

## 15. REFUSAL NOTICES

This guidance refers to section 17 of the FOI Act, the 'Refusal of Request'. When refusing a request the Department must issue a refusal notice. The Information Commissioner's Office (ICO) has found that public authorities have not always given full consideration to the issuing of refusal notices. This guidance outlines the factors that the Department should consider before issuing a refusal notice and highlights the benefits of producing notices that are clear and well drafted.

Section 1 of the Act places a number of obligations upon the Department:

- s1.1(a) an applicant is entitled 'to be informed in writing whether it holds information of the description specified in the request', this is known as 'the duty to confirm or deny'.
- s1.1(b) where information is held the applicant is entitled 'to have that information communicated to him.'

### Refusal Notices

The Department may refuse a request for information where:

- the request is vexatious or repeated.
- the cost of complying with the request exceeds the 'appropriate limit'
- the information requested falls under one of the exemptions listed in Part II of the Act.

When refusing a request the Department must issue a refusal notice. This must be done promptly and not later than the 20 working days after the request is received.

### What are the Benefits of Issuing Good Refusal Notices?

- May result in fewer requests for internal review.
- May result in fewer complaints made to the ICO about the Department.
- The ICO will consider any refusal notice when dealing with a complaint.
- The Information Tribunal is likely to consider any refusal notice when handling appeals.

The ICO has emphasised the importance of clear and fully explained refusal notices. A poor notice that does not fully explain an authority's decision may indicate that a request has not been dealt with seriously. The refusal notice should be clear so that the ICO, and potentially the Information Tribunal, can understand why a request has been refused.

### When is there no requirement to issue a refusal notice?

The Department is not obliged to issue a refusal notice if it considers that a request is vexatious or repeated and:

- it has already issued a refusal notice to the applicant in relation to a recent similar request stating that the request is vexatious or repeated and,
- it would be unreasonable to do so again.

See Section 6 of the Handbook on 'Vexatious and Repeated Requests' for further guidance.

### **Duty to Confirm or Deny**

If the Department decides to refuse a request, it is still obliged to confirm whether or not it holds the information requested unless this would involve the disclosure of exempt information. This itself may be subject to the public interest test and may apply to only some of the information requested.

See Section 11 of the Handbook 'The Duty to Confirm or Deny' for further guidance.

### **What if the information is not held?**

If the Department does not hold the information requested, we do not need to issue a refusal notice. However, within 20 working days, we must confirm in writing that we do not hold the information requested.

### **Exemptions**

The Department may refuse a request to disclose information if it is relying upon one or more of the exemptions listed in Part II of the Act. In this instance, we must issue a refusal notice clearly stating upon which exemption we are relying and the reasons why the exemption applies, (if this would not be otherwise apparent). It is insufficient to merely state that a particular exemption applies. The Department must clearly explain why it believes a particular exemption applies, not just which exemption applies, unless to do so would involve the disclosure of exempt information. The extent to which the Department will have to explain its refusal will depend upon the nature of the request and of the exemption upon which it is relying.

Where an exemption is prejudice based, the Department must also explain the likely harm that would arise from disclosure of the information or by confirming or denying that the information is held. For more information on prejudice based exemptions please see the [ICO's Awareness Guidance No 20 - Prejudice and Adverse Effect](#)

Most exemptions, though, are qualified. This means that the Department has to consider the public interest in its decision to disclose or withhold information, after it has determined that an exemption applies. Therefore, the refusal notice must explain not only which exemption applies and why, but also the public interest arguments addressed in reaching the decision (see below).

As long as disclosure would not breach other legislation, for example, the Data Protection Act 1998, the Department may decide to release the information anyway, even if an exemption applies, if it believes this would be in the public interest. Similarly, the Department is under no obligation to refuse a request on the basis of it being vexatious, repeated or exceeding the appropriate limit. In the case of an absolute exemption, the Department simply has to satisfy itself that the information requested falls within that category.

## **Refusal Notices and the Public Interest Test**

In cases where the Department decides that the public interest in maintaining the exemption outweighs that in disclosure, it must make full reference to the public interest test in the refusal notice. We should make it clear why we consider the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It will not be sufficient to simply state that it is not in the public interest to disclose information in any particular instance. Similarly, it is not sufficient for the Department merely to list the factors it has considered when applying the public interest test. A refusal notice should outline the reasoning the Department has followed in arriving at its decision and why it feels one factor, or set of factors, outweighs another, unless to do so would involve disclosure of exempt information.

Click [here](#) to for Ministry of Justice Guidance on Refusing to release information.

See Section 12 of this Handbook 'The Public Interest Test' for further guidance.

## **Extension of Time for Public Interest Test**

The FOI Act also provides that, where the Department reasonably needs more time to arrive at a decision under the public interest test, it must clearly state this in its refusal notice, together with an estimate of when a decision is likely to be reached. The Department is still required, within 20 working days, to state in the notice under which particular exemption it is considering where the public interest lies. This is still a 'refusal notice' under the Act even though the Department has not at this stage decided to turn down this request.

## **Environmental Information Regulations**

The Environmental Information regulations also require the Department to issue a refusal notice in the case of a request for information being refused. Unlike the FOI Act, the EIR list a series of exceptions, rather than exemptions, where a request for information may be refused. There are no absolute exceptions and all are therefore subject to the public interest test. Under EIR, there is no extension in the time limit for considering the public interest test, though the Department may have up to a maximum of 40 days when dealing with a voluminous and complex request.

## **Internal Review and Complaints Procedure**

A refusal notice must include details of the Department's internal review procedure for dealing with complaints regarding requests under the FOI Act. A rigorous approach to internal review will allow the Department to review the merits of its own decision. The refusal notice must also provide details about the requester's right to complain to the Information Commissioner after any internal review procedure has been exhausted.

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The Refusal Notice Checklist at Appendix F sets out the main points to consider when preparing a refusal notice.

