

Freedom of Information
Working with the Access to Information Central Clearing
House
Toolkit for practitioners



November 2006

Access to Information Central Clearing House Toolkit

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Access to Information Central Clearing House: Toolkit - November 2006

INTRODUCTION

1. The government established the Access to Information Central Clearing House in Autumn 2004, located within the Department for Constitutional Affairs (DCA). The Clearing House's role is to ensure consistency across central government in the way the Data Protection Act (DPA), the Freedom of Information (FOI) Act, and the Environmental Information Regulations (EIRs) (referred to collectively in this toolkit as "the information rights legislation") are applied.
2. We offer advice and assistance to Whitehall departments (including non-Ministerial departments) in dealing with complex information requests, to ensure that government takes a consistent and appropriate approach. In particular, we provide expert advice on requests for information that have been appealed to the Information Commissioner or Information Tribunal.
3. This document provides advice to information rights practitioners, and departmental policy officers dealing with requests for information, about when requests should be referred to the Clearing House, how it works, and what the Clearing House in turn will expect of government departments. The toolkit was updated in October 2006, in order to reflect changes made to Clearing House working practices as a result of the increasing expertise in information rights across Whitehall. The fundamental way in which the Clearing House operates (i.e. on a referral basis) has not changed – neither have the Clearing House triggers (see Annex B for details). However, the extent to which the Clearing House will become involved in referred cases will depend on a range of factors. These are set out in detail at paragraph 24 of this toolkit.

CLEARING HOUSE FUNCTIONS AND ROLES

4. The principal functions of the Clearing House are:
 - to ensure a consistent government-wide position on requests which have gone to more than one department (so-called "round robin" requests), and potentially precedent-setting cases;
 - to provide guidance on sensitive cases with a potentially high public profile;
 - to align the response to such cases with government policy and guidance;
 - to monitor and contribute to the development of information rights case law, particularly at the Information Commissioner and Information Tribunal stages; and
 - to revise government guidance in the light of emerging case law and new policy imperatives.

5. The Clearing House remit concentrates on Whitehall departments (including non-Ministerial departments), as set out at **Annex A**. It also deals with the Scottish Executive and the National Assembly for Wales when requests may have implications for the UK administration.
6. Non-departmental public bodies, executive agencies and other bodies sponsored by government departments are expected to refer requests in the first instance to their sponsoring Whitehall Departments, which will refer them to the Clearing House when appropriate.

CABINET OFFICE FUNCTIONS AND ROLES

7. The Clearing House works closely with the Cabinet Office, which takes the lead on those cases intrinsic to the operation of collective responsibility, Cabinet and the role of Ministers, communications with the Royal Household, and those cases in which the Prime Minister takes personal interest.
8. All such cases must be referred to the Clearing House in the first instance. The Clearing House will then forward those cases within the Cabinet Office remit to their Ministerial Support Team (MST), which tracks all cases referred to the Cabinet Office. MST will forward Cabinet Office advice to the Clearing House to issue. This ensures that all information requests are consistently logged and monitored and that the Clearing House is able to provide a “one-stop shop” service for Departments.

WORKING WITH THE CLEARING HOUSE

Which information requests should be referred to the Clearing House?

9. Departmental information rights practitioners should refer all cases that fall within the list of triggers at **Annex B**. Upon receipt of a referral, a Clearing House case officer will, in consultation with the referring department, assess the extent to which Clearing House advice is necessary. If Clearing House advice is not required in a specific instance, the case will be returned to the referring Department for action.
10. The list of triggers at Annex B is not intended to be exhaustive. The Clearing House works with colleagues around Whitehall to develop triggers specific to departments, in order to reflect the sensitivities that might arise in their particular areas of work. It is possible that, in the light of experience, other categories of request may be identified as meriting referral to the Clearing House, and the list of triggers will be revised accordingly. Similarly, our collective experience of the information rights legislation in practice may point to a need to reduce the triggers over time.
11. There may also, on occasion, be cases that need to be referred even though they do not hit a trigger. The important point is that, consistent with promoting the information rights culture that lies at the heart of the legislation, departments should stay alert to any requests that may have the capacity to set precedents. In such circumstances, they should contact the Clearing House to discuss whether a referral is appropriate.

12. It is particularly important that the Clearing House is made aware of all correspondence received by departments from the Information Commissioner's Office and/or the Information Tribunal. It is once decisions are made at this level that the boundaries of the information rights legislation begin to emerge, and it is vital that the Clearing House is made aware of these cases at an early stage if it is to maintain its overview of the development of information rights in central government as a whole.
13. The Clearing House is also able to offer advice to information rights practitioners, should it be required, in the following circumstances:
 - Campaigning initiatives falling short of round robins or suspected round robin requests;
 - Applications from news media, MPs, organised campaigns and groups (excluding routine enquiries departments deal with on a regular basis); and
 - Exemptions and case law advice.
14. It is not the role of the Clearing House to advise on routine requests for information or to offer advice on the costs of dealing with a request for information. Similarly, the Clearing House will not offer advice about the release of information already in the public domain, regardless of who has made the request. However, if any doubt exists about whether a case should be referred then departments should contact the Clearing House.
15. The DCA has issued guidance on how to handle certain types of request. This guidance should enable departments to meet their obligations under the Act in a manner consistent with its aims and requirements. Practitioners are expected, wherever possible, to have regard to this guidance when formulating responses to requests for information. The Clearing House will clarify and, in certain limited instances, build upon the advice provided in guidance products. It will not, however, routinely offer advice in areas already covered by guidance. See (<http://www.foi.gov.uk/practitioner/index.htm>) for further information.

How to make a referral

16. Departmental policy officers will routinely deal with requests for information and refer cases to departmental information rights practitioners when these raise difficulties or give rise to the consideration of an exemption. It is vital that departmental information rights practitioners are informed of all such requests for information. The information rights practitioner will determine, after seeking advice on relevant sensitivities from the responsible policy officer and having regard to the Clearing House triggers, whether a case needs to be referred to the Clearing House, and will act as the initial liaison point between the Department and the Clearing House.
17. Information rights practitioners **must** complete a referral form when referring a case to the Clearing House. There are four types of referral form – one for new requests, one for internal reviews, one for ICO / IT cases and one to notify Clearing House of straightforward suspected round robin requests (where no other Clearing House triggers are met). These are attached at **Annex C** of this toolkit.

18. Referral forms should be completed **fully** and any relevant background information sent to the Clearing House at the same time. Incomplete referral forms will delay the provision of Clearing House advice, which can have an impact on departments' ability to meet statutory deadlines. **If a referral form does not contain a proper commentary and initial analysis of the request, it will be returned to the department.**
19. Please send completed referral forms to the Clearing House mailbox (clearinghouse@dca.gsi.gov.uk) as soon as possible upon receipt of a request. Departments should **copy all key departmental contacts into the referral e-mail**, to ensure that responses from the Clearing House go to the appropriate people.
20. If relevant papers have a protective marking of secret or above, or they contain particularly sensitive information, they must be sent by a secure electronic method, by messenger, or by another appropriate secure method. Please contact the Clearing House beforehand to arrange this.
21. All referrals will be logged and allocated to a case officer for assessment, or referred to the Cabinet Office via MST. An e-mail acknowledging receipt of the referral, and giving departments the contact details of the relevant Clearing House/Cabinet Office case officer, will be sent to departmental information rights practitioners, and other individuals copied in to the original referral e-mail, following allocation. Allocation will usually take place the day after referral. Departmental information rights practitioners should ensure that the acknowledgement is forwarded to those who need to see it within their department, copying messages to the Clearing House case officer where appropriate.

How the Clearing House works with departments following a referral – the four categories

22. A Clearing House case officer will aim to review a referral form within two days of allocation (i.e. usually three days after referral). They will initially designate the case as falling within one of **four categories**, which denote the extent to which the Clearing House will become involved in the handling of the request, and the extent to which advice is likely to be required. The decision as to which category a case falls within will be made on the basis of a number of factors, including the sensitivity and complexity of issues raised by the request, the need for cross-government co-ordination, and the department's previous experience of dealing with similar requests. In all cases it will be helpful to have the department's view on the sensitivity and complexity of a case to help inform the Clearing House case officer's assessment.
23. Generally speaking, in view of the increasing information rights expertise within Departments approaching two years after implementation, the Clearing House will focus less on first time requests and internal reviews and concentrate increasingly on Information Commissioner and Information Tribunal cases, although **all cases which hit triggers should still be referred**. On first time requests and internal reviews, the Clearing House will seek to be as "light-touch" as possible when advising on cases. Clearing House involvement will usually be greater in cases at the ICO and IT stages.

24. The four categories into which cases will be put are set out below. The general division of responsibilities between the Clearing House and referring departments in respect of each category is also set out here, although these responsibilities will inevitably vary according to the circumstances of individual cases. Departmental information rights practitioners are asked to give an indication on the referral form of the category into which they expect a referral to fall, according to their initial assessment of the sensitivities. However, the final decision on which category a case should be assigned to will rest with a Clearing House case officer. The four categories are:

➤ **Type 1 (“Kickback”)**

A department has either referred a case that does not appear to hit one of the triggers, or has failed to complete a referral form or provide adequate supporting information to allow the case to be assessed.

In these circumstances, the Clearing House case officer will return the referral to the referring department and explain the reasons for this.

Departments should then either process the request themselves without Clearing House advice, or provide sufficient information to allow the Clearing House to assess the request anew.

➤ **Type 2 (“Watching brief”)**

A department has correctly assessed a case as meeting one of the triggers, and has completed a referral form fully and provided adequate supporting information.

The Clearing House case officer forms the view that adequate expertise and/or knowledge of cross-government issues resides within the referring department to process the request without Clearing House advice.

In these circumstances, the Clearing House case officer will confirm with the referring department that Clearing House involvement in the case will be limited to a “watching brief”. Following this, no formal Clearing House advice will be offered unless, as the case progresses, it becomes apparent that it is required.

Referring departments should provide the Clearing House case officer with a copy of the final response to the applicant, to ensure that the Clearing House has a record of the final outcome of the case.

➤ **Type 3 (“One off advice”)**

A department has correctly assessed a case as meeting one of the triggers, and has completed a referral form fully and provided adequate supporting information.

The Clearing House case officer is able to advise on the handling of the request on the basis of the information in the referral form, or information subsequently supplied by the referring department. There are no additional sensitivities (either in presentational or information rights terms) which require continued Clearing House involvement.

In these circumstances, the Clearing House case officer will provide “one off” advice (or a “one off steer”) in respect of the relevant aspects of the case. No further Clearing House advice will be offered unless, as the case progresses, it becomes apparent that it is required.

Referring departments should provide the Clearing House case officer with a copy of the final response to the applicant, to ensure that the Clearing House has a record of the final outcome of the case.

➤ **Type 4 (“Ongoing engagement”)**

A department has correctly assessed a case as meeting one of the triggers, and has completed a referral form fully and provided adequate supporting information.

The Clearing House case officer forms the view (either by reference to the referral form or following consultation with the referring department) that ongoing Clearing House engagement is likely to be required. Case officers will in all cases seek to be as “light touch” as possible. **All ICO cases** (unless relating to purely procedural complaints) and **all IT cases** will be treated as Type 4 requests.

In these circumstances, the Clearing House case officer and the department will work together to progress the case. Aspects of the case in relation to which Clearing House advice is required will be identified via a process of dialogue between the referring department, and provided on an ongoing basis as necessary, either by telephone, e-mail or at case meetings.

Referring departments should copy the Clearing House case officer in on key communications regarding the development of the case.

Referring departments should provide the Clearing House case officer with a **draft** response to the applicant, and await clearance before sending to the applicant. They should also ensure that the Clearing House has a record of the final outcome of the case.

25. It is important that referring departments remain aware of the division of responsibilities with regard to Type 4 cases. The tables below set out the key responsibilities of referring departments and the Clearing House in respect of Type 4 cases.

Type 4 (“Ongoing engagement”) cases – Departmental Responsibilities

- Complete referral forms fully and provide relevant background information. If possible, a draft or outline of the Department’s proposed response should accompany the form.
- Continue analysis of information and prepare response while awaiting Clearing House input.
- Contact the Clearing House if specific questions arise during consideration of, or if there are significant developments related to, the request.
- Provide samples of relevant information if requested by Clearing House case officer.

- Draft and quality assure responses. Departmental FOI teams check that drafts of s17 letters meet basic standards.
- Send all draft responses to the Clearing House for comment before issuing. Ensure sufficient time is allowed for this ahead of the deadline for responding. Where quick clearance is likely to be needed, flag this up as early as possible to the Clearing House case officer.
- Keep requesters informed of progress and advise the Clearing House of any extensions to the deadline for a response.
- Provide copies of final responses to Clearing House for the audit trail.

Type 4 (“Ongoing engagement”) cases – Clearing House Responsibilities

- Case officer to aim to carry out initial analysis and contact department within 2 days of allocation [i.e. within 3 days of referral], subject to receipt of fully completed referral form and supporting documents. Case officer to advise that case has been designated a Type 4 case after assessing referral form and consulting with referring department as appropriate.
- Arrange cross-departmental consultation and attend case meetings when appropriate.
- Clear draft responses within 2 days of receipt. For new requests and internal reviews that constitute Type 4 referrals, advice on drafts will be restricted to substantive issues on the proposed application or non-application of exemptions under the relevant legislation, as well as whether letters contain the appropriate elements of a Section 17 letter. Advice will not usually include comment on drafting style.
- Advise departments on drafting of responses to all ICO letters and on handling of all appeals to the Information Tribunal which involve the referring department.

26. Clearly, case categorisations will not always be final. For example, some cases may initially be categorised as Type 2 (“watching brief”) but, subsequently, complexities may arise that require their elevation to Type 3 and the accompanying provision of Clearing House advice. Similarly, a case that has initially been categorised as a Type 4 may in fact only need to be treated as if it were a Type 3 (“one hit”) case. The Clearing House will work with departments to ensure that the service it provides meets the needs of departments, and allows them to take appropriate responsibility for progressing their own cases. Where more than one department is involved, it may be necessary for the Clearing House to revise its initial categorisation of a case where those departments disagree on the appropriate response under the legislation. (See paragraph 32 for further details.)

How the Clearing House works with departments following a referral – provision of samples of information

27. In reaching a decision on the categorisation of a case, or in formulating advice once a case has been categorised, Clearing House case officers must rely on the

information provided by referring departments. As such, it is vital that departments supply the appropriate information. The type and level of information they require will vary according to the circumstances of each case. The referral forms at **Annex C** of this toolkit set out the minimum information that should be included when referring a case to the Clearing House. The minimum information required will depend on the stage the request has reached – for example, referrals of internal reviews should always include the precise wording of the original request and a copy of the original response. Similarly, referrals of ICO cases should include the a copy of the department’s response to the applicant at the internal review stage, and any other key documents that were not provided to the Clearing House at the internal review stage (because, for example, a case was categorised as a Type 2).

28. It will also in certain circumstances be necessary for Clearing House case officers to view a sample of the information that has been requested. The point at which this becomes appropriate during the processing of a request will vary according to circumstances. A Clearing House case officer may request a sample of the requested information before agreeing on an appropriate categorisation for the case, or may request sight of such a sample during the advice-giving process for a Type 3 or 4 case. In cases where the volume or sensitivity of the information requires it, Clearing House staff may view the information in situ.

How the Clearing House works with departments following a referral – general points to note

29. The referring Department should not delay its assessment of a request simply because it has referred a case to the Clearing House. The Clearing House acts as a resource for expert advice on the application of the information rights legislation. However, referring Departments are usually best placed to judge the sensitivities of any information they may hold in relation to a particular request. Clearing House case officers will rely on departmental officials to advise them on such matters, which will be a key factor in coming to a decision on which of the four categories a case falls into. Departments should accordingly continue to process the request until they are contacted by a Clearing House case officer. If departments have reached the stage where they have prepared a draft response before a Clearing House case officer has contacted them, they should send this draft to the Clearing House as soon as possible. This will assist the case officer in forming a view on the appropriate level of Clearing House involvement.
30. When cases are referred to the Cabinet Office, the Clearing House will inform the referring Department of this. Cabinet Office will engage with departmental officials and the FOI practitioner directly in assessing a case. Departments can contact MST (020 7276 0523) at any point to ask about progress on a case that is with the Cabinet Office, although advice will be issued to departments via the Clearing House.
31. Very occasionally, there may be disagreement between the referring Department and the Clearing House on the advice it provides. The procedure for dealing with any such disputes is set out at **Annex D**. The dispute resolution process in these instances, as agreed by Ministers, is graduated. The Clearing House must be informed of any disagreement immediately and a dispute notice (at **Annex E**) must be sent to the Clearing House. We will then work with Departments closely in resolving any difference of opinion at whatever level is appropriate.

32. Similarly, where more than one department has an interest in a request (for example, because they have received the same request, or because a request made to one department affects the interests of another) there may on occasion be disagreement between the affected departments on how to respond. The Clearing House will work with the departments to broker agreement, and in certain circumstances may adapt the dispute resolution process at Annex D to fit the circumstances of the case.

Meeting statutory timeframes

33. The 20-day time limit to respond to requests is extremely demanding. This limit can be substituted with “such time as is reasonable in the circumstances” in cases which require a complex balancing of the public interest test under the FOI Act. Under the EIRs, the limit can be extended once by a further 20 days. It is important that departments and the Clearing House ensure that the statutory time limit is met in all FOI/EIR cases.

34. Information rights practitioners should advise the Clearing House as soon as they are aware of a request meeting the referral triggers and have gathered enough information to complete a referral form satisfactorily. In any event, departments should send all referrals and relevant information to the Clearing House as soon as practicable. Clearing House case officers will aim to assess and categorise a case within two days of its allocation [i.e. within three days of referral]. If a case is categorised as Type 3 or 4, the nature and extent of Clearing House advice required should be discussed and clarified as soon as possible after referral.

35. Where cases are categorised as Type 4 cases and require clearance of a final draft, departments should at the very least allow two days before the final deadline for the Clearing House to approve draft responses.

36. If there is a prospect that “neither confirm nor deny” (NCND) may be invoked, it will be important for the Clearing House to provide advice as quickly as possible. This requirement must be highlighted on the referral form.

ADDITIONAL CLEARING HOUSE RESPONSIBILITIES

37. Apart from providing advice on how to respond to high profile and sensitive requests, the Clearing House has a number of other functions that ensure consistency when departments across Whitehall respond to requests.

Papers of Previous Administrations

38. One of the triggers for referral to the Clearing House are requests for papers of a previous administration. As well as referring the request to the Clearing House, departments should ensure that they follow the guidance for handling requests for papers of a previous administration (at **Annex F**). This was agreed by Ministers and the former Leader of the Opposition.

Round robin requests

39. Round robin requests are those sent to more than one government department. The Clearing House’s role in such cases is to ensure a co-ordinated approach is adopted in order to avoid inconsistency between different departments, which would leave government open to criticism and be unhelpful to requesters. FOI practitioners should inform the Clearing House if they receive a request that they

suspect is the same as, or similar to, a request sent to another government Department.

40. If the Clearing House agrees that a request is likely to be a “round-robin”, the request will be added to the round robin list which is circulated to the FOI practitioners’ group daily, in order to establish whether other departments have received identical or similar requests. Departments should, when indicating receipt of a round robin request, make clear their own deadline for response, as this can vary between departments. The Clearing House will co-ordinate the government’s response to these requests and will circulate advice for round robin requests via FOI practitioners.
41. While such advice will in many cases prove sufficient for departments to process requests without further Clearing House involvement, on occasion, round robin advice may require further tailoring to address issues raised by the information held by, or the particular sensitivities relating to, each department. This makes it all the more important that departments continue their work on a round robin request – gathering the information and carrying out its own analysis of whether information should be released – while awaiting Clearing House advice. When advice is issued, departments should contact the Clearing House if they believe that advice needs further refinement to suit their particular circumstances.
42. Where a request has been submitted to a small number of departments because they have a joint policy interest (rather than a general request that has been sent to government departments indiscriminately) the Clearing House will judge the extent to which Clearing House involvement is necessary. If the departments concerned are able to deal with the case by contacting each other directly to ensure consistency, the Clearing House may categorise the case as a Type 2 or 3, and ask the departments to progress the case accordingly.

Ministerial veto

43. The Government has decided that there should be a collective Cabinet decision whenever use of the Ministerial veto in section 53 of the Freedom of Information Act is contemplated. In such cases, the Clearing House will co-ordinate the provision of advice to Ministers and will work with the Cabinet Office to manage the process of collective agreement. If it is not already involved, the Clearing House should be told immediately of any case where use of the Ministerial veto is being considered.

The National Archives and the Lord Chancellor’s Advisory Council on Public Records

44. If a request is received for information contained in records transferred to The National Archives, and the request hits one of the Clearing House referral triggers, the request will be referred to the Clearing House for advice in the usual way.
45. The Lord Chancellor’s Advisory Council on Public Records considers requests for the extended closure of public records and requests from departments which want to keep records beyond 30 years. This role has remained the same since the Freedom of Information Act was introduced. For records less than 30 years old that have been transferred to The National Archives, the Clearing House performs the role of the Advisory Council by representing the Lord Chancellor in

relation to requests for such information. Such cases are therefore referred routinely to the Clearing House.

Simultaneous release

46. It is government policy that where information requested is assessed to be of wider public interest, it should be released to the applicant and published at the same time. It is important that the approach adopted is systematic and consistent across government, and that the material published is branded 'released under FOI/EIR'. DCA has published best practice guidance on disclosure logs at http://www.foi.gov.uk/guidance/disclosure_logs.pdf.

Parliamentary Questions

47. Parliamentary Questions are not FOI/EIR/DPA requests and there is no need to make explicit reference to the Act if it is necessary to explain to Parliament why information is not available. Guidance on Parliamentary Questions in light of the introduction of the information rights legislation is at **Annex G**. If departments have further queries on this they should contact their Parliamentary Clerks.

CONTACTING THE CLEARING HOUSE

48. A dedicated help line and e-mail address have been set up to offer prompt advice and to discuss whether cases should be referred to the Clearing House.
49. Telephone enquiries should be directed to 020 7210 8986.
50. The Clearing House can be contacted via e-mail at clearinghouse@dca.gsi.gov.uk.
51. To refer a case, either e-mail the Clearing House at the above address or send the referral via messenger to:

Access to Information Central Clearing House
Information Rights Division
6th Floor, Selborne House
54-60 Victoria Street
London SW1E 6QW

52. Referrals can also be sent via fax to 0870 739 4490 or 020 7210 8388.

INFORMATION RESOURCES

53. In addition to telephone and e-mail help capacities, the Clearing House can offer a number of resources to assist Departments in dealing with requests:
- An e-forum website for Whitehall officials, with access to the guidance and all precedent setting decisions made in Whitehall, by the Information Commissioner and the courts (see www.foi-forum.gov.uk);
 - Website (see www.foi.gov.uk)
 - Portfolio of guidance (see www.foi.gov.uk/practitioner/index.htm).