

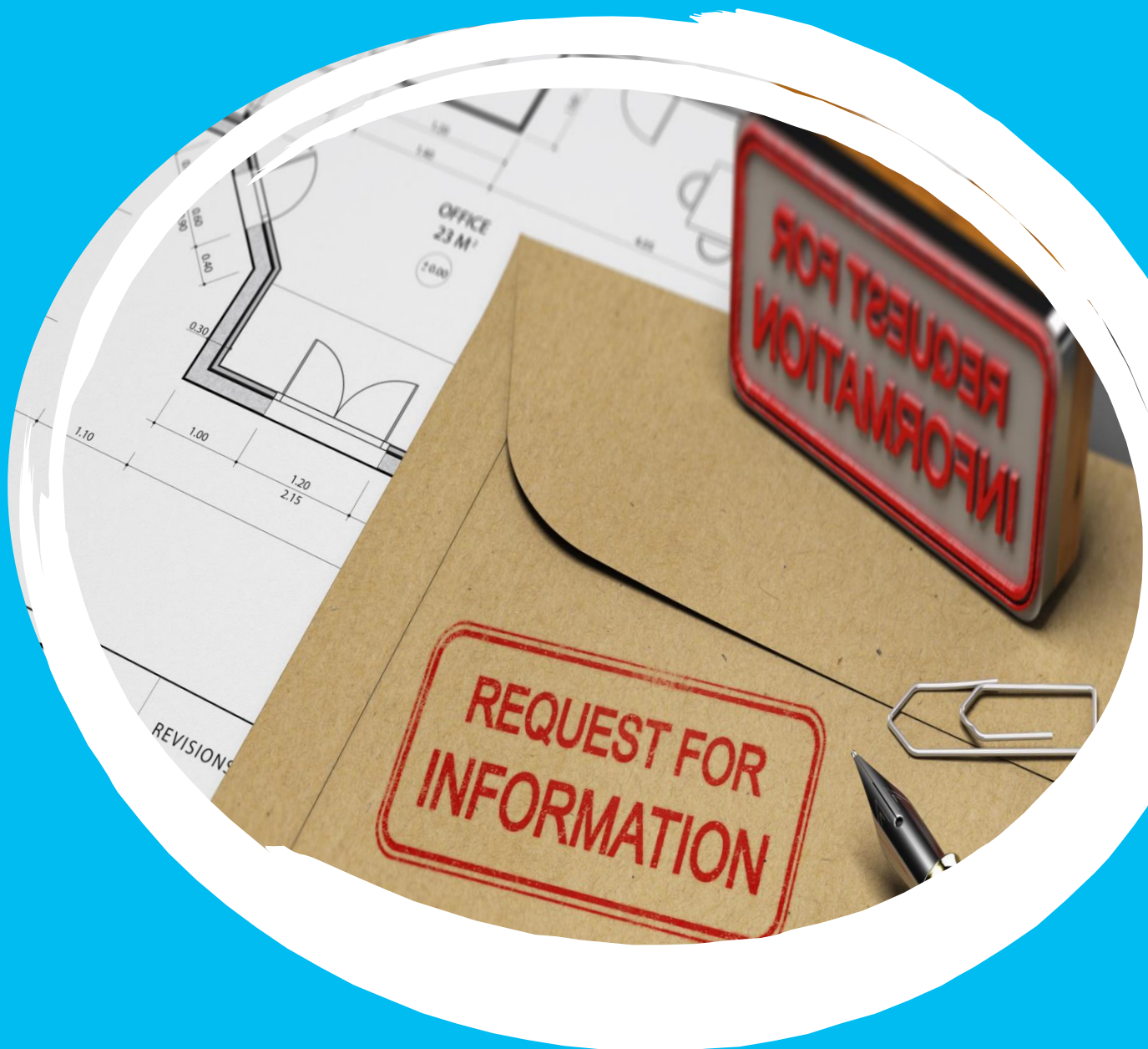
Freedom of Information Act 2000

Internal Guidance

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Approved by: Information Governance Board



milton keynes council



Contents

Introduction.....	3
Roles and Responsibilities	3
Receipt of a Request.....	3
Vexatious or Repeated Requests.....	4
Personal Information.....	4
Requests from the Media	5
Handling a FOI Request	5
Process Flow for Handling a FOI Request.....	6
Unclear Requests.....	7
Information Held	8
Information Accessible by Other Means	9
Withholding Information.....	10
Large Requests	10
Exemptions	12
Consultation with third parties	13
Public Interest Tests	14
Prejudice Tests.....	16
Internal Reviews	16
ICO Complaints	18
Training, Guidance & Other Legislation	18
Appendix 1 – FOI Exemptions.....	20

Version Control

Version	Date	Description
1.0	March 2020	Initial Version
2.0	August 2021	Updated roles and responsibilities.

Introduction

The Freedom of Information (FOI) Act 2000 came into effect on 1 January 2005 and means that any person can make a request for information held by or on behalf of Milton Keynes Council (MKC) as long as it is:

- in writing (unless a disability prevents this);
- states their real name (or organisation name);
- states an address for correspondence (can be an email);
- clearly describes the information requested.

The Council then has 20 working days to respond.

This guide is designed to guide you through processing a FOI request – it cannot however advise for all possible eventualities and therefore if you come across something not included in this guide always contact the FOI Team who can offer more specific advice.

LO = Liaison Officer

ICO = Information Commissioner's Office

FOI = Freedom of Information Act 2000

EIR = Environmental Information Regulations 2004

Roles and responsibilities

The responsibility for compliance with FOI sits with the Information Governance Team (or more specifically the FOI team) as well as "Liaison Officers" within the service areas as follows:

- The **Corporate Information Officer** is responsible for logging, acknowledging, assigning, monitoring, and ensuring responses within MKC's statutory obligations on a daily basis.
- Where issues arise the **Information Governance Officer** is the first stage for escalation and the **Head of Customer Services and Data Insight** is the second stage.
- **Liaison Officers** are responsible for compiling the information from the various teams/officers in their service areas within the statutory timeframe. In some cases, Liaison Officers are responsible for sending responses and in others this falls to the FOI team – the FOI Team will advise who should send the response when they contact you. Full details of the responsibilities of Liaison Officers are detailed within the **IG Liaison Officer** guide found on the [intranet](#).

Receipt of a Request

Upon receipt of a new request the FOI team will:

- **Review the request** to see if it is a valid request and how it should be processed.
- **Log and acknowledge** the request on our Firmstep system producing a reference number.

If you receive a request from the public you should forward it to the FOI team immediately at FOIA@milton-keyes.gov.uk to be processed.

Vexatious or Repeated Requests

Requests deemed **vexatious** or **repeated** where a “reasonable” period of time has not passed will be **refused**. *Note: “reasonable” is not a specific time defined in the legislation and is open to interpretation.*

The FOI team will do their best to filter out these requests however if you receive a request which you believe is vexatious or repeated you should contact the FOI team to determine if a refusal is required.

Refusing a Vexatious or Repeated Request

If a request is deemed to be vexatious or repeated then we should advise the applicant (by issuing a refusal notice) ideally within **5 working days** [but no later than 20 working days] of receiving the request.

The refusal notice needs to include:

- Reference to the request being processed under FOI.
- That it is a refusal notice in line with Section 17 of the Act.
- That Section 14 of FOI is being relied upon.
- Why Section 14 applies (in plain English how we decided the request is vexatious or repeated).
- Details of how to request an internal review and that such a request must be received within 40 working days of the date of our refusal.
- The right to apply to the ICO (including the ICO’s contact details).

Firmstep Users – Draft a refusal using the above and templates in Firmstep and send for **FOI Team Approval**.

Not on Firmstep – Contact the FOI team to advise you believe the request is vexatious / repeated and the reasons why.

Personal Information

The FOI team will do their best to filter out requests for personal data under FOI however inevitably some will slip through. **If you receive a request which you believe contains a request for personal information, either of the applicant or a third party, or if personal data would be part of the disclosure you should contact the FOI team before proceeding.**

As a general rule we would advise the following, although there can be exceptions and so you should always seek **FOI Team Approval** before responding:

- Requests for / disclosures which contain the requesters own personal data – direct requestor to complete a Subject Access Request.

- Requests for / disclosures which contain the personal data of anyone but the applicant – apply an exemption to the information under Section 40(2) (See [Appendix 1](#) for table of exemptions).
- Requests for specific names, salary bands or qualifications etc. of colleagues below the “level” of Head of Service - apply an exemption to the information under Section 40(2) (See [Appendix 1](#) for table of exemptions).
- Requests for specific names, salary bands and job titles etc. of colleagues above the “level” of Head of Service – generally we would release this, but it is best to confirm with the FOI team first.
- Requests where the disclosure contains information on less than 5 individuals - apply an exemption to the information under Section 40(2) (See [Appendix 1](#) for table of exemptions) as the number is low enough to potentially identify an individual.

FOI Team Approval is required for any FOI disclosure where personal data has been considered

Requests from the Media

If a request is received from a media source such as the [BBC](#) or [Guardian](#) then the final response **must be approved** by the [Head of Communications](#) before it is sent.

Handling a FOI Request

All FOI requests **must** be responded to within **20 working days** of receipt.

When you received a new request you should ask yourself a number of questions which will guide you through processing the request and are explained further in the process flow overleaf and in the following pages:

- Is the request clear? Is clarification required?
- Is the information held?
- Is the information published/accessible by other means?
- Am I happy to provide **all** of the information requested?
- Do I believe the request is too large or estimate that it will take over 18 hours to comply with the request?
- Do I believe an exemption applies?

The process flow on the next page shows how all of these questions fit together – clicking on the relevant boxes will provide further information.

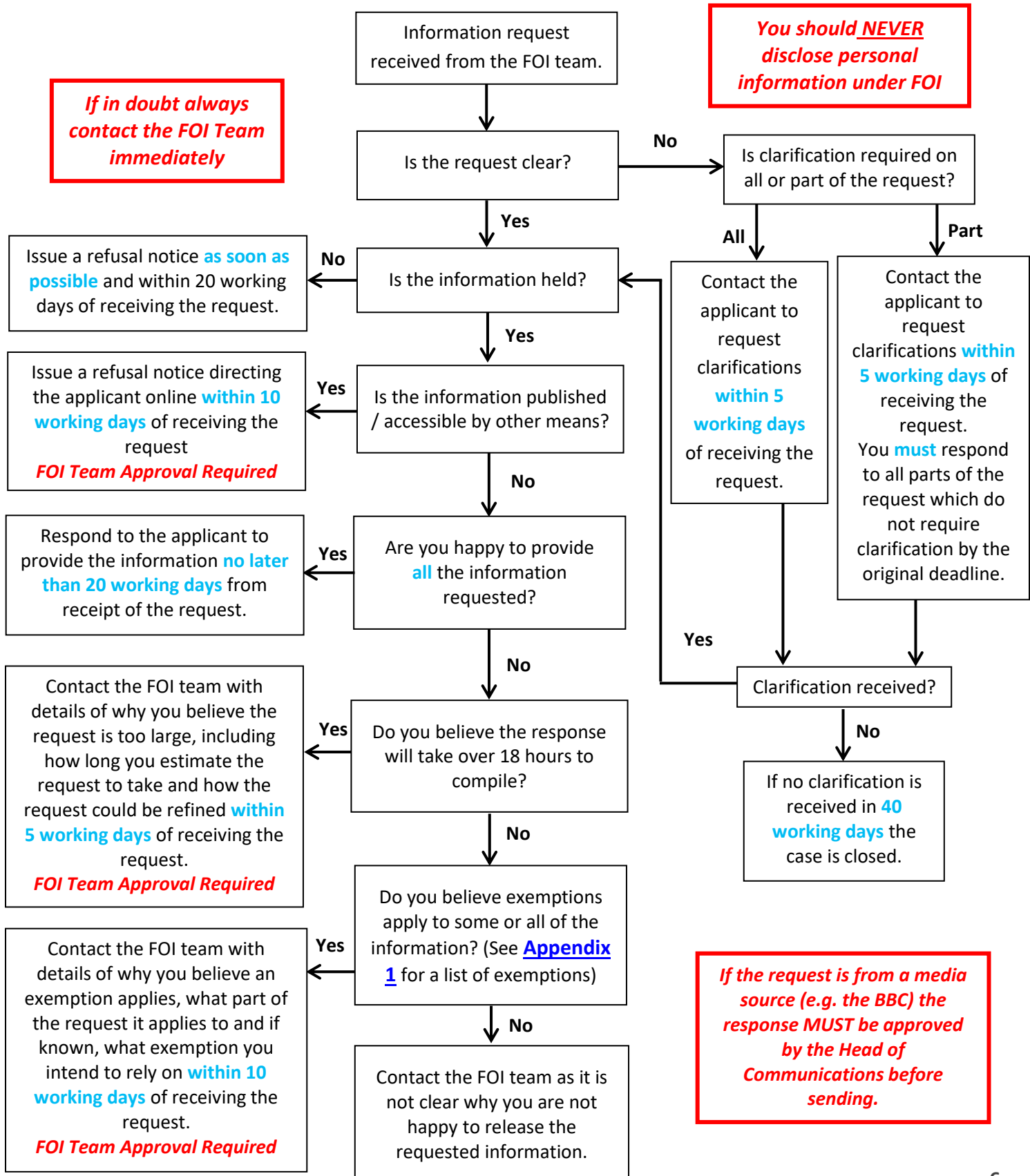
If you receive a FOI which you don't think is for you then please inform the FOI team immediately so it can be reassigned.

I've received an information request from the FOI team – what do I do now?

The below process flow offers a guide to the overall process only and should be read in conjunction with the guidance on the following pages – it is possible to navigate to the relevant pages by clicking on the relevant question box.

If you are a Firmstep user then you should issue responses via Firmstep.

If you are NOT a Firmstep user then all information should be sent to the FOI team as usual.



Green boxes indicate to proceed through the process flow.

Red boxes indicate a response needs to be sent to the applicant / advised to the FOI Team.

Unclear Requests

If clarification is NOT required (the request is clear) ...

We should continue to process the request, asking the remaining questions. [Return to process flow.](#)

If you need to make assumptions of what information is being requested (e.g. where a specific time period hasn't been requested so you assume 2 years will be enough) then the request is not clear and you will need to request clarification (red box below). The duty is on us to clarify.

If clarification is required (the request is unclear) ...

If a request is unclear it is our duty to clarify it with the applicant and so we will need to contact the applicant and request clarification. We should do this ideally within **5 working days** [but no later than 20 working days] from the date of receipt of the request.

It is not appropriate to ask the applicant to clarify their motives – FOI is applicant blind and is about the release of information to anyone and everyone.

Requesting clarification effectively “stops the clock” on the parts of the request requiring clarification, however, as soon as clarification is received the clock immediately restarts. You should therefore request clarification **as soon as possible** as the number of working days you take to request clarification will be deducted from the 20 working days you have to respond once clarification is received (e.g., if you take 5 working days to request clarification you will have 15 working days to respond once clarification is received BUT if you take 10 working days to request clarification you will only have 10 working days to respond once clarification is received).

The next steps will depend on if you need clarification on all or part of the request

If clarification is required in order to respond to **all** of the request ...

- We need to contact the applicant ideally within **5 working days** [but no later than 20 working days] of receiving the request. This should include:
 - Confirmation that we cannot process their request without clarification on some points.
 - What we need clarification on (be specific) – it is okay to offer your assumptions of what is meant and ask them to clarify if this is correct.
 - Confirmation that they have 40 working days to provide the requested clarification and if we do not hear from them within that time their request will be automatically closed.
 - The right to apply to the ICO (including the ICO's contact details).

If clarification is required in order to respond to **only part of the request**

- We need to contact the applicant ideally within **5 working days** [but no later than 20 working days] of receiving the request. This should include:
 - Confirmation that we cannot process part of their request without clarification on some points.
 - What we need clarification on (be specific) – it is okay to offer your assumptions of what is meant and ask them to clarify if this is correct.
 - Confirmation that they have 40 working days to provide the requested clarification and if we do not hear from them within that time we will close the request.
 - Confirmation that any parts of the request which do not require clarification will be responded to within 20 working days of receipt of their request.
 - The right to apply to the ICO (including the ICO's contact details).

You must respond to all parts of the request which do not require clarification within 20 working days of receipt of the original request

Firmstep Users – Send the case back to Triage on Firmstep advising what clarification is needed. Firmstep will automatically close the case after 40 working days if there is no response and advise you if a response is received.

Not on Firmstep – Send the information required for the response directly to the FOI team. We will automatically close the case after 40 working days if there is no response and contact you if there is.

Information Held

If the information is held...

We should continue to process the request, asking the remaining questions. Information is deemed to be held if MKC hold it or another person holds it on behalf of MKC. If you are unsure you should speak to the FOI Team. [Return to process flow.](#)

If the information is NOT held ...

We should issue a refusal notice **as soon as possible** [but no later than 20 working days] of receiving the request.

The refusal notice must include:

- Reference to the request being processed under FOI.
- That the information is not held [and details of any organisation that might hold it (if known)].
- Details of how to request an internal review and that such a request must be received

within 40 working days.

- The right to apply to the ICO (including the ICO's contact details).

If only some of the information is not held you should continue with the questions / process flow and use the above only for the parts of the request not held.

Firmstep Users – Draft a refusal using the above and templates in Firmstep and send for **FOI Team Approval**.

Not on Firmstep – Advise the FOI team of the need for a refusal under data not held and details of any organisation that might hold it (if known).

Information Accessible by Other Means

If the information is NOT accessible by other means ...

We should continue to process the request, asking the remaining questions. [Return to process flow.](#)

If the information is accessible by other means ...

We should issue a refusal notice directing the applicant to the “other means” ideally **within 10 working days** [but no later than 20 working days] of receiving the request.

In order for this to apply the information must be accessible to that individual (based on their ability to access the internet or geographical location of the information). Information is still accessible by another means even if the other means requires a fee to be paid.

The refusal notice must include:

- Reference to the request being processed under FOI.
- That it is a refusal notice under Section 17 of FOI.
- That a Section 21 exemption is being relied on. See [Appendix 1](#) for details of exemptions.
- Why this exemption applies (in plain English) and where the information can be accessed.
- Details of how to request an internal review and that such a request must be received within 40 working days.
- The right to apply to the ICO (including the ICO's contact details).

Firmstep Users – Draft a refusal using the above and templates in Firmstep and send for **FOI Team Approval**.

Not on Firmstep – Advise the FOI team of the need for a refusal and where the information can be accessed.

Withholding Information

If you are NOT happy to provide all of the information requested ...

We should continue to process the request, asking the remaining questions. [Return to process flow.](#)

If you are happy to provide all of the information requested ...

We should respond to the applicant to provide the information **no later than 20 working days** from receipt of the request.

The disclosure correspondence must include:

- Reference to the request being processed under FOI.
- **ALL** the information requested.
- Details of how to request an internal review and that such a request must be received within 40 working days.
- The right to apply to the ICO (including the ICO's contact details).

Firmstep Users – Send responses as above using the templates in Firmstep.

Not on Firmstep – Send the information required for the response directly to the FOI team.

Large Requests

If you estimate that the request can be completed within 18 hours of work ...

In calculating if the request will exceed 18 hours to comply with you can only take into account time taken:

- establishing if the information is held;
- locating and retrieving the information;
- extracting the relevant information from the document containing it.

At this point in the process flow you have concluded that the information is held, is not published, you're not happy for it to be released in full but the request can be complied with within the "appropriate limit". We should therefore continue to process the request, asking the remaining questions. [Return to process flow.](#)

If you estimate that the request can NOT be completed within 18 hours of work ...

MKC does not generally comply with FOI requests which would take over 18 hours to complete.

We charge only for disbursements exceeding £5 at 10p per sheet of A4 over 175 sheets.

In calculating if the request will exceed 18 hours to comply with you can only take into account time taken:

- establishing if the information is held;
- locating and retrieving the information;
- extracting the relevant information from the document containing it.

If in considering only the above you believe the request cannot be complied with within 18 hours we should initially send a request to the applicant to refine their request ideally within **5 working days** [but no later than 20 working days] of receiving the request. If you believe that the request cannot be refined, then you can skip these bullet points and go straight to if they advise they are not willing to refine. This response should include:

- Reference to the request being processed under FOI.
- Reference to the fact that we believe the request is too large to comply with within the “appropriate limit” of Section 12.
- Why we believe it is too large (in plain English) – specific to the information request.
- Details of how we believe their request could be refined and a request for refinement.
- Confirmation that they have 40 working days to refine their request. If a refined request is not requested within that time we will close the request and they will need to submit a new one.
- Details of how to request an internal review and that such a request must be received within 40 working days.
- The right to apply to the ICO (including the ICO’s contact details).

Should they advise they are not be willing to refine their request then we will issue a refusal notice ideally within **5 working days** [but no later than 20 working days] of receiving their response.

The refusal notice must include:

- Reference to the request being processed under FOI.
- That it is a refusal notice in line with Section 17 of the Act.
- That Section 12 of the Act is being relied upon.
- Why Section 12 applies (in plain English) (the request cannot be complied with within the “appropriate limit” as outlined in the Freedom of Information and Data Protection (Limit and Fees Regulations) 2004).
- A calculation of the estimated time it will take to comply with the request (with a breakdown for each part of the request).
- Details of how the request could be refined to within the “appropriate limit” (for each part of the request) OR that we do not believe there is a way to refine the request to within the appropriate limit.

- Details of how to request an internal review and that such a request must be received within 40 working days.
- The right to apply to the ICO (including the ICO's contact details).

Firmstep Users – Draft a refusal using the above and templates in Firmstep and send for **FOI Team Approval**.

Not on Firmstep – Contact the FOI team to advise you believe the request cannot be complied with within the appropriate limit and providing the above require information.

Exemptions

If you believe NO exemptions apply ...

At this point in the process flow you have concluded that the information is held, is not published, the request is not too large to comply with and no exemptions apply but you're not happy for it to be released in full.

You should therefore **contact the FOI team as it is not clear why you are not releasing this information.**

If you believe an exemption applies / the information should NOT be released ...

At this point in the process flow you have concluded that the information is held, is not published and the request is not too large to comply with but that you're not happy to release the information and believe an exemption may apply. We therefore need to assess if it would be appropriate to apply an exemption and issue a refusal to disclose the information.

The FOI Team must approve any use of an exemption and will need to know:

- What part of the request you are seeking to withhold information for (all or part).
- What exemption you are seeking to rely on and why (if you don't know the exemption then just explain to the FOI Team why you think the information should not be released and they can guide you).
- If redactions are needed in a disclosure (to remove exempt information) then these should be marked and sent to the FOI Team for approval no later than a minimum of 2 working days for disclosures under 50 pages or 4 working days for disclosures over 50 pages). If you are unsure how to mark redactions or do not have the software then please advise the FOI Team who can assist you.

You must respond to any part of the request which is not exempt within the 20 working day deadline also.

There are a number of exemptions which we can apply to withhold information and they are detailed within [Appendix 1](#) and Section 21 to 44 of the FOI Act. In reality however, we will only apply a handful of the exemptions. It is possible to apply more than one exemption, if applicable to the request.

Exemptions can fall into a number of categories as below (although the FOI team will guide you in more detail):

- **Absolute:** can be applied without public interest test – but still need to justify why it applies.
- **Qualified:** requires a public interest test to be undertaken and detailed in our response (See later section on [public interests tests](#) and what they are).
- **Class Based:** whether it applies depends on the “type” of document.
- **Prejudice Based:** whether it applies depends on the “harm” disclosure would or would be likely to cause. These exemptions require a prejudice test to be undertaken and detailed in our response (see further section for details on [prejudice tests](#) and what they are).

The refusal notice should be sent ideally **within 10 working days** [but no later than 20 working days] of receiving the request.

When relying on an exemption the refusal notice must include:

- Reference to the request being processed under FOI.
- That it is a refusal notice in line with Section 17 of the Act.
- The exemption(s) being relied upon (see [Appendix 1](#) for details of exemptions).
- Why the exemption(s) applies (in plain English) – specific to the information requested.
- If a qualified exemption is being relied on, how the public interest test has been applied and details of the conclusion of the test. *(If a qualified exemption applies and you require further time to consider the public interest test you must still issue an “initial refusal notice” within 20 working days to confirm the public interest test will be undertaken and the details of the exemption being considered.)* (See later section on [public interests tests](#) and what they are).
- If a prejudice exemption is being relied on, how the prejudice test has been applied and details of the conclusion of the test (See later section on [prejudice tests](#) and what they are).
- Details of how to request an internal review and that such a request must be received within 40 working days.
- The right to apply to the ICO (including the ICO’s contact details).

Firmstep Users – Draft a refusal using the above and templates in Firmstep and send for **FOI Team Approval**.

Not on Firmstep – Contact the FOI team to advise you believe the information cannot be released and providing the above require information.

Consultation with third parties

There are some cases where it would be appropriate for MKC to consult a third party for their views on if information should be released, typically this will be in situations where an exemption is possible (otherwise the information would have to be released anyway).

Cases where consultation might be considered best practice include:

- Where it is necessary to confirm the confidentiality of information for the third party.
- If there is a doubt about whether a breach of confidence is likely to be actionable.

It is MKC's policy to try to consult third parties which may be affected by disclosure prior to disclosing the information. You cannot request more time to consult with third parties and so you should aim to consult with them **as soon as possible** and ensure that any deadline for their response is **at least 5 working days prior to the FOI deadline**. You should also confirm that if we do not hear from them we will assume they are happy for the information to be released

We are not required to follow the advice / views of third parties and MKC should make a decision on what to disclose and/or withhold based on the information, the strength of the exemption and the public interest in the information. If challenged it is MKC that will have to evidence the decision and to state that a third party objected to the release is not sufficient.

Public Interests Tests

Public interest tests **must** be undertaken whenever a qualified exemption is relied upon (see [Appendix 1](#) for which exemptions are qualified). The results of the public interest test **must** be advised to the applicant as part of the refusal notice or disclosure **within 20 working days** of receipt of the request.

The public interest test effectively weighs up if it is in the public interest to withhold or disclose the information. The public interest is not the same as the interests of the public – just because information is interesting to one person does not mean it is in the public interest to release it.

The test:

- is time based and should be considered as if it was the day the request was received;
- cannot be affected by consultation with any third parties – only MKC can conduct the test;
- must be unbiased;
- must balance the arguments in favour of disclosure against those in favour of withholding – those arguments must be specific to the information / request.
- is weighted towards disclosure as being in the public interest – meaning any arguments to withhold must be even stronger.

If the arguments in favour of disclosing **outweigh** the arguments in favour of withholding then you **must disclose the information**.

If the arguments in favour of disclosing **do NOT outweigh** the argument in favour of withholding then you are **not obligated to disclose the information** (but still can).

All public interest tests must be reviewed and approved by the FOI Team prior to a refusal notice being issued. For the response, you will simply need to advise a public interest test has been undertaken, the arguments for and against disclosure and the outcome (to withhold or release the information).

Typical arguments in favour of disclosure include:

- accountability and transparency of officers or spending of public money;
- reassuring the public;
- allowing others to understand the decisions the Council has made;
- increased competition for Council contracts;
- genuine public interest in the issue / information;
- correcting a suspicion of wrong-doing / presenting a “full picture”;
- promoting of good decision making (through accountability);
- more informed debate of the issues under consideration by the Council;

Typical arguments in favour of withholding include:

- undermining or prejudicing of an investigation or prosecution of a crime or criminal proceedings;
- protection / prevention of prejudice to a third party or MKC;
- reduction in the competition for Council contracts;
- encouragement for collusive tendering;
- destruction of a “safe space” to have frank discussions;
- that the information does not need to be scrutinised under FOI as it is scrutinised via other means (e.g. internal audit, scrutiny committees or a regulatory function).

The “weight” of each argument will be influenced by:

- the likelihood of the prejudice (if prejudice based);
- the severity of harm from disclosure;
- the timing of the request / age of the information – older information is generally less sensitive;
- whether any of the information is already in the public domain.

The identity / private interests of the applicant and the potential for information to be misunderstood are not relevant to the public interest test.

Prejudice Tests

Prejudice tests **must** be undertaken whenever a prejudice based exemption is relied upon ([see Appendix 1](#) for which exemptions are prejudice based). The results of the prejudice test **must** be advised to the applicant as part of the refusal notice or disclosure **within 20 working days** of receipt of the request.

The prejudice test effectively weighs up the “harm” which would result from the disclosure and the likelihood of this harm actually occurring.

In order to withhold the information the outcome of the test should:

- identify the negative consequence of disclosure (which must be significant);
- show a link between the disclosure and the negative consequence actually happening (it cannot be an unlikely possibility) – you should actually set out the circumstances that the harm would occur in;
- show that the harm is real, actual or substantive.

If the above cannot be shown then the outcome of the test is to disclose and the information should be released.

All prejudice tests must be reviewed and approved by the FOI Team prior to a refusal notice being issued. For the response, you will simply need to advise a prejudice test has been undertaken, the real harm which would occur from disclosure of the information and the outcome (to withhold or release the information).

Internal Reviews

If requestor is unhappy with the response they receive to their FOI they can request an internal review. Typically, this happens when they believe we hold information which hasn't been disclosed or when they disagree with an exemption we have applied. An applicant must complete MKC's internal review process before the Information Commissioner (the FOI “regulator”) will consider a complaint regarding the handling of a FOI by MKC.

Note: They do not have to actually request an internal review; any written correspondence which makes it clear they are unhappy with the FOI response should be considered a request for an internal review.

Should you ever receive a request for an internal review or an email which suggests that an applicant is unhappy with their FOI response then you should forward it to the FOI team and take no further action unless advised to by the FOI team.

Internal Reviews must be:

- received within **40 working days** of the date of the final response to the FOI;
- acknowledged by the FOI team;
- completed within **20 working days of receipt**. *(In exceptional cases where the request is large or complex it might be possible to request an extra 20 working days however this is only possible with the agreement of the FOI team and is rare.);*
- carried out by a different individual than completed the initial request and where possible, a more senior individual;
- impartial overseen by the FOI team;
- considerate of any public interest in the information in question;
- challenging of the original FOI response (willing to amend or reverse previous decisions);
- responded to by the reviewing officer directly.

When conducting an internal review the reviewer should review the original request and response and any information held and ask themselves the following questions:

- Was the request handled under the correct legislation? *(The FOI team can help with this)*
- Was the request responded to on time (within 20 working days)?
- If applicable, were the exemptions correctly applied / appropriate? (See [Appendix 1](#) for details of exemptions).
- If applicable, was the public interest test and / or prejudice test correctly applied and did the response include details of the test and its conclusions? (See earlier sections for details on [public interests tests](#) and [prejudice tests](#)).
- Did the response fully explain what information was provided/withheld or not held?
- Did the response answer the actual request?

If the reviewer finds that the complaint is upheld (such that something could or should have been done differently) then their response should include:

- Confirmation of if the request was handled under the correct legislation (and what legislation that was);
- That the complaint is upheld.
- The findings for each part of the complaint in turn.
- The information withheld previously (if applicable).
- What went wrong / what has been learnt / what is being put in place to ensure it doesn't happen again.
- An explanation of the reasons for their decision (if not otherwise addressed above).
- Details of how to complain to the ICO if the applicant remains unhappy.

If the reviewer finds that the complaint is NOT upheld (such that the original FOI response was correct and there is no change) then their response should include:

- Confirmation that the request was handled under the correct legislation (FOI).
- That the complaint is NOT upheld.
- The findings for each part of the complaint in turn.
- Reiteration of the original response.
- What has been learnt (if applicable).
- An explanation of the reasons for their decision (if not otherwise addressed above).
- Details of how to complain to the ICO if the applicant remains unhappy.

ICO Complaints

When an applicant has exhausted our internal FOI process (completion of a FOI request and internal review) but they remain unhappy they can make a complaint to the Information Commissioner's Office (ICO), effectively the regulator of information requests (amongst other things).

The FOI team will receive, process and respond to all ICO complaints however they will require input from the individuals who handled the original FOI and internal review. Primarily this will be advice on what information was withheld and/or disclosed and why and the reasoning behind the decisions taken. The FOI team cannot be subject experts on all areas of the Council and therefore rely on you for this more detailed and request/data specific information.

Typically, the ICO will always try to resolve any complaints informally and so providing information to the FOI team when asked promptly and being as helpful as possible can help us to avoid any decision notices (bad things we don't want).

The ICO will always provide us with a deadline to respond – please respond to any queries from the FOI team promptly and fully to enable us to respond to the ICO as quickly and as comprehensively as possible. If we don't the ICO might take further action against us (which would be bad!).

Training, Guidance & Other Legislation

Online training is available via the training portal which can be found on the intranet. However, if you or your team require any further training on the Freedom of Information Act and its application then please contact the FOI Team on FOIA@milton-keynes.gov.uk to arrange a chat or our attendance at a team meeting.

Further guidance and in depth guides for each part of the Act can also be found on the Information Commissioner's website <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/>.

The following legislation which is relevant to the FOI Act might also be helpful:

- The Data Protection Act 2018
- UK General Data Protection Regulations 2018
- The Environmental Information Regulations 2004
- The Freedom of Information and Data Protection (Limit and Fees Regulations) 2004.

BUT if in doubt contact the FOI team for assistance – a quick chat with us could potentially save you hours of work or searching for answers!

Appendix 1 – FOI Exemptions

Sec.	Exemption.	Class	Prejudice	Absolute	Qualified	Notes
21	Information accessible by other means	X		X		Applies if the information is accessible by other means to the applicant. Note if the applicant is unable to access the web a webpage would not be considered accessible, similarly if the information was on show at the office but the applicant lived in Scotland the information would not be considered accessible. Exemption cannot be applied if the information is only available to view.
22 *	Information intended for future publication	X			X	Applies if the information will definitely be published in future – although an exact publication date need not be known. Cannot be applied to all draft information – only that which will be published. Need to consider if document is likely to change prior to publication, if not then less argument for applying this exemption.
22A	Research		X		X	Unlikely to ever be applicable to MKC.
23	Information supplied by, or relating to, bodies dealing with security matters	X		X		Unlikely to ever be applicable to MKC.
24	National security	X			X	Unlikely to ever be applicable to MKC.
25	Certificates under ss. 23 and 24: supplementary provisions	N/A				Unlikely to ever be applicable to MKC.
26	Defence		X		X	Unlikely to ever be applicable to MKC.
27	International relations		X		X	Unlikely to ever be applicable to MKC.
28	Relations within the United Kingdom		X		X	Unlikely to ever be applicable to MKC.
29	The Economy		X		X	Unlikely to ever be applicable to MKC.

Sec.	Exemption.	Class	Prejudice	Absolute	Qualified	Notes
30 *	Investigations and proceedings (conducted by the Local Authority)	X			X	Applies to a specific category of information held for the purposes of criminal investigations. Can also be applied to information obtained in certain other types of investigations – if obtained from a confidential source.
31 *	Law enforcement		X		X	Applies to information which would prejudice or would be likely to prejudice various law enforcement purposes and does not fall under Section 30 exemption (above). It also protects other regulatory functions such as health & safety.
32 *	Court records	X		X		Applies only to a document created or used as part of legal proceedings including an inquiry, inquest or arbitration.
33	Audit functions		X		X	Unlikely to ever be applicable to MKC.
34	Parliamentary privilege		X	X		Unlikely to ever be applicable to MKC.
35	Formulation of government policy	X			X	Unlikely to ever be applicable to MKC.
36	Prejudice to effective conduct of public affairs		X		X	Unlikely to ever be applicable to MKC.
37	Communications with Her Majesty	X			X	Unlikely to ever be applicable to MKC.
38 *	Health & safety		X		X	Applies to information which if disclosed would or would be likely to endanger anyone's physical or mental health & safety.
39	Environmental information	X			X	In practice this exemption is never applied as we just process the request under Environmental Information Regulations 2004.
40(1) *	Personal information - Own	X		X		If the information is the personal information of the applicant then it does not need to be provided. They should be directed to complete a Subject Access Request.
40(2) *	Personal information – of some other than the requester		X	X		Applies to the personal information of anyone other than the applicant where it would breach the data protection principles to release the information. Only applies to information regarding living individuals. Information relating to Councillors or officers acting in their official capacity

Sec.	Exemption.	Class	Prejudice	Absolute	Qualified	Notes
						should be disclosed. MKC will not release the names or contact details of colleagues below the level of Heads of Service in response to an information request.
41 *	Information provided in confidence		X	X		Applies to information received from someone else and where disclosure would constitute a breach of confidence that is actionable through the courts. A document marked “confidential” is not sufficient to engage this exemption.
42 *	Legal professional privilege	X			X	Applies to information subject to “legal professional privilege” – between client and their legal professional (including in house counsel) for the purposes of obtaining legal advice or for ongoing or proposed legal action. Ensures a “safe space” so a client can speak frankly with their legal counsel.
43 *	Commercial interests		X		X	43(1) = trade secrets 43(2) = prejudice to commercial interests Must be able to evidence the prejudice and that it “would” or “would be likely” to be caused by disclosure. Prejudice test should be applied. A commercial interest is a person’s ability to participate competitively in a commercial activity. Closely linked to a Section 41 exemption (as above) but would need to show the information has the necessary level of confidence. As a rule commercial interests diminish over time and so the age of the information is a key factor with this exemption.
44 *	Prohibitions on disclosure	X		X		Applies to information where disclosure is prohibited under law or would constitute contempt of court.

Exemptions where the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by that exemption are marked with a *. Contact the FOI team if you are unsure if you must confirm if the information is held.

Freedom of Information Team

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