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CHAPTER 25 SECTION 4

PROVIDING ASSISTANCE TO APPLICANTS AND PROCEDURAL REFUSALS UNDER  
THE FREEDOM OF INFORMATION ACT 2000

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**CHAPTER 25 PROVIDING ASSISTANCE TO APPLICANTS AND PROCEDURAL  
SECTION 4 REFUSALS UNDER THE FREEDOM OF INFORMATION ACT 2000**

**1. INTRODUCTION**

The Freedom of Information Act 2000 (“the Act”) creates the general presumption that IND staff should, as employees of a public authority, seek to comply with all requests they receive for information where this is possible. The Lord Chancellor has established a Code of Practice under section 45 of the Act which sets out how public authorities should carry out their obligations to applicants. The Code of Practice sets out good administrative practice when handling requests for information, and explains how staff should provide assistance to applicants in helping them to find information.

However, the Act also strikes an important balance in limiting an applicant’s right to information held by public authorities. It does this by establishing boundaries which limit the scope and type of information that public authorities should disclose when responding to requests for information.

There are two distinctive limits to information set out by the Act:

- 1) A small but important number of **procedural grounds** which provide limitations on disclosure to ensure that the Act does not become overly bureaucratic for public authorities operating it. These are set out in Part I of the Act.
- 2) A larger number of **substantive exemptions** which limit disclosure when it relates to certain information such as national security, formulation of government policy and legal matters. These are set out in Part II of the Act and Section 5 of this IDI Chapter provides further guidance on when and how to apply substantive exemptions. Sections 6-13 also explain those individual exemptions which are most likely to be considered by IND.

This Section provides guidance for staff on how to refuse requests for information where **procedural grounds** for refusal may apply under the Act. It also explains the assistance which staff must provide to applicants before refusing a request.

**2. DEALING WITH REQUESTS WHERE THE APPLICANT’S DETAILS ARE  
UNCLEAR**

Requests for information from applicants should always be made in writing and must include a name and address (either a postal or an email address) so that staff can send a response to the applicant. Staff do not need to respond to a request for information if this fails to provide a return address i.e. no postal or email address.

If a request is received by email and the email address of the sender is included, then this should be treated as the return address, even if no postal address is provided.

### **3. DEALING WITH TELEPHONE REQUESTS**

Any telephone requests for information from journalists or any other media bodies should be referred directly by IND staff to the Department's Press Office. Staff should not provide any information in response to phone calls from journalists or media bodies without the involvement and prior approval of Press Office.

If a request for information is received by telephone and is not from a journalist or member of the media, then staff should provide the caller with the relevant information or assistance if the request is a routine one. For example a query about which application form needs to be filled in to apply for certain status would be routine, as would a request where the information is already available in the public domain. In the majority of cases such routine calls after 1 January 2005 should continue to be dealt with by IND staff in line with current arrangements which will be in place at local Directorate level.

If the caller asks for more complex information which staff do not routinely provide on the phone, or staff have any doubt about whether the information exists or should be released, the caller should be advised to put their information request in writing. This will then fall to be dealt with as an information request, usually under the Act. Staff should provide the caller with the relevant address of the IND Directorate who is likely to deal with the IND related subject matter. Where staff are in any doubt about which IND Directorate may deal with a request for information regarding IND policy issues, the caller should be asked to write to the IND Central FOI Team at:

IND Freedom of Information Requests  
15 Wellesley Road  
5th Floor East  
Block C  
Whitgift Centre  
Croydon CR9 3LY

On occasions a caller may inform staff that they are unable to frame their request in writing. Where this is the case, staff should provide appropriate assistance to that person in helping them make a request for information. This may include advising the person that someone else may be able to help them, such as their local Citizens Advice Bureau. In exceptional circumstances, providing appropriate assistance may include staff offering to take a note of the information that is being requested by the caller and subsequently sending the note to them for confirmation. This could occur, for example, where the applicant states that they have a disability and their particular circumstances prevent them from receiving outside assistance.

### **4. HANDLING REQUESTS WHERE APPLICANTS ARE NOT ABOUT CLEAR THE INFORMATION THEY WANT FROM IND**

When making a request, some applicants may not initially be clear about the information they want from IND, and this may prevent staff from being able to identify and locate all or some parts of the information requested.

Where this occurs staff should, as far as is reasonable, provide assistance to applicants by asking the applicant for further details of what information they want from IND. The volume of information made in a request should not in itself be an automatic reason to write back to an applicant asking them to clarify their request,

although the cost considerations outlined in point 7 below may well be relevant when such requests are received.

If staff respond to an applicant in this way they should take care not to give them the impression that they are obliged to disclose the nature of their interest, or that their request will be handled differently. It is also important that where a request is unclear to staff, that applicants are contacted as soon as possible within the initial 20 working day period for responding to a request. This contact could be by telephone, fax or e-mail, to inform them that more information is needed about their request. Where an applicant is contacted by telephone, staff should be careful to make a full note of the conversation and retain this in their relevant file in case of a subsequent appeal.

If it is necessary to contact the applicant to ask them for further clarification, the 20 working day target for responding to a request begins from day 0 once the applicant has provided further details which enables IND to respond to their request. If an applicant does not clarify their request within 3 months of contact from IND staff then the case should be regarded as closed.

When seeking to provide assistance to applicants to help refine their request, staff should also consider helping them refine their request by:

- providing an outline of the different kinds of information which might meet the terms of the request; or
- providing access to detailed catalogues and indexes, where these are available, to explain the nature and extent of the information held in the relevant IND Directorate; or
- providing a general response which sets out options for further information which could be provided on request.

A standard letter template which IND Directorates can adapt for their own use when writing to an applicant for further clarification can be found at **Annex E** and is entitled: ***'First standard letter to applicants where the information requested is unclear.'*** There is no need to notify the IND Central FOI Team at this stage of replying to an applicant, although records should be kept internally at local IND Directorate.

If an applicant fails in their subsequent response to describe the information requested in a way which enables IND to identify and locate the information they want, staff can then refuse the request and there is no need to seek any further clarification from the applicant. Any information relating to the request which has been successfully identified by staff should be disclosed to the applicant or withheld under a substantive exemption if this is appropriate. A standard refusal letter is available for use at **Annex E** entitled: ***'Standard refusal letter to applicants where staff have contacted them and the information they have requested is still unclear'***. This should be adapted and used by IND Directorates in these circumstances. The refusal letter should be sent within 20 working days of receiving the second attempt from the applicant to clarify what information they want. IND Directorates must inform the IND Central FOI Team of this refusal by filling in the template provided at **Annex B** entitled: ***'Notifying outcome of non-routine FOI requests to the IND Central FOI Team'*** and faxing it. Alternatively, this can be sent by email to the following Poise address on the Home Office global address list: Freedom of Information Team (IND). There is no need with such requests to follow the procedures for notifying Ministers of a response as detailed in Point 5.1 of Section 2 of this IDI Chapter.

Where an applicant clarifies their request in a way which enables IND to identify and locate the information they want, the request should be treated as a new request. The 20 working day target will start again from day 0 and staff will also need to establish whether to treat the request as a routine or non-routine request for information in accordance with the guidance provided in Section 2 of this IDI Chapter.

#### 4.1. **Dealing with requests submitted in foreign languages**

Anyone, anywhere in the world can submit an FOIA request to the Home Office and all requests must be treated equally, regardless of whether they are sent from within the UK, or abroad. Requests, and especially those from overseas, may be in a foreign language. If staff receive a request in a foreign language and the relevant IND Directorate regularly makes printed material available in this language, it is best practice to use the translation service used by the department to translate the request into English and deal with the request. If IND or the relevant IND Directorate does not generally provide written material in the language used in the request, then staff should reply to the requests, asking that they re-frame their request in English.

The Welsh Language Act 1993 confirms in law that Welsh and English are equal in Wales. It places an obligation on IND to treat the Welsh and English languages equally in the provision of services to the public in Wales. Any requests received in the Welsh language should therefore be translated into English if necessary and processed as normal. We should also translate the response back into Welsh in the interests of good customer service. The translation of text to, and from, Welsh is not chargeable under the consideration of the £600 cost limit since it fulfils a pre-existing statutory obligation.

### 5. **REQUESTS TO IND WHERE INFORMATION IS HELD BY ANOTHER PUBLIC AUTHORITY**

IND will occasionally receive requests on immigration related matters or other issues where neither IND or the wider Home Office holds the information requested, but the information may be held by another Government Department or public authority.

If the request is not for information held by IND, staff may know that it is held by another Government Department or public authority. In these cases staff should directly transfer the request to the relevant Government Department or public authority. For example, IND receives many requests for information on entry clearance matters where UK Visas may usually hold the information requested. For the purposes of the Act, UK Visas are defined as part of the Foreign and Commonwealth Office and so are classified as another public authority. Cases where UK Visas hold the information requested or lead on an entry clearance matter should, therefore, be transferred directly to the relevant part of UK Visas.

There may also be some requests for information which fall between IND and another Government Department where IND only holds the minority of the information requested, or does not take the lead on the subject of the request. Staff should directly transfer these types of requests to the Government Department who holds the majority of the information concerned or leads on the subject matter.

Before transferring a request out of IND, staff should always:

- get confirmation from the Government Department or public authority concerned that the subject matter of the request for information is dealt with by them; and
- check that they are willing to accept the transfer.

Once a transfer has been agreed, staff should immediately transfer the request to the Department or public authority which has agreed to take the case on, and also respond to the applicant informing them of the transfer. A standard letter for IND Directorates to use and adapt accordingly to inform of applicants of this transfer can be found at **Annex E**. This is entitled: '**Standard template response to an applicant where a request for information has been transferred to another department or public authority**'. There is no need to inform the IND Central FOI Team of this transfer.

In exceptional cases where a request for information involves complex or wide ranging issues, or cuts across the work of many Government Departments, this should be referred to the IND Central FOI Team by faxing details of the case. The request may fall to be dealt with by the DCA Clearing House system which Section 2 of this IDI Chapter provides details on.

## 6. REFUSING VEXATIOUS OR REPEATED REQUESTS

Section 14 of the Act enables IND to refuse a request for information where this may take on the characteristics of being either **vexatious** or **repeated**.

### 6.1. Identifying a vexatious request

It is important to note that under the Act a request should not be identified as vexatious with reference to the person making the request or because that person has made previous, possibly numerous requests. An individual can make as many separate requests for information as he/she wishes, and cannot be labelled as vexatious simply on these grounds. However, if a number of requests ask for repetitive information, then they may fall to be refused on the grounds of being repetitive (see point 6.2).

**Whether a request is vexatious is only to be decided by staff with reference to the nature of the request for information itself.**

Staff need to assess whether a request is vexatious or according to **all the circumstances** of an individual case and whether it is a genuine attempt to access information for its own sake.

There are a number of ways in which it may be possible to identify individual requests as being vexatious. The following list is not designed to be exhaustive, but rather to illustrate a general approach:

- **The applicant makes clear his or her intention:** If an applicant explicitly states that it is his or her intention to cause IND the maximum inconvenience through a request, it will almost certainly make that request vexatious.

- **IND has independent knowledge of the intention of the applicant:** Similarly, if an applicant (or an organisation to which the applicant belongs, such as a campaign group) has previously indicated an intention to cause IND the maximum inconvenience through making requests, it will usually be possible to regard that request as being vexatious.
- **The request clearly does not have any serious purpose or value:** It will usually be easier to recognise such cases than define them. Although the Act does not require the person making a request to disclose any reason or motivation, there may be cases which are so lacking in serious purpose or value that they can only be fairly treated as “vexatious” – for instance a request for the number of unmarried employees an organisation may have, may be able to be classified justifiably as a vexatious request. Such cases are especially likely to arise where there has been a series of requests. Before reaching such a conclusion, however, a public authority should be careful to consider any explanation which the applicant gives as to the value in disclosing the information which may be made in the course of an appeal against refusal (see below).
- **The request can fairly be characterised as obsessive or manifestly unreasonable:** It will usually be easier to recognise such cases than define them. They will be exceptional –IND must have valid reasons for making such a judgement. An apparently tedious request, which in fact relates to a genuine concern, must not be dismissed. But a public authority is not obliged to comply with a request which a reasonable person would describe as obsessive or manifestly unreasonable. It will obviously be easier to identify such requests when there has been frequent prior contact with requester or the request otherwise forms part of a pattern, for instance when the same individual submits successive requests for information. Although such requests may not be “repeated” in the sense that they are requests for the same information taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious.

Where staff believe that a request falls to be refused because it is vexatious they should prepare a draft response to the applicant explaining why the request will not be dealt with and why it is considered as vexatious under section 14 (1) of the Act. A standard refusal letter to the applicant which IND Directorates can use can be found at **Annex E**. This is entitled: ‘**Standard refusal letter template to applicants where a request is vexatious**’. This must be adapted to reflect the individual circumstances of the case and why it has been defined as vexatious. Once a final draft response has been authorised at HEO/CIO level in an IND Directorate, it should be sent to the IND Central FOI Team for approval on the classification of a request as vexatious and they will also provide advice on any further actions necessary before a response is sent out. IND Directorates should send the final draft response to the applicant by email to the following Poise address on the Home Office global address list: Freedom Of Information Team (IND).

Section 2 of this IDI chapter has further details on authorisation levels and the need to refer certain non-routine requests to the IND Central FOI Team for further action as well as notifying Ministers on proposed responses.

## 6.2. Identifying repeated requests

Where IND has dealt with a request for information which was made by any person or organisation, there is no obligation under section 14 (2) of the Act to comply with a subsequent identical or substantially similar request from that person or organisation, unless a '*reasonable interval*' has elapsed between compliance with the first request and receipt of the second.

Requests from the same individual or organisation about **different** aspects of IND's work should not be regarded as repeated requests.

Where an individual or organisation sends in a similar or identical request to IND or an IND Directorate, a response should only be sent where what the Act describes as a "*reasonable interval*" has elapsed between compliance with the first request and receipt of the second. The Act does not place a fixed period on the length of this interval and IND Directorates will need to carry out a consideration of what is a reasonable length of time on a case-by-case basis. In many circumstances a useful indicator to IND Directorates will be that a similar or identical request may be classified as repeated unless it is made **more than 3 months** after the reply to the first request was sent. But this period should not determine in every case whether a request falls to be classified as repeated.

A similar or identical request may not, for example, be classified as repeated before a period of 3 months if it is:

- for fast-changing information; or
- extremely time sensitive; or
- of great personal importance to the applicant.

Equally, a longer period of time than a 3 month period may be considered as a reasonable interval if the information was less time sensitive. For example, a similar or identical request for statistics compiled and published on an annual basis by IND may lead to a period of 12 months being classified as a reasonable interval for a request to be classified as repeated.

Where IND Directorates decide that a request does fall to be treated as repeated, they should respond to the applicant explaining why the request was considered to be repetitive under section 14 (2) of the Act. There is no need with such requests to follow the procedures for notifying Ministers of a response as detailed in Point 5.1 of Section 2 of this IDI Chapter. A standard letter which IND Directorates can use to refuse such requests can be found at **Annex E**. This is entitled, '**Standard refusal letter template to applicants where a request is repeated**'. This should be adapted to reflect the particular circumstances of the case. IND Directorates must inform the IND Central FOI Team of this refusal by filling in the template provided at **Annex B** entitled: '**Notifying outcome of non-routine FOI requests to the IND Central FOI Team**' and faxing it. Alternatively, this can be sent by email to the following Poise address on the Home Office global address list: Freedom of Information Team (IND).

## 7. APPLYING THE COST LIMIT WHEN DEALING WITH REQUESTS

As part of the Home Office, IND is not required to deal with requests for information that would be excessively expensive to comply with. If it would cost more than £600 to provide the information in response to a request, then there is no obligation for IND to comply with the request and provide the information requested by the applicant, unless there are exceptional reasons for doing so (see point 7.3).

### 7.1. **What work counts towards calculating the £600 cost limit?**

The work of staff which should be included in assessing whether a response may exceed the £600 cost limit includes:

- determining whether the information requested is held;
- locating and retrieving it;
- extracting the information to be disclosed from other information, including the first time an individual working in a particular IND Directorate reads information for this purpose. However, the cost of any subsequent readings by any other member of staff should not be counted; and
- communicating information. This includes only the actual staff time taken to write a response to the request, or to summarise, edit or redact information into the response.

The following items should not be included in the calculation as to whether the £600 limit may be exceeded:

- the costs involved in considering whether material should be classed as exempt under the Act or whether exempt information should be disclosed under the public interest test. This includes both staff time and the cost of any advice that an IND Directorate may choose to seek from the IND Central FOI Team or legal advisers. It also covers situations where the IND chooses to neither confirm nor deny that it holds requested information;
- the costs involved in considering whether a request is vexatious or a repeated request (see point 6);
- obtaining authorisation in a Directorate or from the IND Central FOI Team to send out the information;
- overheads, including IT running costs, superannuation costs, building-related costs (heating, lighting etc);
- the time taken when aggregating requests (see point 7.4);
- the time taken to check that a request for information meets the requirements of the Act (see point 2);
- advice and assistance provided to the applicant to help them submit their request (see points 3 and 5);
- the costs of photocopying or postage when communicating information to applicants.

### 7.2. **Calculating the £600 cost limit on the basis of staff hours**

The cost of staff carrying out any of the activities which count towards the £600 cost limit should be calculated at a flat rate of £25 per hour for every member of staff, regardless of whether they may be identifying, locating or communicating information. It is important to note that this flat rate applies irrespective of the grade of the member of staff who may be responding to the request. In real terms if it takes any one member of staff three and a half days actual work to provide the information

requested and this work is included at point 7.1 above as counting towards calculating the £600 cost limit, then the request does not have to be complied with. Both the cost limit of £600 and this flat hourly rate apply to all Government Departments.

### 7.3. Responding to a request which will cost more than £600 to answer

Although the option exists to charge the applicant the full cost of processing beyond £600, it is **not IND's policy** (in line with the central Home Office) to comply with the majority of requests which cost more than £600 as they involve disproportionate effort and an unreasonable diversion of resources. Requests which cost over £600 to reply to will only be complied with in exceptional circumstances, most commonly where there are compassionate grounds for complying. If IND staff consider there to be a compassionate case for complying with a request which exceeds the £600 limit, they should contact the IND Central FOI Team for further advice. It is anticipated that very large requests costing more than the £600 limit will be done for free when answered on exceptional grounds.

Where it is determined that an initial request for information will not be complied with because it will cost more than £600 to process, the applicant should be contacted by either email, fax or letter to inform them of this. This should only be done once the intended response has been noted to Ministers as specified in Point 5.1 of Section 2 of this IDI Chapter. The response should provide the applicant with an option of submitting a revised request which would fall below the cost limit. IND Directorates should also set out options, where this is possible, for the applicant to request the information so that it does not exceed the £600 limit. The template letter provided at **Annex E** can be used in response to applicants at this stage and should be adapted to explain the reasons why a case exceeds the estimated £600 limit. It is entitled: ***'Standard initial letter template to applicants asking an applicant to refine their request because it exceeds £600 cost limit'***.

If it is necessary to contact the applicant to ask them to refine their further request, the 20 working day target does not begin until the applicant has provided further details which enables IND to respond to their request.

If the applicant fails in their subsequent response to alter their request or the information they have requested may still exceed the £600 limit, then a further response should be sent refusing their request for information. The template letter provided at **Annex E** should be adapted and used for all such refusals by IND Directorates. It is entitled: ***'Standard letter template to applicants where a follow up request falls to be refused as providing the information requested would exceed £600'***.

The refusal letter should be sent within 20 working days of receiving the second attempt from the applicant to refine what information they want. There is no need with such follow up requests to follow the procedures for notifying Ministers of a response as detailed in Point 5.1 of Section 2 of this IDI Chapter. IND Directorates must, however, inform the IND Central FOI Team of this refusal by filling in the template provided at **Annex B** entitled: ***'Notifying outcome of non-routine FOI requests to the IND Central FOI Team'*** and faxing it. Alternatively, this can be sent by email to the following Poise address on the Home Office global address list: Freedom of Information Team (IND).

Where an applicant refines their request in a way which enables IND to provide the information below the £600 threshold, the request should be treated as a new request. The 20 working day target will start again, and staff will need to establish whether to treat the request as a routine or non-routine request for information in accordance with the guidance provided in Section 2 of this IDI Chapter.

All decisions relating to requests which exceed the £600 limit must be authorised at SEO/HMI level or above in IND Directorates, regardless of whether an initial or refusal response is being sent out to the applicant.

Decisions to refuse to comply on the grounds of excessive cost are likely to be challenged by applicants. It is therefore essential that an accurate and defensible record of the decision making process which led to refusal is kept, in addition to the refusal letter sent to the applicant. A best practice example of a table format for calculating the estimated cost of processing a response can be found at Annex E. Where staff are in any doubt about how to apply the £600 cost threshold, they should contact the IND Central FOI Team for further advice.

#### **7.4. Aggregating the costs of different requests for identical or similar information**

Where a single request has been refused on the grounds that it exceeds the £600 cost limit, a person or persons may then attempt to ask for the same information but break this into a series of smaller separate requests. Where this occurs it is also possible under Section 12 (4) of the Act to refuse to comply with these requests on the basis that to do so would again exceed the £600 limit.

These identical or similar requests could be made by one person or by different persons who appear to be acting together or as part of a campaign. However, the requests in question must have been on the same or related subject, and subsequent requests must be received by IND or a Directorate before the 60th working day following the date of on which the first of the requests was received.

Where an IND Directorate receives two requests at different times only the cost of answering the second or subsequent requests on that subject can be taken into account when seeing if the requests exceed the £600 limit. The charge of compiling the information for the first request cannot be taken into account by staff.

Similarly, if the requests were received from different people acting together or as part of a campaign, staff would only be able to begin taking account the cost of dealing with the second and any subsequent requests.

Staff should exercise caution when considering whether requests should be aggregated and the decision must be taken on a case by case basis. It is entirely possible, for example, that the response to a first request raises further questions for the applicant, who might then put in a second, related request. In such cases, staff should not aggregate the two requests.

It is likely that aggregating requests may prove to be a difficult area for all Government Departments in the initial stages of the Act coming into force. IND Directorates should, therefore, contact the IND Central FOI Team immediately for further advice when they believe that requests may fall to be aggregated.