

Departments/Bodies within Clearing House Remit

Cabinet Office
Charity Commission
Crown Estate
Crown Prosecution Service
Department for Communities and Local Government
Department for Constitutional Affairs
 - Scotland Office
 - Wales Office
Department for Culture, Media and Sport
Ministry of Defence
Department for Education and Skills
Department for Environment, Food and Rural Affairs
Export Credits Guarantee Department
Food Standards Agency
Foreign and Commonwealth Office
Department of Health
Health and Safety Executive
Her Majesty's Revenue and Customs
Home Office
Department for International Development
Legal Secretariat to the Law Officers
The National Archives
Northern Ireland Office
Office of Government Commerce
Office of the Leader of the House of Commons
Office for National Statistics
Ofgem
Ofsted
Ofwat
Prime Minister's Office
Privy Council Office
Serious Fraud Office
Department for Trade and Industry
Department for Transport
HM Treasury
Treasury Solicitors
UK Trade and Investment
Department for Work and Pensions

Access to Information Central Clearing House – Triggers for Referral

FOI Practitioners are expected to refer cases to the Clearing House in the following instances. Referral does not necessarily mean that the Clearing House will need to become fully engaged with the request. Nevertheless, it is essential to refer cases so that the Clearing House can effectively ensure consistency of response and advise Departments properly.

Prime Ministerial and Ministerial Issues

Requests for, or relating to:

- Ministerial Diaries;
- the role of Ministers e.g. Ministerial financial interests, and propriety issues related to the Ministerial Code;
- the work of Private Offices;
- the current Prime Minister;
- Cabinet and its Committees, e.g. agendas, papers, minutes and meeting dates;
- the operation of collective responsibility e.g. inter-Ministerial correspondence and notes of meetings between Ministers;
- correspondence between the UK and the Devolved Administrations;
- papers of a previous administration; and
- Select Committee evidence and appearances where information is not already in the public domain.

Royal Household and Honours

Requests for, or relating to:

- communications with Her Majesty, other members of the Royal Family or with the Royal Household; and
- the conferring of Honours.

Procurement and Efficiency

Requests for, or relating to:

- Gateway reviews;
- internal audit reports;
- NAO investigations;
- complex and/or high profile procurement projects; and
- shared information held relating to the Efficiency Programme.

Cross-Whitehall Issues

Requests for, or relating to:

- cross-Whitehall issues and suspected round robin requests;
- high profile issues, whether current or historical (e.g. issues of Ministerial and/or media interest and where release or refusal likely to attract media coverage);
- information less than 30 years old is held by the National Archives and there may be a dispute between the Department and TNA;
- metadata (such as - software code, document properties (e.g. list of people editing documents / when last edited / etc), document wordcounts);
- file lists where the guidance does not apply;
- requests which could be vexatious; and
- requests which may involve the use of section 34 (Parliamentary Privilege exemption)

Ministerial Veto Certificates and Security

Requests:

- which might lead to the use of Ministerial vetos;
- where the use of the exemption under s.23 FOI Act is being considered;
- where the use of the exemption under s.24 FOI Act is being considered; and
- relating to Departmental security matters.

Other Issues

Requests:

- which are covered by Working Assumptions, but where Departments do not think they apply;
- for information that were previously disallowed under the Code of Practice on Access to Government Information;
- where Departments disagree with Clearing House advice; and
- where the application of FOI, EIRs or DP is complex and/or technically difficult;

Appeals

- Internal reviews of Departmental decisions to **withhold information** (not reviews about process);
- Appeals to the Information Commissioner;
- Any correspondence from the Office of the Information Commissioner;
- Appeals to the Information Tribunal; and
- Any correspondence from the Information Tribunal



DCA Access to Information Central Clearing House Referral Form – New Requests

- 1/ Please complete this form as thoroughly as possible. Referral forms must be used when referring cases to the Clearing House.
- 2/ When e-mailing this form to the Clearing House, please copy in all relevant departmental contacts in the e-mail cc. field.
- 3/ You should continue to process the request until a Clearing House case officer contacts you. However, please do not issue a final response before agreement with the Clearing House.

Referring department details and acknowledgement e-mail contacts

Name of department:	
Departmental Case Ref:	

Timeframes

Date request received:	
Deadline for response to applicant (including any PIT extension already issued or due to be issued):	

Case details and analysis:

Name / organisation of applicant and exact wording of request:	
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<p>Please give a detailed analysis of the request. You must provide information on:</p> <ul style="list-style-type: none"> • Subject matter and sensitivities. • What Clearing House triggers are engaged. • What information is held – please provide a sample with the referral form if possible. • What exemptions you think may apply and why. • Whether there is a prospect of using NCND. • Whether media interest in the response is likely. • Any other factors you believe to be relevant. 	
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Does/will the National Security Liaison Group (NSLG) have an interest in this case?	What case categorisation (1, 2, 3, or 4) does the department believe would be most suitable (see Clearing House toolkit para 24)	
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Involvement of other government departments and/or NDPBs:

Is this a suspected round robin request?		
If not a suspected round robin, are any other government departments or NDPBs likely to be involved or have an interest in the request?		

If **“Yes”** or **“possibly”**, please state why and provide contact details for relevant departments where possible:

	Department 1	Department 2	Department 3
Name of Department			
Reasons for (possible) involvement:			
Contact details (if available):			

Contact details of lead departmental FOI practitioner

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name:		
E – mail (check accuracy):		
Telephone Number:		

Contact details of lead departmental policy official

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name:		
E – mail (check accuracy):		
Telephone Number:		

Other key contact details (if applicable)

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name and position:		
E – mail (check accuracy):		
Telephone Number:		



DCA Access to Information Central Clearing House Referral Form – Internal Reviews

- 1/ Please complete this form as thoroughly as possible. Referral forms must be used when referring cases to the Clearing House.
- 2/ When e-mailing this form to the Clearing House, please copy in all relevant departmental contacts in the e-mail cc. field.
- 3/ You should continue to process the request until a Clearing House case officer contacts you. However, please do not issue a final response before agreement with the Clearing House.

Referring department details and acknowledgement e-mail contacts

Name of department:	
Departmental Case Ref:	

Timeframes and Case History

Original Clearing House Ref. (if applicable):	
Date request for Internal Review received:	
Deadline for response to applicant:	

Please confirm that you have attached the following essential documents (tick box):

The original request letter or e-mail:	<input type="checkbox"/>
Key documents giving oversight of/ insight into internal thinking on original request:	<input type="checkbox"/>
The original response letter or e-mail:	<input type="checkbox"/>
The letter or e-mail requesting an Internal Review:	<input type="checkbox"/>

Failure to attach the documents requested will result in the return of this referral form

Case details and analysis:

Name / organisation of applicant and exact wording of request:			
<p>Please give a detailed analysis of the request. You must provide information on:</p> <ul style="list-style-type: none"> Subject matter and sensitivities. How the original request was handled, including which exemptions were cited in the original response (if any), and why. Do you believe these exemptions still apply? Clearing House triggers (other than the Internal review one) engaged. Department's views on the likely outcome of the review. Whether there is a prospect of using NCND. Whether media interest in the response is likely. 			
Does/will the National Security Liaison Group (NSLG) have an interest in this case?		What case categorisation does the department believe would be most suitable (see Clearing House toolkit para 24)	

Previous Clearing House advice:

Did the Clearing House advise on this request at New Request stage? If so, please attach details of the relevant advice.	
Are you aware of any reason why the advice should be revisited (e.g. a change in circumstances)? If yes, please give full details .	

Involvement of other government departments and/or NDPBs:

Are any other government departments or NDPBs likely to be involved or have an interest in the review?
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If “Yes” or “possibly”, please state why and provide contact details where possible:

	Department 1	Department 2	Department 3
Name of Department:			
Reasons for (possible) involvement:			
Contact details (if available):			

Contact details of lead departmental FOI practitioner

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name:		
E – mail (check accuracy):		
Telephone Number:		

Contact details of lead departmental policy official

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name:		
E – mail (check accuracy):		
Telephone Number:		

Other key contact details (if applicable)

		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
Name and position:		
E – mail (check accuracy):		
Telephone Number:		



DCA Access to Information Central Clearing House Referral Form – ICO and Tribunal Cases

- 1/ Please complete this form as thoroughly as possible. Wherever possible, referral forms should be used when referring ICO Cases to the Clearing House.
- 2/ When e-mailing this form to the Clearing House, please copy in all relevant departmental contacts in the e-mail cc. field.
- 3/ You should not respond substantively to the ICO or Tribunal until a Clearing House case officer contacts you. Please refer all correspondence at the earliest opportunity.

Referring department details and acknowledgement e-mail contacts

Name of department:	
Departmental Case Ref:	

Timeframes and Case History

Original Clearing House Refs (original request, IR and/or ICO):	
Date communication from ICO/IT received:	
Deadline for response to ICO/IT (if applicable):	

Please confirm that you have attached the following essential documents (tick box):

All communications from/to ICO/IT (including acknowledgement letters):	<input type="checkbox"/>
Any other correspondence generated since responding to the Internal Review/ICO	<input type="checkbox"/>
The final response to any Internal Review conducted or any decision notice issued by ICO	<input type="checkbox"/>
Any other key documents not seen by the Clearing House at the Internal Review/ICO stage	<input type="checkbox"/>

Failure to attach the correspondence requested will result in the return of this referral form

Case details and analysis:

Name / organisation of applicant and exact wording of request:	
Please give an analysis of any immediate considerations that Clearing House should be aware of, beyond those points raised in the attached correspondence.	
Does/will the National Security Liaison Group (NSLG) have an interest in this case?	

Contact details of lead departmental FOI practitioner, policy official and lawyer

	Name	E-mail (check accuracy)	Telephone Number	Please check if this is first point of contact for Clearing House
FOI practitioner				<input type="checkbox"/>
Policy official				<input type="checkbox"/>
Lead lawyer				<input type="checkbox"/>



DCA Access to Information Central Clearing House Referral Form – Suspected Round Robin Trigger ONLY

- 1/ This form should **ONLY** be used if no other Clearing House triggers are engaged. If other triggers **ARE** engaged, please use the “New Requests” referral form, and indicate in the appropriate field that the case is a suspected Round Robin.
- 2/ Please complete this form **in its entirety**. Referral forms **must** be used when referring cases to the Clearing House.
- 3/ You should **continue to process the request** until a Clearing House case officer contacts you.
- 4/ Because of the possible involvement of other government departments in this request, please **do not issue a final response** before agreement with the Clearing House.

Referring department details and acknowledgement e-mail contacts

Name of department:	
Departmental Case Ref:	

Timeframes

Date request received:	
Deadline for response to applicant (including any PIT extension already issued or due to be issued):	

Case details and analysis:

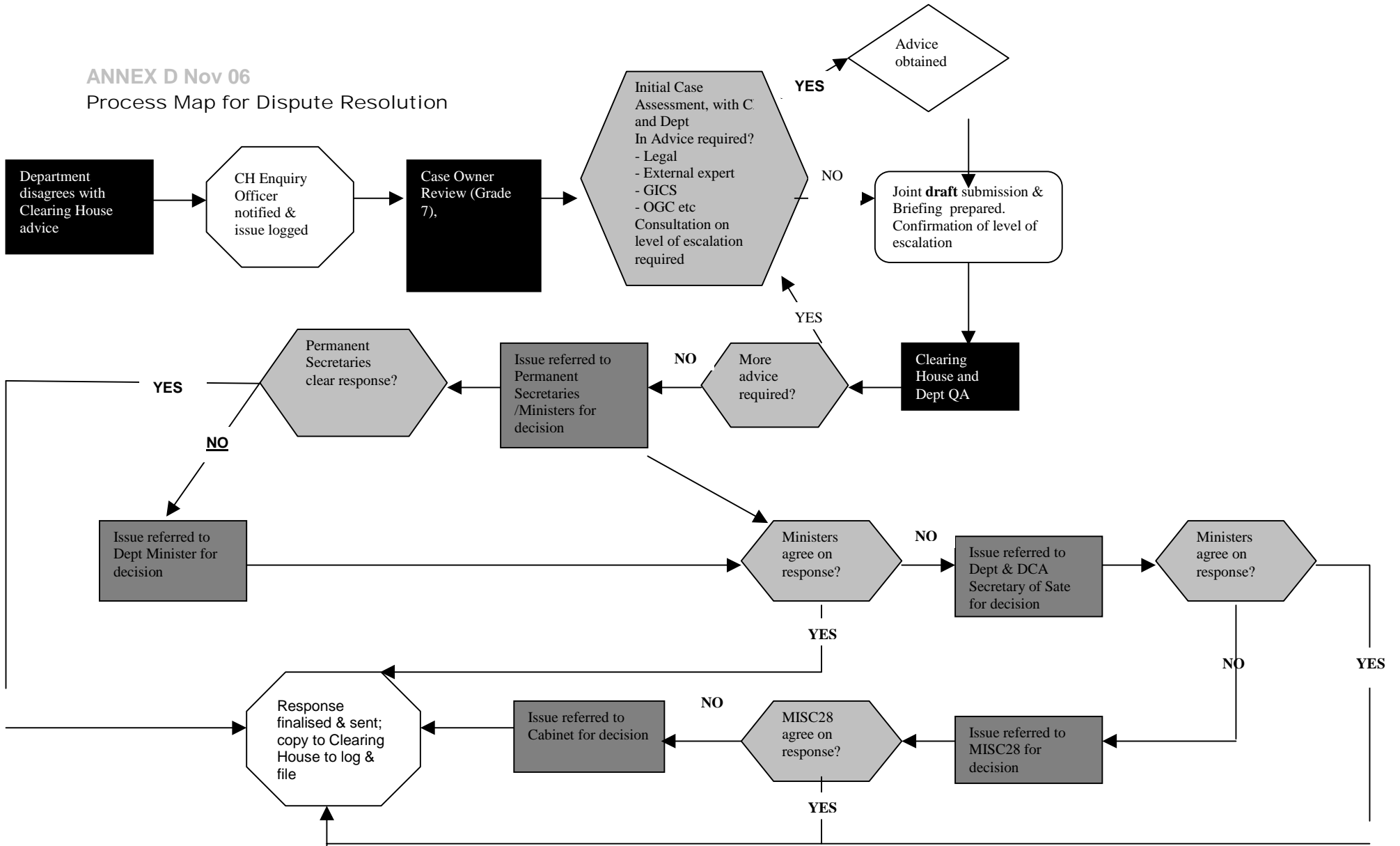
Name / organisation of applicant and exact wording of request:		
Please give information on:		
<ul style="list-style-type: none"> • What relevant information is held. • Whether you know which other departments have received the request. • Your department’s proposed response. 		
What case categorisation (1, 2, 3 or 4) does the department believe would be most suitable (see the Clearing House Toolkit , para 24)		

Contact details of lead departmental FOI practitioner

Name:	
E – mail (check accuracy):	
Telephone Number:	

ANNEX D Nov 06

Process Map for Dispute Resolution



Note: the dispute resolution process may be escalated and fast tracked as required to get the quickest decision on the case.

**Process Map for Dispute Resolution -
Text only version**

Step 1 -

The Department disagrees with Clearing House advice.

Go to step 2.

Step 2 -

The Clearing House Enquiry Officer is notified and the issue is logged.

Go to step 3.

Step 3 -

The case owner reviews the dispute.

Go to step 4.

Step 4 -

The Clearing House and the Department discuss whether further advice is required, for example from lawyers, external experts, GICS, or OGC. The Clearing House and the Department also discuss the level to which the dispute needs to be escalated.

If further advice is required, go to step 5.

In all other cases, go to step 6.

Step 5 -

Advice is obtained.

Go to step 6.

Step 6 -

The Department and the Clearing House prepare a draft submission and briefing setting out the nature of the dispute. They also agree on the level of escalation of the dispute at this stage.

Go to step 7.

Step 7 -

The submission is quality assured within the Clearing House and the referring Department.

Go to step 8.

Step 8 -

The Clearing House and referring Department discuss whether further advice is required.

If yes, go to step 4.

If no, go to step 9.

Step 9 -

The issue is referred to Permanent Secretaries or Departmental Ministers for a decision.

Go to step 10 if the issue is referred to Permanent Secretaries.

Go to step 12 if the issue is referred to Ministers.

Step 10 -

Permanent Secretaries discuss the dispute.

If they cannot reach agreement, go to step 11.

If they agree the response, go to step 13.

Step 11 -

The issue is referred to Departmental Ministers for a decision.

Go to step 12.

Step 12 -

Ministers discuss the dispute.

If they agree on the response, go to step 13.

If they do not reach agreement, go to step 14.

Step 13 -

The response is finalised and sent to the applicant, copied to the Clearing House. The outcome is logged in the Clearing House.

Step 14 -

The issue is referred the Departmental Secretaries of State for a decision.

Go to step 15.

Step 15 –

Ministers discuss the issue.

Go to step 13 if agreement is reached.

Go to step 16 if no agreement is reached.

Step 16 -

The issue is referred to Cabinet Committee for a decision.

Go to step 17.

Step 17 -

Cabinet Committee discusses the issue.

Go to step 13 if agreement is reached.

Go to step 18 if no agreement is reached.

Step 18 -

The issue is referred to Cabinet for a decision.

Go to step 13 once agreement has been reached.



DCA Access to Information Central Clearing House Dispute Notice

Contact Details of Departmental FOI Practitioner

Name:	
Department:	
E – mail (check accuracy):	
Telephone Number:	
Clearing House Case Ref:	
Departmental Case Ref:	
Type of request (New Request/ Internal Review/ ICO/ IT):	

Timeframes

Date request received:	
Deadline for response to applicant:	

Case Details:

Name / organisation of applicant and exact wording of request:	
Please give full details of the nature of the dispute, and include any suggestions for progressing the case:	

Contact details of lead departmental FOI practitioner

Name:		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
E – mail (check accuracy):		
Telephone Number:		

Other key contact details (if applicable)

Name and position:		Please check if this is first point of contact for Clearing House <input type="checkbox"/>
E – mail (check accuracy):		
Telephone Number:		

FOI requests and access to papers of previous administrations

1. Purpose of this document

Departments are asked to implement the following instructions when they receive FOI requests falling within the scope set out at 2 below.

2. Scope

Departments receive large volumes of FOI requests for information relating to events and issues over the last 30 years that fell within the lifetimes of previous administrations of a different political colour to the current Government. Some of these requests will be for factual information that can be released with relatively little deliberation by officials. Some requests will be for information which officials will identify as clearly exempt under the Act and these will accordingly be refused. In between, are a range of FOI requests on which guidance is needed, to preserve the convention on ministers' access to papers of previous administrations. This guidance is aimed at requests that relate to:

- decision making within Government, within the spirit of the convention on access to papers of previous administrations (http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/csg-vol2.pdf, see pp 8-10);
- matters particular to individual former Ministers (such as their expenses and diaries);
- high profile events and issues during the lifetime of a previous administration which are still of widespread and significant interest.

3. Process

Referral to the DCA Clearing House

3.1 All requests that fall within the scope of this guidance must be referred to the DCA Clearing House.

Informing the former Minister of the receipt of a relevant request

3.2 As soon as a Department receives a request that refers explicitly to a former Minister, or clearly relates to one, the Department must inform the former Minister in question, although without calling for any response at this stage. The purpose of this step is to notify the former Minister that the request has been received. Wherever possible former Ministers should learn about such requests from Departments and not as a result of media reports.

Informing the former Minister of a decision made without consultation

3.3 When the Department receives guidance from the Clearing House as to how the handle the request there will be four possible options. The Department will be advised by the Clearing House that :

- no exemption appears to apply and the information should be disclosed;
- the information is exempt and should be withheld;
- a qualified exemption applies but that the public interest favours disclosure
- a qualified exemption applies but that it is unclear without further consultations whether the public interest favours disclosure or non-disclosure; or
- a qualified exemption applies and the public interest favours non-disclosure.

3.4 If the Department concludes that:

- no exemption appears to apply, and it is therefore required to disclose the information, or
- the information is exempt and should be withheld,

the former Minister should be notified *before the requester is told*. In the latter case, it would also be courteous to inform him or her which exemption applies.

Consulting a former Minister on the public interest

3.5 If the Department is minded to release the information to which a qualified exemption applies, or is uncertain as to whether or not the balance of the public interest favours disclosure in such a case, the former Minister should be consulted at that point so that his or her knowledge of the issue covered can inform the assessment of the public interest. Public authorities must bear in mind that the decision on disclosure is ultimately one for which they will be legally responsible; they cannot pass that responsibility on to a former Minister. The purpose of consultation is to uncover any public interest considerations that the Department has not yet identified, or may not otherwise give appropriate weight to.

3.6 The Clearing House will advise Departments whether or not it is necessary to consult former Ministers. The question of whether the consultation with the former Minister should be undertaken by the Department or the Clearing House should be discussed and agreed between the Department and the Clearing House on a case by case basis.

If it is likely that it will be necessary to refer the matter to the Attorney-General, LSLO will also be notified at this stage.

3.7 If the information appears to officials to be exempt under section 36, the Clearing House will refer the matter to the Attorney-General. The Attorney-General will act as the 'qualified person' and determine whether or not the information falls within the terms of the exemption. This judgement is a prior stage to the assessment of the public interest as to whether or not information that falls within the terms of the exemption should be released. The 20 day working period may, where appropriate, be extended to assess the public interest, but not to seek the opinion of the qualified person as to whether or not the information in question falls within the terms of the exemption in the first place.

3.8 Where a former Minister is to be consulted, Departments should prepare a note for the former Minister. The note should:

- give the wording of the request and any additional information that had been gleaned from the requester as part of the process of giving advice and assistance to requesters under s 16.
- where appropriate, give an indication of the information held by the authority falling within the terms of the request
- state the exemption which applies (with, if not obvious, a brief explanation of why)
- invite the Minister to suggest any considerations he or she would wish the public authority to take into account before it reaches a decision on the balance of the public interest.

The note must not:

- state the public interest considerations that the Department has already identified
- indicate any preliminary view that the Department may have formed about whether the information should be disclosed
- disclose, expressly or impliedly, any legal advice that the Department has received in handling the request.

In many cases former Ministers may express an interest in knowing who the requester is. There may, exceptionally, be cases where to reveal the identity would be inappropriate, for example where it might breach a confidence or unfairly disclose personal data; if there is any doubt about the position, advice should be sought before identifying the requester to the former Minister. Obligations under the Act are the same regardless of the identity of the requester and the purpose to which the information might be put.

Departments should remember that it might be necessary to defend a decision to withhold information on appeal to the Information Commissioner or the Information Tribunal. Equally it may be necessary to defend in court a decision to disclose against a third party that claims to have been aggrieved by the disclosure ('reverse FOI').

3.9 Former Ministers should be given adequate time to prepare their responses. The Act requires public authorities to answer requests promptly, and no later than 20 working days after receipt. If in the case of information falling under a qualified exemption, additional time is required to reach a conclusion on the balance of the public interest, the authority may extend the 20 working days 'until such time as is reasonable in the circumstances' to do that. The authority is still however required within the original 20 days to give the requester an estimate of when a final decision will be reached, and specify (and if necessary explain) the exemption that applies. If therefore you recognise that it will be necessary to extend the 20 working days it would be prudent to contact the former Minister's office prior to giving the requester and estimate of when the request will be responded to. It is reasonable to allow former Ministers five days to examine the papers and identify public interest considerations, although there will be some cases where former Ministers can respond much quicker and others where they may need longer to examine voluminous papers, and consider complex issues.

Making a decision after consultation

3.10 Once the Clearing House or the Department has consulted the former Minister, and given due weight to any public interest consideration that he or she adduces, it must determine in all the circumstances of the case whether the public interest in disclosure is or is not outweighed by the public interest in refusing disclosure. Except where the Clearing House and the Department consider it appropriate to ask the Attorney General to make that decision, the decision should be taken by the Permanent Secretary of the Department.

The Department should inform the former Minister of its decision before it notifies the requester. If the decision goes against the wishes of a former Minister, the Department might give a suitable indication of why that decision had been made. However the Department must be mindful of the fact that those reasons might ultimately be tested in courts.

**GUIDANCE TO OFFICIALS ON DRAFTING ANSWERS
TO PARLIAMENTARY QUESTIONS**

1. Never forget Ministers' obligations to Parliament which are set out in the *Ministerial Code*:

“It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.

Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest.”

2. It is a civil servant's responsibility to Ministers to help them fulfil those obligations. It is the Minister's right and responsibility to decide how to do so. Ministers want to explain and present Government policy and actions in a positive light. Ministers will rightly expect a draft answer that does full justice to the Government's position.
3. Approach every question predisposed to give relevant information fully, as concisely as possible and in accordance with guidance on disproportionate cost. If there appears to be a conflict between the requirement to be as open as possible and the requirement to protect information whose disclosure would not be in the public interest, you should consult your FOI liaison officer if necessary.
4. Where information is being refused on the grounds of disproportionate cost, there should be a presumption that any of the requested information which is readily available should be provided.
5. Do not omit information sought merely because disclosure could lead to political embarrassment or administrative inconvenience.
6. Where there is a particularly fine balance between openness and non-disclosure, and when the draft answer takes the latter course, this should be explicitly drawn to the Minister's attention. Similarly, if it is proposed to reveal information of a sort which is not normally disclosed, this should be explicitly drawn to Ministers' attention. The Minister should also be advised of any relevant FOI cases which are under consideration which could impact on the way the PQ should be answered.
7. If you conclude that material information must be withheld and the PQ cannot be fully answered as a result, draft an answer which makes this clear and explains the reasons, such as disproportionate cost or the information not being available, or explains in terms similar to those in the Freedom of Information Act (without resorting to explicit reference to the Act itself or to section numbers) the reason for the refusal. For example, “The release of this information would prejudice commercial interests”. Take care to avoid draft answers which are literally true but likely to give rise to misleading inferences.
8. Where an MP/Peer tables a question and has also submitted a separate request to the department under FOI, it is reasonable to reply in terms that the issue is

currently under consideration. Once a decision has been reached, the MP/Peer should be informed of the answer and a copy of the letter placed in the Libraries of the House. Consideration should also be given to a written ministerial statement in both Houses.

9. Where a decision on an FOI case results in a change of policy and that information which was previously withheld is now being released, consideration should be given to informing both Houses, for example, through written ministerial statement.
10. PQs should be answered within the normal deadlines. In the House of Commons, a Named Day question should receive a substantive response on the day named and an Ordinary Written question should receive a substantive response within a working week of it being tabled. In the House of Lords, questions for Written Answer are expected to be answered within 14 days. Consideration of a parallel FOI request is not a reason to delay an answer to a Parliamentary Question.

CABINET OFFICE
February 2005