

## Freedom of Information (FOI) and Environmental Information Regulations (EIR) Policy

### Policy Management:

Version number	1.1
Status	Approved
Approval date	27/07/23
Approved by	SLT
Effective from	27/07/23
Date of next review	3 years (July 2026)
Policy owner (HOS Service)	Finance & Corporate Services
Policy author	Lehan Fielding
Equality Impact Assessed? (Y/N)	Y
Data Protection Assessed? (Y/N)	Y
Published on HOS website? (Y/N)	Y
Related documents (policies / process / procedure / guidance):	Freedom of Information requests procedure (in development)

### Version Control:

Version	Date	Author	Details of review
1	04/07/2023	Lehan Fielding	Initial draft
1.1	21/07/2023	Lehan Fielding	Suggested revisions after F&CS review

## Contents:

### Table of Contents

1. Overview .....	3
2. Scope .....	3
3. Roles and Responsibilities .....	4
4. Policy Statements.....	6
4.1 General Principles .....	6
4.2 What information is covered? .....	6
4.2.1 Freedom of Information Act (FOIA) .....	6
4.2.2 Environmental Information Regulations (EIR) .....	7
4.3 What information is not covered? .....	7
4.4 What constitutes a valid information request? .....	8
4.4.1 Freedom of Information Act (FOIA) .....	8
4.4.2 Environmental Information Regulations (EIR) .....	8
4.4.3 Valid name .....	8
4.4.4 Clarification .....	9
4.4.5 Rights of the requestor .....	10
4.4.6 Requests which are not valid under the FOIA/EIR .....	10
4.5 Timescales .....	10
4.6 Fees.....	11
4.6.1 Freedom of Information Act.....	11
4.6.2 Environmental Information Regulations .....	12
4.7 Means of making disclosure .....	12
4.8 Refusing a request.....	12
4.9 Vexatious (FOIA) and manifestly unreasonable (EIR) requests.....	13
4.10 Transferring requests.....	14
4.11 Consultation with third parties.....	14
4.12 Staff names .....	15
4.13 Internal Reviews .....	16
5. Contracts.....	16
6. Publication Scheme.....	16
Appendix A: Exemptions under the Freedom of Information Act .....	18
Appendix B: Exemptions under the Environmental Information Regulations .....	22

## 1. Overview

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR) 2004, are two similar pieces of legislation which provide the public a right of access to information held by public authorities and those designated within the legislation as such in two ways:

- Public authorities are obliged to proactively publish certain information about their activities and
- Members of the public are entitled to request information direct from public authorities

Whilst the Freedom of Information Act gives people access to most other types of information held by public authorities, the Regulations apply only to '*environmental information*' held by public authorities. There are also several exemptions/exceptions set out in both pieces of legislation which enable a public authority to withhold certain information if disclosure would be prejudicial in some way.

The Housing Ombudsman Service (HOS) has been designated as a public authority under Schedule 1 of the Freedom of Information Act since 1 May 2018 and is therefore covered by both the FOIA and the EIR.

HOS recognises its responsibility to these pieces of legislation and is committed to promoting a culture of openness and transparency with all the information it holds to meet the requirements of the FOIA and the EIR.

This Policy is intended to outline how HOS intends to demonstrate compliance with both the FOIA and the EIR by providing a framework that fully endorses and adheres to the principles of both pieces of legislation. It also seeks to ensure consistency of approach in applying FOI and EIR principles, making FOI/EIR decisions and enforcing FOI/EIR exemptions as well as ensuring that the Service meets the standards set out in the Lord Chancellor's Code of Practice under section 45 of FOIA, which provides guidance on the practice to be followed in handling requests for information.

## 2. Scope

This policy applies to all persons within the Housing Ombudsman Service (meaning permanent, fixed term, and temporary staff, any third-party representatives or sub-contractors, agency workers, volunteers, interns and agents engaged with the Company). Adherence to this policy is mandatory and non-compliance could lead to disciplinary action.

The policy covers all requests for information except requests from individuals for their own personal data and normal 'business as usual' requests. A 'business as usual' request is a request for information or services that a service area would expect to receive in its normal day to day operation. Any request that indicates it is a FOIA request cannot be treated as 'business as usual.'

This policy also does not cover the governance of information requests or reviews made under the 'Access to Information Scheme' (ATIS) which is a policy directive separate to the FOIA and EIR, both of the latter being legislative in nature.

### 3. Roles and Responsibilities

<p><b>The Housing Ombudsman</b></p>	<p>The Housing Ombudsman is accountable for having policies and procedures in place to support best practice, effective management, service delivery, management of associated risks and meet national and local legislation and/or requirements in relation to and including the Freedom of Information Act 2000. The Housing Ombudsman is HOS' qualified person under the FOIA.</p>
<p><b>Director of Finance &amp; Corporate Services (SIRO (Senior Information Risk Owner))</b></p>	<p>Has overall responsibility for the application of HOS' publication scheme.</p>
<p><b>Data &amp; Digital Manager</b></p>	<p>The Data &amp; Digital Manager is responsible for HOS' overall compliance with the FOIA and the EIR by:</p> <ul style="list-style-type: none"> <li>• Ensuring an effective procedure is in place for FOI/EIR requests to be dealt with by the DPAs (Data Protection Advisor).</li> <li>• Producing compliance monitoring reports on FOI/EIR requests received.</li> <li>• Setting and reviewing appropriate policies for handling information in line with the legislation and codes of practice issued pursuant to Sections 45 and 46 of the FOIA.</li> <li>• Coordinating and managing all requests for information.</li> <li>• Ensuring team compliance with legislative deadlines.</li> <li>• Completing internal reviews where requested.</li> <li>• Liaising with the ICO to resolve any complaints/appeals or tribunals raised through the regulator.</li> <li>• Providing advice and guidance to the Director of F&amp;CS and the COO on maintenance of HOS' publication scheme.</li> </ul> <p>The Data &amp; Digital Manager will also provide a point of contact for all staff who require advice on FOI and EIR matters.</p>
<p><b>Data Protection Advisors</b></p>	<p>Data Protection Advisors are responsible for the management and administration of all FOI/EIR requests received and responses made including:</p> <ul style="list-style-type: none"> <li>• Assessing the validity of requests made under FOIA/EIR and acknowledging all valid requests received.</li> <li>• Providing advice and assistance to persons making requests for information.</li> </ul>

	<ul style="list-style-type: none"> <li>• Transferring requests to another authority in respect of information that is not held by HOS (if appropriate).</li> <li>• Determining whether HOS holds the requested information by consulting with relevant directorates and teams.</li> <li>• Consulting with third parties in the disclosure of held information if appropriate.</li> <li>• Ensuring confidentiality obligations are considered.</li> <li>• Determination and application of any appropriate exemptions including carrying out relevant Public Interest Tests (PIT) if necessary.</li> <li>• Notifying requestors of HOS' complaints procedure when communicating responses.</li> <li>• Ensuring records of FOI/EIR requests are accurately kept on our case management system.</li> <li>• Providing advice and guidance to HOS staff on FOIA/EIR related matters.</li> </ul>
<p style="text-align: center;"><b>Heads of Service</b></p>	<ul style="list-style-type: none"> <li>• Ensuring that all requests for information made by the Data &amp; Digital Team to relevant departments are dealt with in full and without delay by their respective teams.</li> <li>• Identifying any documentation or information within their department which may be suitable for proactive publication under the publication scheme.</li> <li>• Working with the Data &amp; Digital Manager to ensure that there are effective and efficient processes in place for dealing with FOIA/EIR requests and that any obstacles to compliance are overcome.</li> </ul>
<p style="text-align: center;"><b>All staff</b></p>	<ul style="list-style-type: none"> <li>• Creating and maintaining records which are accurate, appropriate and retrievable. This will include adherence to standards for referencing, titling, filing and authoring documents, both electronically and on paper.</li> <li>• Ensuring that requests for information and possible re-use are passed in a timely manner to staff who are responsible for responding – the Data &amp; Digital Team.</li> <li>• Ensuring that disclosures are not made outside of the defined process so that inappropriate disclosures are avoided.</li> <li>• Ensuring that documents which fall within the requirements of the publication scheme are provided for publication.</li> <li>• Bringing new documents or classes of information that have not been previously published to the attention of their Heads of Service who will facilitate agreement on publication of such material(s) with the Data &amp; Digital Manager.</li> </ul>

## 4. Policy Statements

### 4.1 General Principles

HOS will apply the below general principles when dealing with any request for information under either the FOIA or the EIR:

- Disclosure of information will be the default position and withholding information will only be done if there is a lawful exemption in the legislation allowing for this.
- A requestor does not need to provide an explanation as to why they require the information, nor should a justification be requested by HOS unless such circumstances that an explanation is required to assist in locating the relevant information or in establishing whether a Section 14 exemption is engaged.
- All requests for information should be treated equally (except under some circumstances relating to vexatious requests and those for personal data). Requests should be dealt with in an 'applicant blind' fashion meaning that regardless of who has requested the information; be it a member of the public, a journalist or a government official, the request should be dealt with in accordance with the relevant legislation and not dealt with preferentially in any way. This does not mean that HOS cannot provide information to certain individuals or agencies outside of the legislations.
- Since all requestors are treated equally, information should only be disclosed under the Act or the Regulations if it could be disclosed to anyone else who requested it. Any information released under these legislations are deemed to be a 'disclosure to the world' and not just to the requestor.
- A request does not have to mention either the FOIA or the EIR for it to be dealt with as such. It should simply be clear that information is being requested from HOS which falls within the scope of either of these legislations. Where either no specification is made as to whether the request is being made under the FOIA or the EIR or the incorrect legislation is quoted in the request, HOS will make the determination as to which legislation applies and deal accordingly. We are required to do this as different exemptions or exceptions apply in such circumstances and different legal rights apply dependant on which legislation is applicable. We will confirm this with the requestor in our acknowledgment of receipt of the request and it will not affect the statutory time limits in which the request is responded to.

### 4.2 What information is covered?

#### 4.2.1 Freedom of Information Act (FOIA)

The FOIA covers all recorded information held by HOS. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is not limited to official documents and it covers, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings.

The Act covers information that is held on behalf of HOS even if it is not held on HOS premises. Where HOS subcontracts a service to an external company, that company may then hold information on our behalf, depending on the type of information and our contract with them. Some of the information held by the external company may be covered by the Act if we receive an FOI request but the external contractor is not obliged to respond to any request it receives directly.

The FOIA covers all recorded information held by HOS, no matter how it was obtained and not just information that HOS has produced or uses for its own business purposes. HOS will be classed as holding the information in a report or a document if we have a copy of it, even if the 'ownership' or copyright rests with another body. Information released may be subject to copyright and if the requester wishes to re-use the information, they must apply to the copyright holder. However, it must be noted that copyright does not prevent information being disclosed.

#### 4.2.2 Environmental Information Regulations (EIR)

The EIR cover any recorded information which falls within the definition of 'environmental information':

"Environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);<sup>1</sup>*

#### 4.3 What information is not covered?

Neither the FOI Act nor the EIR give people access to their own personal data (information about themselves). If a member of the public wants to see information that HOS holds about them, they should make a right of access request under the Data Protection Act.

Neither the FOI Act nor the EIR cover information that is not recorded. If a member of the public asks for information, HOS are only obliged to provide information if we already hold it in a recorded form. HOS are not required to create new information or find the answer to a question from staff who may happen to know it to respond to a request made.

Neither the FOI Act nor the EIR cover information which is held solely on behalf of another body, person or Organisation. This means that HOS employee's purely private information is not covered even if it is held on a HOS owned device or within HOS cloud storage. Nor is Union information which may be likewise held.

---

<sup>1</sup> The Environmental Information Regulations 2004 Article 2(1)

## 4.4 What constitutes a valid information request?

### 4.4.1 Freedom of Information Act (FOIA)

In accordance with Section 8 of the FOIA all requests made must:

- Be made in writing (can be made via email, letter or via our Social Media channels)
- Be received in a legible form
- Describe the information being sought
- Specify the name of the requestor (see section on Names below)
- Specify a return correspondence address for the response to be sent to (can be a residential address, an email address or a Social Media handle – as long as there is an ability to receive a response in writing). There may be limitations on what information can be sent via a Social Media handle (file size or character restrictions) and therefore we may ask for an alternative address to be provided before we disclose information.

A request does not have to cite the FOIA to be considered to be a valid request for information.

### 4.4.2 Environmental Information Regulations (EIR)

In addition to the above, requests made to HOS for information which falls under the definition of environmental information can also be made verbally. However, a valid name, return correspondence address and description of the information being sought must still be provided.

A request does not have to cite the EIR to be considered to be a valid request for information.

Requests for information under the FOIA and EIR should be submitted to the Data & Digital Team via [DPO@housing-ombudsman.org.uk](mailto:DPO@housing-ombudsman.org.uk) or by post to:

The Housing Ombudsman Service  
PO BOX 152  
Liverpool  
L33 7WQ

Any request for information under the FOIA/EIR received within any HOS department should be forwarded to the Data & Digital team via the DPO inbox as soon as it is received. Any request specifically referring to the FOIA or the EIR must be responded to by the Data & Digital Team only.

All valid FOI/EIR requests received by the Data & Digital Team will be acknowledged in writing.

### 4.4.3 Valid name

For an FOI or EIR request to be deemed valid, the requestor must provide enough of their real name to provide anyone receiving the request a reasonable indication of their identity.



Guidance as to what constitutes a valid name can be found on the ICO's website:  
[Recognising a request made under the Freedom of Information Act \(section 8\) | ICO](#)

Pseudonyms are not accepted as being valid names. However, where there is no specific reason to challenge a requestor's identity (such as a requestor using an obvious pseudonym such as 'Mickey Mouse' or where the identity of the requestor is required for HOS to make a determination on the application of a Section 14 exemption), the name provided will be taken at face value.

Where an obvious pseudonym is provided or where we believe the requestor may be using a pseudonym to subvert the application of a Section 14 exemption, we reserve the right to ask for appropriate validation such as asking the requestor to produce a valid identity document to confirm their identity.

A request can be accepted if it is made in the name of a genuine company, organisation or campaign group. The name provided does not have to be an individual's name. If the name exists as a legal entity such as a trading name, then it will be deemed valid for the purposes of FOI/EIR. Again, we reserve the right to challenge the validity of the Company's authenticity and ask for verification if required.

Where a name is not provided within the body of the request or in the correspondence sign off, an email address or social media handle will only be considered to be a valid name if the prefix meets the above criteria.

Therefore, [jbloggs@email.com](mailto:jbloggs@email.com) would be considered to be a valid name for the purposes of the FOIA/EIR.

[joey@email.com](mailto:joey@email.com) would be considered to be invalid.

#### 4.4.4 Clarification

If a request is unclear or if it does not appropriately describe the information being sought, HOS has a duty to clarify the request with the requestor.

Clarification could be sought if for example:

- The request is too general and open ended (for example, a requestor asks for information on the number of complaints been made against a certain landlord but they don't specify a date parameter in which to conduct searches).
- The request could be read in more than one way.
- The request is rendered unclear by the context.

HOS will seek clarification at the earliest opportunity and always within 20 working days of the request being received. A request will not be considered to be valid under the FOIA or EIR until the clarification has been received. Where clarification is asked of the requestor, the timeline for compliance will not start until the date the clarification is received. If clarification is not received within 3 months of being requested, the request will be closed on our system and a new request must be submitted.

The FOIA, Section 16 and EIR Regulation 9(1) require a public authority to provide advice and assistance to a person making a request. HOS will take all reasonable steps to advise anyone whose request does not fulfil the above criteria and what is required by us to progress their request.

#### 4.4.5 Rights of the requestor

Information not already made available in the Publication Scheme is accessible through a specific request for information. In this regard the FOIA and the EIR establishes two related rights:

- a. the right to be told whether information exists, and
- b. the right to receive the information (subject to legal exemptions/exceptions).

These rights can be exercised by anyone worldwide.

#### 4.4.6 Requests which are not valid under the FOIA/EIR

The following requests are not valid under either the FOIA/EIR:

- Requests which do not ask for access to recorded information for example, those asking for opinions, comments, statements or which are making a complaint. If appropriate, these will be forwarded on to the relevant department for response if required.
- Requests from an individual for information about themselves. These will automatically be dealt with under the right of access provision of the Data Protection Act as per our Data Subjects Right policy.
- Routine or business as usual requests which would normally be responded to as a matter of course. These will be forwarded to the relevant departments for routine response.

Where FOIA/EIR is specifically cited within the request, a formal response under FOIA/EIR will be provided and the requestor will be directed to the correct avenue for response if applicable. Where FOIA/EIR is not cited but it is clear that the request falls under one of the above criteria it will be automatically forwarded to the relevant department and the requestor will be advised of who will be dealing.

### 4.5 Timescales

The statutory timescales for providing a response under both FOIA (Section 10) and EIR (Reg 5(2)) is as soon as possible and no longer than twenty working days from receipt of the request.

All valid FOI/EIR requests must be dealt with by the Data & Digital Team. However, a request can be received anywhere within the Service. Once received, it should be forwarded to the Data & Digital team via the [DPO@housing-ombudsman.org.uk](mailto:DPO@housing-ombudsman.org.uk) email address as soon as possible.

A request is deemed as having been received by HOS on the date that a valid request is received anywhere within the Service and not the date it is received by the Data & Digital Team.

The twenty working day 'clock' starts from the first working day after a valid request is received. For requests received on weekends this will be the first working day of the week

(which will usually be Monday unless there is a bank holiday or other public holiday in which case it will be the first working day back).

Where clarification is requested, the date received will be based on the date the clarification is received.

Public/bank holidays and weekends are not classed as working days.

A request is only classed as valid if it meets all the criteria outlined in Section 3.4. There are occasions where the deadline can be extended up to a maximum of an additional forty working days to consider the application of particular exemptions and the public interest test. Where this is the case, a deadline extension will be authorised by the Data & Digital Manager and the requestor will be advised as to the new deadline within the initial twenty working day deadline.

Where a request incurs a fee and the applicant has paid this, the period from when the applicant received the fees notice to when they paid the fee in full is disregarded for the purposes of calculating the twentieth working day following receipt.

## 4.6 Fees

### 4.6.1 Freedom of Information Act

Most requests made under FOIA will not be subject to a fee, however there are certain activities which can be charged for under the Appropriate Limit and Fees Regulations 2004. These are:

- Reproducing any document containing information e.g., printing or photocopying
- Postage and other forms of transmitting the information
- Complying with Section 11 of the FOIA where the requestor has expressed a preference for means of communications and where this is reasonably practicable

In addition, section 12 of the FOIA states that HOS can charge a fee for complying with a request which exceeds the appropriate limit to facilitate. For local government bodies (which includes HOS), the appropriate limit is set at £450. This is a standard rate of £25 per hour (regardless of the grade of the Officer undertaking the work) and represents the estimated cost of one person spending 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information. If the appropriate limit for complying with a request is reached the request will be refused under Section 12 of the FOIA and the requestor will be asked if they would like to amend their request to bring it within the appropriate limit. The requestor can also choose to pay the relevant fee to continue with the request.

If the requestor chooses to pay the relevant fee, a fees notice will be issued and HOS will not be obliged to respond to the request until the full fee is received.

HOS does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate.

HOS fees are based on the standard rate of £25 per hour to facilitate the request in full. Only the following activities can be counted in this estimate:

- determining whether we hold the information,
- locating the information, or a document which may contain the information,
- retrieving the information, or a document which may contain the information, and
- extracting the information from a document containing it<sup>2</sup>

#### 4.6.2 Environmental Information Regulations

The FOIA, section 9, EIR Regulation 8(1) enable a public authority to charge a requester for making information available.

It is the aim of HOS to make as much information as possible available free of charge. However, there will be occasions when HOS will need to levy a charge for information. Any charge made will be 'reasonable' and will not exceed the costs HOS incurs in making the information available or act as a deterrent to the right to request information. It will only cover the cost of the paper for photocopying or printing the information and a covering letter and the cost of postage. It could also include the cost of staff time in identifying, locating or retrieving the information from storage.

Should a fee be charged, we will refer the requester to a schedule of charges within 20 working days. HOS are not obliged to provide the information until we have received any requested fee in full.

#### 4.7 Means of making disclosure

Where a requestor has expressed a particular preference for communication of the requested information, HOS, so far as is reasonably practicable, will give effect to that preference.

In determining whether it is reasonably practicable to communicate information by a particular means, HOS will consider all the circumstances, including the cost of doing so. If it is determined that it is not reasonably practicable to comply with any preference expressed by the applicant in making their request, the applicant will be notified of the reasons for its determination and will provide the information by such means as which it deems reasonable in the circumstances.

Where a preference is not expressed, HOS will determine the appropriate means of communication of the requested information which will usually be via email in the first instance.

#### 4.8 Refusing a request

HOS is not obligated to provide information in response to either a request made under the FOIA or the EIR if the information requested is subject to an exemption (FOIA) or an exception (EIR). A full list of exemptions under the FOIA and exceptions under the EIR is listed at Appendix A.

Where an exemption/exception applies, HOS will communicate this to the requestor by providing a refusal notice and stating the reasons why HOS is not providing some or all of the requested information. A refusal notice will be sent in all cases where a valid request under either legislations has been acknowledged and where HOS are unable to provide

---

<sup>2</sup> The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 Reg 4(3)

the information. If a refusal notice is issued, it will be issued in line with the timelines set out in section 4.5 of this policy.

An “absolute” exemption may be claimed where there is an explicit provision that HOS does not have to release the information. In some cases, this will also remove the duty for HOS to confirm or deny that the information requested is held.

A “qualified” exemption may be claimed where there is a reason for not disclosing information. Before a final decision is made, a public interest test must be applied to each exemption claimed. If a qualified exemption is claimed, HOS will state the reasons why the public interest in maintaining the exemption outweighs the public interest in disclosure by conducting a public interest test.

If a request for information is refused, the requestor must be informed of their rights to request an internal review of the decision and, thereafter, to complain to the ICO. The internal review process is set out in section 4.12 of this policy.

Where a record due for destruction is known to be the subject of a request for information under the FOIA or EIR, destruction shall be delayed until disclosure has taken place or if the Data & Digital Team has decided not to disclose the information, until the complaint and appeal provision under the FOIA/EIR has been exhausted.

Under the FOI Act, it is a criminal offence to destroy or dispose of records once the Data & Digital Team has received a formal request to access the information contained in those records. Staff who unlawfully or inappropriately destroy information contrary to the terms of the FOA/EIR could be subject to disciplinary action. In circumstances where information has been inappropriately destroyed, the Data & Digital Team must inform the requestor of their rights in terms of the internal review process and complaint to the ICO.

#### 4.9 Vexatious (FOIA) and manifestly unreasonable (EIR) requests

There is no statutory equivalent to the Appropriate Limits and Fees Regulations, under the EIR. If an EIR request is received which is considered particularly voluminous, these requests may be refused under the Manifestly Unreasonable exception in regulation 12(4)(b) of the EIR.

When considering whether an EIR request is Manifestly Unreasonable, HOS will follow the Information Commissioner’s guidance (see appendix B) and relevant case law.

The Information Commissioner’s guidance suggests that regulation 12(4)(b) provides an exception to the duty to comply with an EIR request in two circumstances:

- 1) where it is vexatious and
- 2) where it would incur unreasonable costs for the public authority or an unreasonable diversion of resources.

These however, are only examples and each case will be decided on its own facts. When refusing a request on the grounds of it being manifestly unreasonable, HOS will offer the applicant advice and assistance.

HOS does not have to disclose information in response to a vexatious request and can refuse such requests under section 14(1) (Vexatious Request).

In such cases, HOS will consider the Information Commissioner's guidance on vexatious requests (see appendix A) and any appropriate case law.

The Information Commissioner's Office suggests that when determining whether a request is vexatious, the following should be considered:

1. the burden on the public authority and its staff
2. the motive of the requestor
3. the value or serious purpose of the request
4. any harassment or distress of and to staff

If HOS has notified an applicant that a request is vexatious and receives a further request for similar or the same information, HOS is not obliged to provide the applicant with a further refusal notice.

HOS may choose to issue prior warnings to requestors when answering requests if we believe that further requests of the same nature or tone are likely to engage a vexatious exemption.

Applicants are reminded of our [Unacceptable user action policy - Housing Ombudsman \(housing-ombudsman.org.uk\)](https://housing-ombudsman.org.uk) which extends to all enquiries, complaints and queries received by HOS. We may refuse to engage with correspondence that is abusive, threatening, offensive or in any way harassing.

#### 4.10 Transferring requests

Where HOS does not hold or does not substantially hold the information requested it may transfer the request to another public body who are believed to hold the information.

In such circumstances HOS will either:

- Identify that the information is not held by HOS and inform the requestor that the information is believed to be held by another public authority and advise them to contact the relevant authority.
- Transfer the request to that authority on the requestor's behalf.

Transfers of requests to other public authorities will only take place with the consent of the requestor however it may be appropriate in some cases for HOS to conduct prior communications with another public authority to determine whether a transfer is appropriate (e.g., to determine whether that public body holds the requested information) before asking for the requestors consent to transfer.

#### 4.11 Consultation with third parties

HOS recognises that in some cases the disclosure of information pursuant to a request may affect the legal rights of a third party, for example where the information is subject to



the common law duty of confidence or where it constitutes Personal Data as defined by the Data Protection Act 2018. Unless an exemption applies in relation to any particular information, HOS will be obliged to disclose the information in response to a request.

Where disclosure of information cannot be made without the consent of a third party and would constitute an actionable breach of confidence such that an exemption would apply, HOS may consult that third party with a view to seeking their consent, unless such consultation is not practicable.

HOS will undertake consultation where:

- The views of the third party may assist in determining whether an exemption under the Act applies, or
- The views of the third party may assist in determining where the Public Interest lies.

HOS may consider that consultation is not appropriate where the cost or amount of time and/or effort of consulting with the third party would be disproportionate. In such it will consider the most reasonable course of action to take in light of the requirements of the Act.

Consultation will be unnecessary where:

- HOS does not intend to disclose the information
- The view of the third party can have no effect on the decision as to whether to disclose the requested information.

Where the interests of several third parties may be affected by a disclosure and those parties have a representative, HOS will, if it considers consultation appropriate, consider that it would be sufficient to only consult some of the organisations.

If the response to an FOI/EIR request belongs to or contains a significant amount of information provided by another organisation, HOS will consider, on a case-by-case basis, whether to consult with that organisation. The Service will apply this process when considering whether an exemption may be applicable.

In all cases, it is for HOS not the third party, to determine whether information should be disclosed. A refusal to consent to disclosure by a third party does not automatically mean information will be withheld.

#### 4.12 Staff names

Section 40(2) of the FOI Act and regulations 12(3) and 13 of the EIR provide an exemption/exception from the duty to disclose 'personal data' about identifiable individuals, where the disclosure would breach any of the data protection principles set out in the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA). However, it is acknowledged that as a public body, some justification exists for the disclosure of employee names and contact details.

HOS will release the names of chief executives, directors and staff at an operational management level (Heads of Service) on request, unless a valid exemption applies. Names and details of staff published on HOS' website will also be provided without gaining additional consent.

Consent will be sought from all other staff to release their information where it is reasonably practicable to do so. The Data & Digital Manager and the Data Protection Advisors will decide when it may or may not be reasonably practicable to obtain consent

### 4.13 Internal Reviews

A requestor may ask that HOS conduct an internal review of their request in relation to either its outcome or the way in which the request was handled. For example, a request for review can be made:

- to dispute the response or the application of any exemptions/exceptions.
- to complain about the handling of the request e.g., the response has taken longer than 20 working days.
- to appeal the calculation of costs if a fees notice is issued.

The complaints notice is listed in all response letters sent under the FOIA/EIR. For a request for internal review to be accepted, it must be sent to the Data & Digital Team within 40 working days of the response being issued. Any requests for review which are submitted after this period, will not be considered.

All requests for internal review will be dealt with by the Data & Digital Manager. The same timescales as outlined in Section 4.5 of this policy will apply to requests for internal review.

A requestor may appeal direct to the Information Commissioner for an independent review of their response however, the commissioner is unlikely to accept the appeal unless the requestor has exhausted the public authorities own internal review process.

## 5. Contracts

When entering into contracts HOS will refuse to include contractual terms which attempt to restrict the disclosure of information it holds relating to the contract beyond the restrictions permitted by the Act or Regulations.

When entering into contracts with non-public authority contractors, HOS may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. HOS must reject such clauses wherever possible.

HOS must disclose information pursuant to the Act, not the wishes of the non-public authority contractor. Steps must be taken to protect from disclosure by the contractor, information which HOS has provided which would clearly be exempt from disclosure under the Act/EIR.

## 6. Publication Scheme

HOS has a duty to adopt and maintain a Publication Scheme which, in line with the Information Commissioner's Office (ICO) guidance, describes the different classes of information they hold and whether there is a charge for specific information. HOS'



Publication Scheme is accessible via our website: [Home | Housing Ombudsman Service \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk)

In addition to the information we are obliged to publish under the approved publication scheme, HOS also publishes most of our determinations made on cases we have investigated in order to increase transparency.

Publication of determinations is done in line with our Publication Policy: [Publication policy - Housing Ombudsman \(housing-ombudsman.org.uk\)](https://www.housing-ombudsman.org.uk)

## Appendix A: Exemptions under the Freedom of Information Act

Section	Exemption Name and Description	Type	PIT required
12	<p><b>Appropriate time limit/cost threshold</b> – Section 12 of the FOIA provides an exemption from a public authority’s obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit (£450 or 18 working hours).</p> <p><a href="#">fees_cost_of_compliance_appropriate_limit.pdf (ico.org.uk)</a></p>		No
14	<p><b>Vexatious requests</b> – Under Section 14 of the FOIA a public authority does not have to comply with a vexatious or repeated request.</p> <p><a href="#">Dealing with vexatious requests (section 14)   ICO</a></p>		No
21	<p><b>Information reasonably accessible to the applicant by other means</b> – The purpose of this exemption is to ensure there is no right of access to information via FOIA if it is available to the applicant by another route. The public Authority must still comply with their obligation to confirm or deny that the information is held.</p> <p><a href="#">Information accessible to the applicant by other means (section 21)   ICO</a></p>	Absolute – Class based	No
22	<p><b>Information intended for future publication</b> – Section 22 may be engaged if, at the time of the request, the public authority has the intention to publish the specific information requested.</p> <p><a href="#">information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf (ico.org.uk)</a></p>	Qualified – Class based	Yes
23	<p><b>Information supplied by or concerning certain security bodies</b> – Section 23 can be used for information originating from a security body that is provided by a third party.</p> <p><a href="#">Section 23 – Security bodies   ICO</a></p>	Absolute – Class based	No
24	<p><b>Safeguarding national security</b> – Section 24 can be used to withhold information which could prejudice national security.</p> <p><a href="#">Section 24 – Safeguarding national security   ICO</a></p>	Qualified – Prejudice based	Yes
26	<p><b>Defence</b> – Section 26 provides an exemption for information if disclosure would be likely to prejudice the defence of the British Islands or of any colony or the capability of effectiveness or security of any relevant Forces.</p> <p><a href="#">Section 26 – defence   ICO</a></p>	Qualified – Prejudice based	Yes

27	<p><b>International relations</b> – Section 27 provides an exemption for information if its disclosure would be likely to harm UK interests or is obtained in confidence from another State, international organisation or international court.</p> <p><a href="#">Section 27 - International relations   ICO</a></p>	<p>S27(1) Qualified – Prejudice based</p> <p>S27(2) Qualified – Class based</p>	Yes
28	<p><b>Relations within the UK</b> – Section 28 provides an exemption for information if disclosure would be likely to prejudice relations between two or more administrations in the UK.</p> <p><a href="#">Section 28 – Relations within the UK   ICO</a></p>	Qualified – Prejudice based	Yes
29	<p><b>The economy</b> – Section 29 provides an exemption for information if disclosure would be likely to prejudice the economic interests of the UK or any part of it or the financial interests of any administration in the UK.</p> <p><a href="#">The economy (section 29) - FOIA guidance - Version 1.2 20201231 (ico.org.uk)</a></p>	Qualified – Class based	Yes
30	<p><b>Investigations &amp; proceedings conducted by public authorities</b> – Section 30 provides an exemption for information if disclosure would be likely to prejudice any criminal proceedings an authority is entitled to conduct or to protect confidential sources.</p> <p><a href="#">investigations-and-proceedings-foi-section-30.pdf (ico.org.uk)</a></p>	Qualified – Class based	Yes
31	<p><b>Law Enforcement</b> – Section 31 provides an exemption for information if disclosure would be likely to prejudice law enforcement interests.</p> <p><a href="#">law-enforcement-foi-section-31.pdf (ico.org.uk)</a></p>	Qualified – Prejudice based	Yes
32	<p><b>Information contained in court records</b> – Section 32 provides an exemption for information held only by virtue of being contained in documents that are created or held for the purposes of court, inquiry or arbitration proceedings.</p> <p><a href="#">Court, inquiry or arbitration records (section 32) v1.1 - FOIA guidance (ico.org.uk)</a></p>	Absolute – Class based	No
33	<p><b>Public audit</b> – Section 33 provides an exemption for information on public audit functions. It applied to public authorities that carry out audits or audit type inspections of other public authorities.</p> <p><a href="#">public-audit-functions-s33-foi-guidance.pdf (ico.org.uk)</a></p>	Qualified – Prejudice based	Yes

34	<b>Parliamentary privilege</b> – Section 34 provides an exemption for information if its disclosure would infringe parliamentary privilege. <a href="#">section 34 parliamentary privilege.pdf (ico.org.uk)</a>	Absolute – Class based	No
35	<b>Government policy</b> – Section 35 provides an exemption for information if its disclosure would be likely to prejudice the formulation of Government policy. <a href="#">Section 35 - Government policy   ICO</a>	Qualified – Class based	Yes
36	<b>Disclosure prejudicing the effective conduct of public affairs</b> – Section 36 provides an exemption for information if in the reasonable opinion of a ‘qualified person’, its disclosure would be likely to prejudice certain specified interests relating to public affairs. <a href="#">Section 36 - Prejudice to the effective conduct of public affairs   ICO</a>	Qualified – Prejudice based	No
37	<b>Communications with the Royal family and the awarding of honours</b> – Section 37 provide an exemption from disclosing information if it covers communication with or on behalf of the Sovereign or the heir to the Throne, the person second in line of succession or a person who has subsequently come to the throne or become heir or second in line to the Throne. It also provides an exemption for information relating to the awarding of honours or dignities by the Crown. <a href="#">Communications with His Majesty and the awarding of honours (section 37)   ICO</a>	Absolute in respect of Sovereign, Heir to Throne and second in line to the Throne  Qualified – Class based for others	Yes
38	<b>Health &amp; safety</b> – Section 38 provides an exemption if disclosure of information would be likely to endanger the physical or mental health of any individuals or the safety of an individual. <a href="#">Section 38 – Health and safety   ICO</a>	Qualified – Prejudice based	Yes
39	<b>Environmental information</b> – Section 39 provides an exemption for any environmental information held by a public authority which is subject to the Environmental Information Regulations (EIR)	Qualified – Class based	Yes
40	Personal information – Information is exempt from disclosure if it is personal information about the requestor or another party. <a href="#">s40 Personal information (section 40 and regulation 13) version2.3 (ico.org.uk)</a>	Absolute – Class based	No
41	<b>Information provided in confidence</b> – Information will be covered by Section 41 if it was obtained from another person, its disclosure would constitute a breach of confidence, a legal person could bring	Absolute – Class based	No

	<p>a court action for that breach of confidence and that court action would be likely to succeed.</p> <p><a href="#">information-provided-in-confidence-section-41.pdf (ico.org.uk)</a></p>		
42	<p><b>Legal professional privilege</b> – information may not be disclosed if it is legally privileged. The concept of legal professional privilege (LPP) protects the confidentiality of communications between a lawyer and client.</p> <p><a href="#">Legal professional privilege (section 42)   ICO</a></p>	Qualified – Class based	Yes
43	<p><b>Commercial interests</b> – Information is exempt from disclosure if it relates to a trade secret or if it is likely to prejudice the commercial interests of any legal person.</p> <p><a href="#">Section 43 - Commercial interests   ICO</a></p>	Qualified – Class based	Yes
44	<p><b>Prohibitions on disclosure</b> – Information is exempt from disclosure it is prohibited by any other legislation.</p> <p><a href="#">Prohibitions on disclosure (section 44) - FOIA guidance - version 1.1 31122020 (ico.org.uk)</a></p>	Absolute – Class based	No

## Appendix B: Exemptions under the Environmental Information Regulations

Reg	Exemption name and description	PIT required
12(4)(a)	<p><b>Information not held</b></p> <p><a href="#">Information you hold for the purposes of the EIR   ICO</a></p>	
12(4)(b)	<p><b>Manifestly unreasonable requests</b> – a request can be refused if it is manifestly unreasonable. The purpose of the exception is to protect public authorities from manifestly unjustified, inappropriate or improper use of the EIR.</p> <p><a href="#">Manifestly unreasonable requests - regulation 12(4)(b) (Environmental Information Regulations)   ICO</a></p>	Yes
12(4)(c)	<p><b>Requests formulated in too general a manner</b> – Regulation 12(4)(c) allows a public authority to refuse disclosure if a request has been expressed in too general a manner e.g., a request that is unclear or non-specific.</p> <p><a href="#">requests formulated in too general a manner eir guidance.pdf (ico.org.uk)</a></p>	No however advice and assistance should be offered
12(4)(d)	<p><b>Material in the course of completion, unfinished documents and incomplete data</b> – information which relates to material still in the course of completion or is unfinished or incomplete does not have to be disclosed.</p> <p><a href="#">Regulation 12(4)(d) - Material in the course of completion, unfinished documents, and incomplete data (Environmental Information Regulations)   ICO</a></p>	Yes
12(4)(e)	<p><b>Internal communications</b> – Any material which relates to internal communications does not have to be disclosed. The concept is broad and includes any information someone intends to communicate to others. This includes information communicated by letter, memo and email. It also covers official information contained in non-corporate channels or locations.</p> <p><a href="#">Regulation 12(4)(e) – internal communications   ICO</a></p>	Yes
12(5)(a)	<p><b>International relations, defence, national security or public safety</b> – Information can be excepted if it is likely to prejudice international relations, defence, national security or public safety.</p> <p><a href="#">International relations, defence, national security or public safety (regulation 12(5)(a))   ICO</a></p>	Yes

12(5)(b)	<p><b>The course of justice and inquiries</b> – provides an exception to disclose information “to the extent that its disclosure would adversely affect” the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.</p> <p><a href="#">Regulation 12(5)(b) – The course of justice and inquiries exception   ICO</a></p>	Yes
12(5)(c)	<p><b>Intellectual property rights</b> - Intellectual property rights arise when someone is granted exclusive rights to certain intangible assets (i.e., an asset that you cannot physically touch). This means that others are prevented from reproducing or reusing that asset without the permission of the person who owns the IP (Intellectual Property) rights.</p> <p><a href="#">Regulation 12(5)(c) – intellectual property rights   ICO</a></p>	Yes
12(5)(d)	<p><b>Confidentiality of proceedings</b> – a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.</p> <p><a href="#">Regulation 12(5)(d) – confidentiality of proceedings (Environmental Information Regulations)   ICO</a></p>	Yes
12(5)(e)	<p><b>Confidentiality of commercial of industrial information</b> – a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.</p> <p><a href="#">Commercial or industrial information (regulation 12(5)(e))   ICO</a></p>	Yes
12(5)(f)	<p><b>Interests of the person who provided the information to the public authority</b> – information can be excepted from disclosure if the interests of the person who provided the information would be adversely affected.</p> <p><a href="#">eir_voluntary_supply_of_information_regulation.pdf (ico.org.uk)</a></p>	Yes
12(5)(g)	<p><b>Protection of the environment</b> – information can be excepted from disclosure if it would be harmful to the protection of the environment.</p> <p><a href="#">Regulation 12(5)(g) – Protection of the environment   ICO</a></p>	Yes
12(9)	<p><b>Information on emissions</b> – this regulation overrides the use of Exceptions 12(5)(d) – 12(5)(g) if the information relates to emissions.</p>	

	<a href="#">Information on emissions (regulation 12 (9)) (Environmental Information Regulations)   ICO</a>	
13	<p><b>Personal information</b> – Information is exempt from disclosure if it is personal information about the requestor or another party.</p> <p><a href="#">s40 Personal information (section 40 and regulation 13) version2.3 (ico.org.uk)</a></p>	No