

Freedom of Information Policy

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**If you need this document in a different format please telephone
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1. Introduction

The Freedom of Information Act 2000 applies to all information held by the Council. Any individual or organisation can make a written request for information to the Council. We must respond within 20 working days, providing either the information, confirmation that we do not have it, or an explanation of why it is being withheld.

The Act operates to encourage openness and transparency; consequently the basic principle is that requested information should be disclosed unless certain specific exemptions apply.

The right to request information belongs to anyone; it does not matter who they are (subject to some specific exceptions).

This policy sets out what staff should do in order to comply with the Act's requirements.

The policy, and the Council's approach, is based on an assumption of openness. Staff should handle all requests for information on the presumption that the information will be disclosed. Applicants do not have to prove that they are entitled to receive what they have asked for. There are exemptions within the Act which can be used to prevent specific and unwarranted harm, damage or prejudice to the interests of the public or to the Council's ability to deliver services to them. Even if exemptions apply, some will be subject to a further test – the public interest test - to determine if the information should be disclosed. All requests will be dealt with on a case-by-case basis.

The Council has a number of FOIA Champions from each Directorate. These Champions can assist, advise and promote FOIA.

2. Summary of specific requirements

All directorates must:

- ensure that all relevant staff are aware of the Freedom of Information Act and their obligations under it;
- ensure that all relevant staff are aware of the corporate FOI process;
- inform foirequest@wigan.gov.uk of any request for information which mentions Freedom of Information or the Environmental Information Regulations, or any request for information which will be refused for any reason; and
- inform the foirequest@wigan.gov.uk of any directorate FOI Champion or point of contact.

3. Specific issues

The main principle behind the FOI legislation is that the public have the right to know about the activities of public authorities, unless there is good reason for them not to. Disclosure of information should be the default – in other words, information should be withheld only when there is a good reason and it is permitted by the Act

Note that if information requested is already published, either by ourselves or somewhere else, then the Council can cite Section 21 and refer the requester to the published information. For example, Council minutes are available on our website.

Please refer to our Publication Scheme, Open Data and FOI FAQs on the website.
<https://www.wigan.gov.uk/Council/DataProtection-FOI-Stats/index.aspx>

3.1 Simple requests

Staff should respond positively to simple requests for information (ie of simple service requests: for example - when will my bins be emptied; who are my councillors; what are opening times of the library etc). If information is available and can be provided without causing harm or damage, it should be disclosed. The council encourages staff to disclose information where there is no risk of harm. Applicants do not need to make written requests if their requests can be answered verbally.

3.2 Individual responsibility

Every member of staff needs to recognise FOI requests. Any written request received by the council by email, letter or social media which is not a simple request for information should be treated as an FOI request and a response provided within 20 working days. A request is valid even if it does not mention the FOI Act or the Environmental Information Regulations. Although specific staff may have been nominated as directorate contacts for FOI, every member of staff is subject to the council's FOI obligations.

3.3 Decision making and the public interest test

If a decision to withhold or disclose information involves a public interest test, staff must consult the Information Governance Team. A senior officer will usually be consulted as well. Staff must disclose information where there are no obvious public interest grounds to withhold, and do not need to consult senior staff in such circumstances.

3.4 Responses

All approved responses must be returned to foirequest@wigan.gov.uk . All responses and refusals must be sent to the requester by the Information Governance Team and will include:

- Information will be released by default;
- if information has been withheld the name of the particular exemption that is being used;
- an explanation of why the use of that exemption is necessary; and
- how to make a complaint.

Advice on refusal notices and exemptions is available from the Information Governance Team or foirequest@wigan.gov.uk .

You can refuse an entire request under the following circumstances:

- it would cost too much or take too much staff time ie over 18 hours to deal with the request (we must demonstrate this in our response);
- the request is vexatious;
- the request repeats a previous request from the same person.

3.5 Consulting third parties

If applicants ask for information about third parties, whether individuals or organisations eg contractors, the third party should be consulted before a response is given. They should offer a statement which includes evidence of harm or prejudice as a result of disclosure before a refusal notice is issued. Council officers make the final decision (public interest test). Information will not be withheld solely because a third party requests us to do so.

3.6 Case-by-case approach

Previous decisions and the experience of other organisations are relevant when trying to decide whether to disclose; experience will lead to better decision-making. However, every request must be treated on its merits. A previous decision made anywhere does not bind the council to make the same decision again. In particular, decisions will not be made solely because:

- information is considered to be exempt automatically;
- other organisations have adopted or want to adopt a common approach;
- another organisation has answered the same question in the particular way;
- a representative or specialist body recommends a certain approach;
- information has been marked “confidential”;
- information requested may embarrass the council, any officer, or be used in a campaign.

3.7 Media Requests

Requests from the media are subject to the same rules as any other request – information should not be withheld or disclosed purely because the applicant represents a media organisation. However, the PR team will be copied into requests from the media (eg newspaper and broadcast journalists, researchers, editors or producers). If disclosure is likely to lead to a news story, PR should be informed so that they can respond to press enquiries.

3.8 Requests from Councillors

Elected members have a ‘need to know’ if pursuing their duties as a ward member. Councillors should be directed to use the RIC system

Correspondence between members or MPs and the Council is likely to be covered by a duty of confidence. This includes information on the RIC system. Members or MPs correspondence must not be disclosed without reference to the Information Governance Team or Legal Services.

The Freedom of Information Act does not affect the ability of elected members to represent their constituents, or prevent them from making requests or enquiries on their constituents’ behalf.

3.9 Recording and Monitoring

The Council has a system for recording and monitoring FOI requests and therefore all requests, and requests made under Environmental Information Regulations must be forwarded to foirequest@wigan.gov.uk

3.10 Internal Reviews

All FOI applicants have the right to make a complaint about the way in which their request was dealt with. The complaint must be dealt with by a senior officer not involved with the original request. They will review the request, and may make a new decision.

The reviewer can:

- uphold the original decision;
- reverse it; or
- substitute a different one.

The Information Governance Team will provide advice on the Act and the process if required, but will not take part in making the decision.

3.11 Advice, Guidance and Assistance

The Information Governance Team can provide advice on Freedom of Information issues.

3.12 Openness and Transparency

A lot of information is accessible to the public via our website and many requests can be answered by directing requests for information to the FOI, EIR, Publication Scheme and Open Data links on our website.

[Open data](#)

[Freedom of Information](#)

3.13 Review of this policy

This policy will be reviewed on an annual basis.

4. Refusal notices

Remember that the main principle behind the FOI legislation is that the public have the right to know about the activities of public authorities, unless there is good reason for them not to. Disclosure of information should be the default – in other words, information should be withheld only when there is a good reason and it is permitted by the Act.

Information Governance Officers will expect evidence to support refusals in all cases and exemptions will not be applied without Senior Officer approval, ie AD or above

a. over 18 hour time limit

When estimating the cost of compliance we can only take into account the cost of the following activities:

- determining whether we hold the information;
- finding the requested information, or records containing the information;
- retrieving the information or records; and
- extracting the requested information from records.

The biggest cost is likely to be staff time and you should rate staff time at £25 per person per hour, regardless of grade. The limit is £450 and, therefore, this means a limit of 18 staff hours. We must demonstrate in our refusal notice why we are refusing on this basis.

b. Requests for personal information of a third party

We would not provide details of a third party to a requester. An appropriate response for such a request would be:

“I am refusing to provide the information requested under Section 40(2) of the Freedom of Information Act in that the information is the personal information of a third party and to disclose the information would breach the Principles of the Data Protection Act 2018/GDPR.”

c. Vexatious and repeat requests

Please discuss with the Information Governance Team as use of this exemption must be backed up with evidence. This type of refusal is most likely to result in an internal review and may even lead to a complaint to the Information Commissioner’s Office. ICO investigations are extremely thorough and the case workers will expect us to provide evidence to support a refusal of this nature so departments **MUST** discuss with Information Governance officers and provide recorded evidence. The ICO have the authority to overturn our decision and order us to issue a revised response.

Finally – please remember that:

- Disclosure of the information should be the default
- A requester does not have to justify why they are asking for the information; on the contrary, we must justify refusing or withholding information
- All requests for information should be treated equally ie applicant and motive blind
- You should consider any information you release under the Act as if it were being released to the world at large

5. Freedom of Information – Definition of Exemptions

**Some of these exemptions are absolute ie the information never gets released.

However, some of them have to be given the public interest test**

Exemption	Definition	Public Interest Test?(PIT)
21	Information accessible by other means	Always Exempt
	<p>This exemption applies if the information requested is already accessible to the requester. Eg. the requester already has the information, or if it is already included in our Publication Scheme. For this exemption, you will need to take into account any information the requester gives you about their circumstances. For example, an elderly or infirm requester may tell you they don't have access to the internet at home and find it difficult to go to their local library, so information available only over the internet would not be reasonably accessible to them. When applying this exemption, you have a duty to confirm or deny whether you hold the information, even if you are not going to provide it. You should also tell the requester where they can get it. This exemption is absolute, so you do not need to apply the public interest test.</p>	
22	Intended for future publication	PIT
	<p>This exemption applies if, when you receive a request for information, you are preparing the material and definitely intend to publish it and it is reasonable not to disclose it until then. You do not need to have identified a publication date. You do not have to confirm whether you hold the information requested if doing so would reveal the content of the information. This exemption is qualified by the public interest test.</p>	
24	National Security	PIT
	<p>The section 24 exemption applies if it is "required for the purpose of safeguarding national security". The exemption does not apply just because the information relates to national security.</p>	
30	Prejudice to investigations	PIT
	<p>The section 30 exemption applies to a specific category of information that a public authority currently holds or has ever held for the purposes of criminal investigations. It also applies to information obtained in certain other types of investigations, if it relates to obtaining information from confidential sources. In general, the Council's duties to prevent and investigate crimes and to report them to the police and others are covered by an exemption.</p>	
31	Prejudice to law enforcement	PIT

	Section 31 applies where complying with the request would prejudice or would be likely to prejudice various law enforcement purposes (listed in the Act) including preventing crime, administering justice, and collecting tax. It also protects certain other regulatory functions, for example those relating to health and safety and charity administration.	
36	Prejudice to public affairs	PIT
	The section 36 applies where complying with the request would prejudice or would be likely to prejudice “the effective conduct of public affairs”. This includes, but is not limited to, situations where disclosure would inhibit free and frank advice and discussion. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised qualified person for that public authority.	
38	Health and Safety	PIT
	You can apply the section 38 exemption if complying with the request would or would be likely to endanger anyone’s physical or mental health or safety. In deciding whether you can apply this exemption, you should use the same test as you would for prejudice. This exemption is qualified by the public interest test.	
39	Environmental Information	
	You should deal with any request that falls within the scope of the Environmental Information Regulations 2004 under those Regulations. This exemption confirms that, in practice, you do not also need to consider such requests under the Freedom of Information Act. This exemption is qualified by the public interest test, but because you must handle this type of request under the Environmental Information Regulations, it is hard to imagine when it would be in the public interest to also consider it under the Freedom of Information Act.	
40(1)	Personal information of the requester	Always Exempt
	This exemption confirms that you should treat any request made by an individual for their own personal data as a subject access request under the DPA 2018/GDPR. You should apply this to any part of the request that is for the requester’s own personal data. They should not be required to make a second, separate subject access request for the information. If the information contains some of the requester’s personal data plus other non-personal information, then you will need to consider releasing some of the information under the Data Protection Act/GDPR and some under the Freedom of Information Act.	
40(2)	Data protection	Always Exempt

	<p>This exemption covers the personal data of third parties (anyone other than the requester) where complying with the request would breach any of the principles in the Data Protection Act/GDPR. If you wish to rely on this exemption, you need to refer to the Data Protection Act/GDPR as the data protection principles are not set out in the Freedom of Information Act. This exemption can only apply to information about people who are living; you cannot use it to protect information about people who have died. Section 40(2) is an absolute exemption, so you do not need to apply the public interest test. However, you may need to consider the public interest when applying the data protection principles. For guidance please contact the Information Governance Team</p>	
41	Information Provided in Confidence	Always Exempt
	<p>This exemption applies if the following two conditions are satisfied:</p> <ul style="list-style-type: none"> • you received the information from someone else; and • complying with the request would be a breach of confidence that is actionable. <p>To rely on this exemption, you must apply the legal principles of the common law test of confidence. This exemption is absolute so you do not need to apply the public interest test. However, you will still need to consider the public interest in disclosure, because the law of confidence recognises that a breach of confidence may not be actionable when there is an overriding public interest in disclosure. You should carefully consider how you use confidentiality clauses in contracts with third parties and set reasonable levels of expectations about what may be disclosed.</p>	
42	Legal professional privilege	PIT
	<p>This applies whenever complying with a request would reveal information that is subject to 'legal professional privilege' (LPP). LPP protects information shared between a client and their professional legal advisor (solicitor or barrister, including in-house lawyers) for the purposes of obtaining legal advice or for ongoing or proposed legal action. These long-established rules exist to ensure people are confident they can be completely frank and candid with their legal adviser when obtaining legal advice, without fear of disclosure. This exemption is qualified by the public interest test.</p>	
43	Commercial prejudice	PIT
	<p>This exemption covers two situations:</p> <ul style="list-style-type: none"> • when information constitutes a trade secret (such as the recipe for a branded product); or • when complying with the request would prejudice or would be likely to 	

	<p>prejudice someone's commercial interests. Both parts of this exemption are qualified by the public interest test.</p>
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6. Public Interest Test - guidance

All exemptions in the Freedom of Information Act are either “absolute” or “qualified”. If the exemption is qualified then we must weigh the public interest in maintaining the exemption against the public interest in disclosure – we must carry out the public interest test.

- Absolute exemptions (Section 21/23/32/34/40/41)
- Qualified exemptions (Section 22/24/26/27/28/29/30/31/33/35/36/37/38/39/42/43/44)

Where we wish to withhold information under a qualified exemption we have to carry out a two stage process:

1. Decide whether the exemption applies to the requested information.
2. Carry out the public interest test – decide whether the public interest is better served by maintaining the exemption or by disclosing the information.

We can only withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosure. Under Section 17(3) public authorities must explain to the requester why the balance of the public interest test favours withholding the information.

In relation to the public interest test the following should be recorded:

- Public interest factors in favour of maintaining the exemption and the weight attached to them.
- Public interest factors in favour of disclosure, and the weight attached to them.
- The outcome of the public interest test. The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

What is in the ‘public interest’?

The public interest is what is in the public good - not just what is of interest to the public, and not the private interest of the requester. Public Interest arguments for the exemption must relate specifically to that exemption. There will always be a general public interest in transparency. There may also be a public interest in transparency about the issue the information relates to. We have to consider any public interests that would be served by disclosing the information.

This can cover a very wide range of things for example:

- Transparency and accountability
- Promote public understanding and safeguard the democratic process
- Upholding standards of integrity
- Ensuring justice and fair treatment for all
- Securing the best use of public resources

- Ensuring fair commercial competition in a mixed economy

However, we must also consider the following: -

- an informed and involved public helps to promote good decision making but public bodies still need the space and time to full consider policy options to enable appropriate decisions to be made away from public interference.
- Likewise although revealing wrong doing may help the course of justice, investigations may need confidentiality to be effective.

Therefore in each case, the public interest test involves identifying the appropriate public interests and assessing the extent to which they are served by disclosure or by maintaining the exemption. The fact that information falls within an exemption is simply a trigger to consider the public interest; it does not imply that there is a public interest in not disclosing the information.

It should be noted that the public interest is not the same as what interests the public. Also, a requester's private interests are not in themselves the same as the public interest and what may serve one person's private interests will not necessarily serve a wider public interest.

Carrying out the public interest test

This should be done objectively by considering the arguments in favour of disclosing the information and those in favour of maintaining the exemption. This should be done by drawing up a list showing the arguments on both sides.

- The argument in favour of maintaining an exemption must relate specifically to that exemption. Arguments relating to other exemptions are irrelevant.
- Class based exemptions protect information because it is of a particular type (e.g. Information held for the purposes of an investigation). As a general rule there is no inherent public interest in class based exemptions.
- Prejudice based exemptions protect information where its disclosure would or would be likely to harm a particular interest (for example the prevention or detection of crime). There is an inherent public interest in section 42 – legally privileged information.
- There will always be a general public interest in transparency, accountability, public understanding and involvement in the democratic process. This will always be given some weight in the public interest test.
- There may be a general public interest in the subject the information relates to. If a particular policy decision has widespread or significant impact on the public then there is a public interest in furthering debate on the issue.
- There can also be the counter argument to this – information should not be disclosed because of the need to have a safe space in which to formulate and develop policy.
- There may be a general public interest in the information in question (e.g. to help people understand their legal obligations).
- If there is a suspicion of wrong doing on the part of the public authority a requester may make an allegation of wrong doing and request information that would shed some light on it. In order for this to be considered as a factor in the public interest test:

- Disclosure must be in the wider public interest, not just the private interests of the individual.
- The suspicion of wrongdoing must amount to more than a mere allegation; there must be a plausible basis for the suspicion.
- There is a public interest in fully understanding the reasons for public authorities' decisions, to remove any suspicion of manipulating facts or 'spin'. There may well be a public interest argument for disclosing advice given to decision makers. There will always be an argument for presenting a full picture and allowing people to reach their own view.
- If information that is already in the public domain is misleading or misrepresents the true position or doesn't reveal the full picture this may increase the public interest in disclosure.

There are a number of factors which are not relevant to the public interest test:

- Identity of the requester
- Private interests of the requester
- Information may be misunderstood – this may only be used though where it is not possible to provide an explanation of the information or if the explanation would not limit any damage caused.

Giving weight to the public interest arguments:

Once the relevant public interest arguments have been identified then the weight of those for disclosure must be weighed against those for maintaining the exemption to find where the balance lies. Certain factors can add weight on either side:

- Likelihood of prejudice – would disclosure cause or be likely to cause the prejudice described in the exemption?
- Severity – the severity of the prejudice that may happen also affects the weighting. What would the impact of the prejudice if the information is disclosed?
- Age of the information – in general the public interest in maintaining an exemption will diminish over time – the likelihood or severity of the prejudice diminishes (won't be true in every case)
- The specific information and the public interest in disclosure – it is important to consider how far disclosing the requested information would further the public interests identified. The information may be relevant to a subject of public interest but it may not add greatly to public understanding – in such cases the public interest in maintaining the exemption may outweigh that in disclosure. On the other hand disclosure may help inform the debate, and if so the public interest in disclosure is strengthened.

The balancing exercise:

We must carry out a balancing exercise to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. If it does not then the information must be released. If the public interest is equal on both sides we must disclose the information

The public interest test requires that information only should be withheld under an exemption if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Where the balance is equal then the information must be released. In all cases the decision to release or withhold information will be a matter of judgement at the time of the request.

The decision showing the application of the public interest test should be recorded and documented with the reasons on both sides. There should be reasons on both sides recorded as objectively as possible and we must be able to account for the reasons. If relying on the exemption under Section 36 (Prejudice to Public Affairs) you must seek the opinion of the Monitoring Officer of the Council – see note below.

Some points to consider when assessing the public interest:

- Factors in favour of disclosure.
- Whether it would promote accessibility to information, promoting transparency and accountability.
- Whether a document would disclose reasons for a decision made on behalf of the public and/or enable them to challenge these decisions.
- Whether disclosure would contribute to a public debate on a matter of public interest.
- Whether disclosure would enhance scrutiny and thereby improve accountability and participation.
- Whether disclosure would bring to light important matters of public health and safety.

This is not an exhaustive list and in all cases full consideration should be given to whether to disclose or withhold information. It should be noted that the public interest does not include the protection of individuals in their capacity of officers of the Council from embarrassment.

Applying an exemption:

- It is possible to cite more than one exemption as the reason for non-disclosure.
- All responses must state clearly in writing what exemptions have been applied and where the exemption is qualified and the public interest test has been used must state the reasons used.
- An exemption can apply to all or just to some of the information in a document.
- An exemption which applied when a document was created may no longer apply by the time the record is the subject of an FOI request.

Section 36

When wishing to cite Section 36 (Prejudice to effective conduct of public affairs) officers need to be aware that the Qualified Person's opinion is needed to engage the exemption. The Qualified Person at Wigan Council is the monitoring officer.

After seeking the Qualified Person's opinion we still need to carry out the Public Interest Test.

In addition to the record of the qualified person's opinion, the authority should therefore also have a record of the factors taken into account in the public interest test and the weight given to them. They can then refer to these in any internal review and provide them to the ICO if there is a complaint.

In order for the qualified person to form a reasonable opinion, the public authority should provide them with all relevant material, eg the information itself or a description of it, together with arguments and any evidence on what the effects of disclosure would be. In the ICO's view it will be difficult for the qualified person to reach a reasonable opinion if they are not aware of the nature of the information and the relevant factors (and only the relevant factors) that need to be taken into account. It is also important that it is clear what information the opinion relates to.

Further reading:

ICO guidance on Public Interest Test https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf

Public Interest Test and EIR https://ico.org.uk/media/for-organisations/documents/1629/eir_effect_of_exceptions_and_the_public_interest_test.pdf

ICO guidance on the prejudice test https://ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf

ICO Guidance on Section 36 https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf

7. Freedom of Information – Senior Officer Review

Staff Guidance

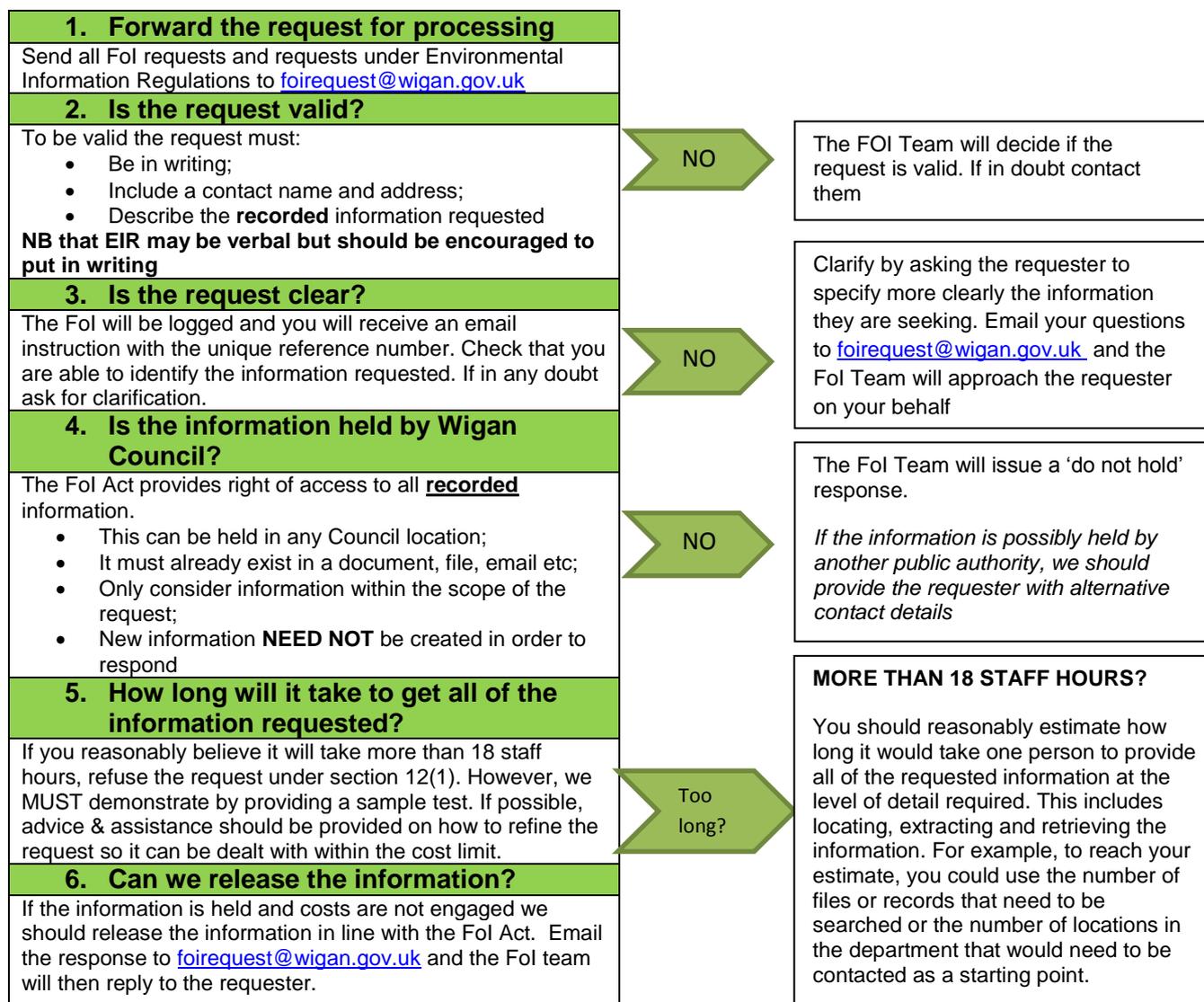
Public Authorities must have a separate Fol complaints procedure so that requesters who are dissatisfied with the outcome of an Fol can have that request considered a second time by an independent officer. We offer a senior officer review to requesters.

All Fol responses include information on how requesters can escalate to a senior officer review, or make a complaint to the ICO. If officers receive a complaint about an Fol request or receive a request for a review they must forward it to foirequest@wigan.gov.uk

- The Information Governance Team will forward any complaints regarding Fol responses to a senior officer. This must not be an officer involved in the original decision. The officer carrying out the review will be sent the original request, any correspondence between the Information Governance Team and the department about the request, and the final response, along with the request to escalate to a review.
- The Information Governance Team can give advice about the Fol to the officer handling the review if required, unless they were involved in the initial decision.
- The senior officer will look at the original request, and make a fresh decision about whether to disclose the information, taking into consideration whether any exemptions apply and carrying out the public interest test if required.
- If they reach the same conclusion as the original decision the senior officer will write to the requester confirming this.
- If the senior officer carrying out the review decide that the original decision was not correct they will inform the department of their conclusion and the department will reconsider the request in the light of their conclusion.
- The senior officer carrying out the review may inform the Information Governance Team if they believe that the Council's advice and procedures need to be changed, or if staff training is required, or where any other action is needed to avoid similar complaints.
- If the requester is still dissatisfied they can complain to the Information Commissioner, who is the regulator for Freedom of Information. The website is <https://ico.org.uk/>
- Where information has been withheld under Section 36, Prejudice to Public Affairs, there will not be an internal review as this decision must be made by the Monitoring Officer. In these cases the requester will automatically be referred to the Information Commissioner if dissatisfied.

8. Freedom of Information Flowchart

This flow-chart breaks the FOI handling process down into clear and logical steps. On receipt of a request for information, please consider each stage below to ensure that every response you handle is compliant with the Freedom of Information Act 2000 (FOIA)/EIR



DOES AN FOI EXEMPTION OR EIR EXCEPTION APPLY

The main principle behind FOI and EIR legislation is that the public have the right to know about the activities of public authorities, unless there is good reason for them not to. Disclosure of information should be the default – in other words, information should be withheld only when there is a good reason and it is permitted by the Act

There are currently 23 FOI exemptions but not all apply to local government. A list of common exemptions can be found at <http://thehub/OurCouncil/Policies-and-documents/Freedom-of-information/index.aspx>. EIR Exceptions differ from FOI Exemptions. Please contact foirequest@wigan.gov.uk for advice. Further help and guidance can be found on the ICO website at <http://ico.org.uk/>.

We need to identify which of the exemptions apply; if an extension of time is needed to consider the Public Interest Test and provide evidence to support the decision.