Head of Department to which the request relates, the Legal Adviser, an independent decision-maker and any such specialist advice as may be deemed appropriate. The timescales and decision-making process outlined above apply.

19. Records Management

- (1) The PSNI will have a separate policy with supporting systems and procedures that will ensure compliance with Lord Chancellor's Code of Practice on the Management of Records under Section 46 of the FOI Act 2000.
- (2) The Policy and associated procedures will address issues of active records management creation, keeping, maintenance and disposal according to the requirements that the law places upon the PSNI.

20. Responsibilities of Staff

- (1) All PSNI staff will adhere to this Policy. Managers at all levels will ensure that the staff for whom they are responsible are aware of, and adhere to this Policy. They will also ensure that staff are updated in regard to any changes in this Policy.
- (2) The FOI Team should ensure that requested information in manual form be destroyed two years from event date unless there are outstanding appeals.

21. Corporate Responsibility

- (1) The Head of FOI, who has delegated responsibility for the FOI Act 2000 from the Chief Constable, will oversee the implementation of the FOI Policy Directive, and will establish systems and procedures that will support the implementation of FOI Policy.
- (2) The Head of FOI, will ensure that Professional Standards Department, Historical Enquiries Team and Crime Operations Department, who process FOI requests relating to their spheres of activity, have in place the same processes as the rest of PSNI.
- (3) All staff will adhere to the PSNI FOI Policy Directive.

22. Training

The Head of FOI, will liaise with the Police College and external trainers to ensure that appropriate training on the FOI Act and Environmental Information Regulations (EIR) is available to staff who require it. Also, FOI Decision-Makers will attend the ACPO Decision-Makers Course within a reasonable timeframe of commencing their role and will familiarise themselves with ICO guidance as and when this is issued.

23. Freedom of Information Process Map

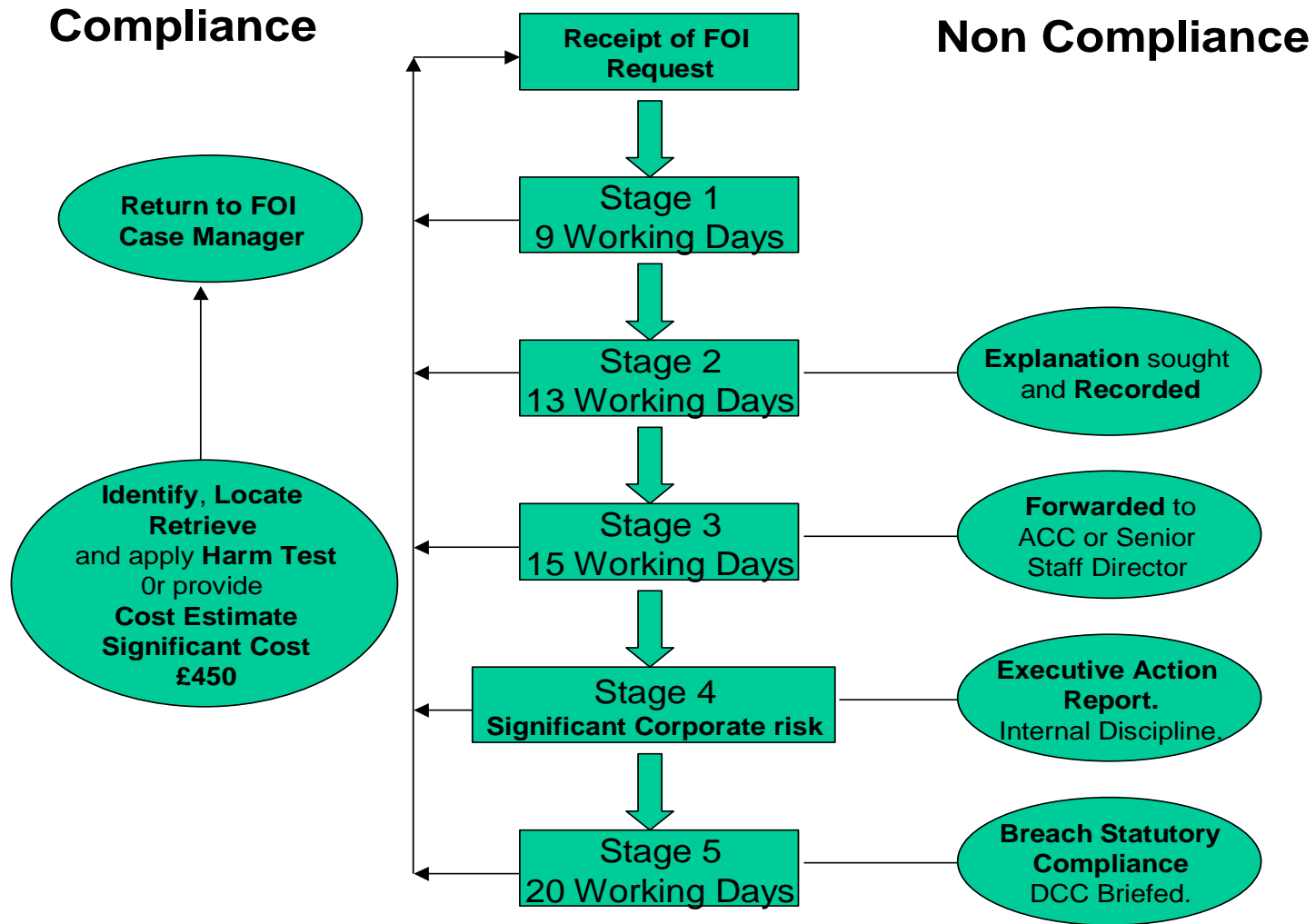
Appendix 'A' outlines how Freedom of Information requests will be processed within PSNI.

24. Internal Policy Links

The following related instructions refer:

Policy Directive 06/04 - Records Management;

Policy Directive 06/08 - Data Protection.



FREEDOM OF INFORMATION EXEMPTIONS

1. There are 2 types of exemption:
 - (1) **absolute**, which do not require a test of prejudice or the balance of public interest to be in favour of non-disclosure; and
 - (2) **qualified** by the PIT, which require the PSNI to decide whether it is in the balance of public interest to not disclose information.
2. With the exception of Section 21 (information available by other means) exemptions apply not only to the communication of information but also to the duty to confirm or deny, if that itself would disclose information that it is reasonable to withhold.
3. Listed below are the exemptions in the Act, together with a brief commentary as to the applicability of each. It is important that this document be read in conjunction with the Act itself, to avoid any misinterpretation or mistake as to the meaning of each exemption.

Absolute exemptions

Exemption	Description
Section 21 – Information accessible to the applicant by other means (Absolute)	For example, information which the authority is required by law to communicate, or publishes in the context of its approved publication scheme. It must be ‘reasonably’ accessible to the applicant, even if it is only accessible on payment.
Section 23 – Information supplied by or relating to bodies dealing with security matters. (Absolute)	This only applies to information supplied by or relating to one of the security bodies listed in the Section.
Section 32 – Court records (Absolute)	Information that is only held as part of the documentation for a court or tribunal case, or a statutory inquiry.
Section 34 – Parliamentary privilege (Absolute)	Information likely to infringe the parliamentary privilege of either House of Parliament.
Section 40 – Personal information (Absolute exemption for subject access requests and in certain other situations; Public Interest Test applies to third party requests)	This section operates as a gateway to the Data Protection Act 1998. Subject access requests are decided under the terms of the Data Protection Act. Third party requests for personal information are decided in accordance with the data protection principles, but within the overall framework of the Freedom of Information Act.

Exemption	Description
Section 41 – Information provided in confidence (Absolute)	This exemption applies where disclosure would constitute an actionable breach of confidence.
Section 44 – Legal prohibitions on disclosure (Absolute)	Information, the disclosure of which is prohibited by any other enactment, is incompatible with any community obligation, or would be a contempt of court.

Qualified Exemptions

Exemption	Description
Section 22 – Information intended for future publication (Public Interest Test)	This applies where publication was planned at the time the request was made.
Section 24 – National Security (Public Interest Test)	Information that is not covered by Section 23 above, but exemption is needed to safeguard national security. Requires a certificate signed by a Minister of the Crown.
Section 26 – Defence (Public Interest Test)	Information likely to prejudice national defence or the armed forces.
Section 27 – International Relations (Public Interest Test)	Information likely to prejudice the UK's international relations or interests.
Section 28 – Relations within the United Kingdom (Public Interest Test)	Information likely to prejudice relations between the UK administrations: the UK government, the National Assembly for Wales, the Scottish administration and the executive committee of the Northern Ireland Assembly.
Section 29 – The economy (Public Interest Test)	Information likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the government or any of the national administrations in the UK.
Section 30 – Investigations and proceedings conducted by public authorities (Public Interest Test)	Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.

Exemption	Description
Section 31 – Law enforcement (Public Interest Test)	Information not covered by Section 30 above, and which is likely to prejudice a wider range of investigations and conduct, including prevention of crime; assessment and collection of any tax; regulatory enforcement; health and safety and any civil proceedings.
Section 33 – Audit (Public Interest Test)	Applies to information held by public authorities who have functions relating to audit or examining the economy, efficiency and effectiveness of the use of resources of other public authorities. Information is exempt if its disclosure is likely to prejudice those functions.
Section 35 – Formulation of government policy (Public Interest Test)	Information held by a government department or the National Assembly for Wales, relating to the formulation of government policy.
Section 36 – Prejudice to the effective conduct of public affairs (Absolute for information held by either House of Parliament; for all other information covered by this Section, Public Interest Test)	This Section applies to information held by any public authority. However, with the exception of statistical information, a 'qualified person' is required to operate the exemption. For authorities not listed in the Section, including local authorities in England and Wales, this is either a Minister of the Crown or someone authorised for this purpose by a Minister.
Section 37 – Communication with Her Majesty, etc. and honours (Public Interest Test)	This applies to information that relates to communications with Her Majesty, Members of the Royal Family or Royal Household, or the conferring of honours.
Section 38 – Health and safety (Public Interest Test)	Information that would, or would be likely to, endanger the physical, or mental health and safety of an individual.
Section 39 – Environmental information (Public Interest Test)	Information is exempt information if the public authority holding it (a) Is obliged by regulations under Section 74 to make the information available to the public in accordance with the regulations, or (b) Would be so obliged but for any exemption contained in the regulations.
Section 42 – Legal professional privilege (Public Interest Test)	This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings.
Section 43 – Commercial interests (Public Interest Test)	This exemption applies to trade secrets, and to information which if disclosed would, or would be likely to, prejudice the commercial interests of any person, including the authority holding it.

ROLE DESCRIPTIONS

1. Corporate Information Manager

The Head of Freedom of Information has delegated authority from the Chief Constable to supervise and co-ordinate compliance with legislative requirements under the Data Protection Act 1998, Freedom of Information (FOI) Act 2000 and the Environmental Information Regulations. The Head of FOI has responsibility for the FOI Policy.

2. FOI Team

The central FOI Team has responsibility to process requests for information governed by the FOI Act 2000.

3. Professional Standards Department (PSD)/Crime Operations/Historical Enquiries Team (HET)

Due to the sensitivity of the information retained in each of these areas of responsibility it has been necessary to establish local Freedom of Information Teams. While operating under Central Policy, each local information team will be responsible for:

- (1) Application of Exemptions;
- (2) Decision-making;
- (3) Preparing and signing off responses; and
- (4) Handling reviews.

Whilst the decision-making process in each of these areas will essentially be completed "in-house" the Central FOI Team will take responsibility for registration of all FOI requests received in PSNI.

4. FOI Decision-Maker

The role of the Central FOI Team means they are gatekeepers to information held by the PSNI.

The FOI Decision-Maker will be the first port of call for FOI enquiries. This involves obtaining all relevant information and compiling responses to requests and appeals, through liaising with Record Owners.

5. Record Owner

A Record Owner is the person responsible for PSNI corporate information within a Headquarters Department (HQ) or a District.

Within HQ Departments it is the Head of Branch and within Districts it is the District Commander.

The Record Owner will be responsible for the retrieval of **all** records required to answer a FOI request. They will also be accountable for providing the Central FOI Team with an appropriate "Harm Test" evidencing the likely harm in releasing the information, and send **all** of the information, with their contextualised response to the relevant Decision-Maker in the central FOI Team.

A Record Owner may, where business needs dictate, delegate tasks arising from FOI. However, the onus remains with the Record Owner that comprehensive searches are completed and all relevant information is conveyed to the central FOI Team, together with a completed HARM test, within the timescales specified in Appendix 'A' of this Policy.

INFORMATION SHARING PROTOCOL TEMPLATE

Freedom of Information (FOI) Act 2000

Dealing with inter-authority requests

1. Purpose

The purpose of this protocol is to provide a formal agreement between the PSNI and other named public authorities in the way that requests under the Freedom of Information (FOI) Act are dealt with. It documents a process that relates to circumstances where there are inter-authority issues to consider in relation to the:

- (1) ownership of information that is subject to disclosure;
- (2) requirement to consult prior to the release of information;
- (3) transfer of requests between authorities.

2. Statement of intent

- (1) The aim of this protocol is to describe the agreed processes that the PSNI and other named public authorities will follow when dealing with requests under FOI Act, when the involvement of another public authority is necessary prior to the decision about the disclosure or non-disclosure of information.
- (2) All public authorities adopting this protocol are committed to the provision of information in accordance with the requirements of FOI Act.
- (3) All authorities will work together to ensure that:
 - (a) Wherever possible the applicant can request information and receive a response following co-ordination from an initial single point of contact;
 - (b) The applicant receives the same high standard of service from each public authority;
 - (c) Exempt information is identified and properly protected in accordance with the public interest.

3. Application of inter-agency requests

This protocol will operate where:

- (1) Information requested is known, or believed to be held, by more than one public authority including the authority receiving the request;
- (2) Information requested is not held by the authority receiving the request but is known or believed to be held by one or more other authorities; and
- (3) Decisions on the disclosure or non-disclosure of information are likely to have an impact upon the interests of another public authority.

4. Code of Practice – consultation with third parties

The Code under Section 45 FOI Act makes it clear that consultation should take place where the views of the third party may assist the authority to determine:

- (1) whether information is exempt from disclosure;
- (2) where the public interest lies.

5. Origin of the information

This protocol recognises that the authority receiving the request and holding the information must ultimately determine whether it should be disclosed under FOI Act, irrespective of the ownership of the information. It requires the authority holding the information to liaise with both the authority originating the information and any other authority that is known or thought to be impacted by its disclosure or non-disclosure.

6. Participating authorities and the role of the FOI Act Officer

- (1) This protocol identifies the public authorities that have signed up to it, and the lead contact in each of them with responsibility for compliance with FOI Act, known as the FOI Act Officer.
- (2) The FOI Act Officer will act as the designated point of contact between authorities in dealing with inter-authority requests. The FOI Act Officer will be responsible in this protocol for all access and communication issues within their authority in the decision-making process for the disclosure or non-disclosure of information. The FOI Act Officer will also be responsible for all communication requirements between authorities before and after decisions have been made.
- (3) The FOI Act Officer will recognise the priority of an inter-authority request and activate the protocol promptly.
- (4) The FOI Act Officer will be responsible for the process of transferring requests between authorities as outlined below.

7. Process

This protocol requires authorities signed up to this protocol to follow an agreed process in dealing with inter-authority requests. The FOI Act Officer will ensure that the following actions take place:

- (1) Log the request on the authority's internal system;
- (2) Identify the request as one with inter-authority issues;
- (3) Identify all interested parties internally and externally;
- (4) Liaise with the applicant to explain how the request will be handled and gain the applicant's consent for the passing of their request to another authority if appropriate;
- (5) All relevant FOI Act Officers will make contact by email (to commence an audit trail of communication and the process of decision-making);
- (6) Authorities will have established generic mailboxes in the FOI Act processing units to ensure efficient communication between them and avoid individually owned mailboxes;
- (7) The authority receiving the request will retrieve the information that it holds, identify the originators of the information externally and liaise with them regarding decisions to disclose or withhold the information;
- (8) An authority receiving such a request should wherever possible disclose information held that originates from other authorities in its original format;

- (9) Where appropriate, the applicant can be directed to any other authority that may hold information relevant to that request. However the underlying principle of making this information access regime applicant-focused should encourage authorities to meet the needs of applicants by acting as a single initial point of contact.

8. Decision-making

- (1) All decision-making processes about the disclosure/non-disclosure of information in inter-authority requests will only be resolved by real time case conferencing or email exchange. In all cases such decisions will be fully recorded and communicated to the applicant.
- (2) This protocol has an underlying principle that agreement should be reached on the disclosure or non-disclosure of information wherever possible, and that the fullest consideration should be given to an authority's claim to the application of an exemption.
- (3) There will be rare cases where the dispute between 2 authorities cannot be resolved about the disclosure or non-disclosure of information. This protocol guides the receiving authority to consider a 'safety first' principle of non-disclosure of the information. This will enable the applicant, if not satisfied with the outcome, to proceed to a complaint stage where the decision-making process can be reviewed by the receiving authority's internal complaint process. However, this protocol recognises that where the receiving authority holds information relevant to the request it is ultimately for that public authority to determine whether disclosure of this information should occur.
- (4) The legal obligation is clear – an authority receiving a request for information that it holds has a duty to disclose that information unless an exemption applies – this protocol ensures that inter-authority requests are dealt with in a manner that will provide the best service to the applicant and ensure that decisions on the disclosure or non-disclosure of information are dealt with in a co-ordinated manner.

9. Code of Practice - transferring requests

- (1) The Code under Section 45 FOI Act outlines further responsibilities on a public authority to transfer requests for information that it does not hold, where it is believed to be held by another authority. The public authority will consider whether to:
 - (a) consult the other authority with a view to establishing whether information is held;
 - (b) transfer the request, either in full or the part of the request that relates to information held elsewhere, with the consent of both the applicant and the other authority.
- (2) The receiving authority must still advise the applicant that it does not hold the information (or part of it), consider the appropriateness of advising the applicant that the information is held elsewhere and seek the applicant's consent to transfer the request. Information held by the receiving authority that can be disclosed must be so disclosed whilst the remainder of the request is transferred. The FOI Act Officer is responsible for this process.

10. Protocol administration

The contents of this protocol will be:

- (1) Shared with the Office of the Information Commissioner;
- (2) Owned by PSNI who will be responsible for all amendments;
- (3) Dated and version controlled;
- (4) Reviewed on regular basis; and
- (5) Signed off in each public authority by the senior member of staff responsible for compliance with FOI Act.