

Guidance Note: Freedom of Information and SLCs



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Background

SLCs run by PBOs which are privately owned (i.e. not UK public authorities) are not legally obliged to provide information under the terms of the Freedom of Information Act 2000 (FOI). However under the terms of the NDA Management and Operation contract SLCs are contractually obliged to assist the NDA in meeting its legal obligations (see appendix A).

This means that all valid Freedom of Information and Environmental Information requests received by SLCs have to be dealt with in line with an agreed protocol (see appendix B). Each SLC has a nominated FOI lead who will liaise with the NDA to ensure compliance.

It is important to recognise those requests which the SLC should deal with and those that should be referred to the NDA, as by law valid FOI and EIR requests should be responded to promptly and not take more than a maximum of 20 working days. Also SLCs should still respond to general and business enquiries from the public.

So how do you distinguish between day to day business enquiries, general enquiries and valid FOI or EIR requests?

Requests for information that can be provided without any question – such as recruitment, publications, leaflets, press releases and the text of public meetings – should be treated as business as usual.

As a rule of thumb:

- if any information requested is held and needs to be actively considered before release then the request should be formally treated as a FOI or EIR.
- if it seems likely that the requested information cannot be disclosed, it should be treated as a request for information.

Valid FOI requests:

- must be received in written format (email, fax, letter etc.)
- must contain contact information
- must adequately describe the information required. If the description is not clear then you should still contact NDA and we will contact the applicant and ask them to provide us with more information or clarification. (While we are waiting for them to respond the 20 day count stops.)
- **Remember that the correspondent doesn't need to mention FOI or EIR to make it valid.**

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The key distinction between FOI requests and everyday business enquiries are:

- They require some investigation to produce an answer.
- The information requested isn't in the public domain.
- The NDA/SLC would be the only source of this information.
- The NDA/SLC does not currently publish the information requested, or intend to do so in the future.

Valid EIR requests:

- can be received both in **verbal** and in written format.
- relate specifically to the environment e.g. soil, air, water,
- or anything which affects the environment such as emissions, waste and discharges.

Requests from the media

All requests from the media must be referred to the Communications department and handled in line with your own Communications Procedures.

Invalid requests

Applicants do not need to be aware of their rights under the EIR or FOI Act, but the NDA is under a legal obligation to inform applicants of their rights and to assist them in making valid requests. We must also have consideration for disability discrimination legislation and assist anyone with a disability make their request valid e.g. by offering to write down a request and send it to them for verification. The SLC must assist the NDA to meet these obligations and so any invalid requests should be given due consideration and the applicant given assistance to make a valid request or be redirected to the NDA.

Please make sure that you pass any valid FOI/EIR requests to your SLC FOI coordinator promptly.

Appendix A

Standard M&O contract clause

10.1 Freedom of Information Act

10.1.1 This Clause (*Confidentiality, Security and Compliance with Law*) is subject to FOIA and EIR together with any guidance and/or codes of practice issued by the Ministry of Justice, the Information Commissioner, the Department for Constitutional Affairs and/or the Lord Chancellor's Department.

10.1.2 The Contractor shall:

facilitate the Authority's compliance with its information disclosure obligations under the FOIA and the EIR in the manner provided for in Clause 0 to 0 (*Freedom of Information Act*) and shall also comply with the protocol as set out in Schedule 20 (*Freedom of Information Act Request Protocol*) or as subsequently agreed between the Parties from time to time detailing the practical arrangements and procedures to be adopted. If the Authority is required to provide information as a result of a request made to it under the FOIA or EIR and such information is in the possession of either of the Contractor or any of its Subcontractors, the Contractor shall provide such information to the Authority as soon as reasonably practicable. The Contractor shall provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR; and

use reasonable endeavours to procure that its Subcontractors shall transfer any Request for Information (as defined under the FOIA) that it or they receive to the Authority as soon as practicable after receipt.

10.1.3 The Contractor shall provide a nominated member of staff with sufficient authority to handle, co-ordinate and be responsible for the supply of information to the Authority for the purposes of compliance with this Clause (*Freedom of Information Act*) and the protocol referred to in Clause 10.1.2 (*Freedom of Information Act*).

10.1.4 The Authority shall be responsible for determining at its absolute discretion whether any information provided to the Authority is exempt from disclosure in accordance with the FOIA or EIR or is to be disclosed in response to a Request for Information.

10.1.5 The Contractor acknowledges that the Authority may, acting in accordance with the FOIA or EIR disclose information without consulting the Contractor. The Authority may, at its sole discretion, elect to consult the Contractor and take its view into account, and in such event the Authority shall use its reasonable endeavours to notify the Contractor's member of staff nominated in accordance with Clause 0 (*Freedom of Information Act*).

10.1.6 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 0 (*Freedom of Information Act*).

**Appendix B
Freedom of Information Act Request Protocol**

1. This Protocol covers requests for information that xxx (“the Contractor”) holds on behalf of the Authority. When requests are received by the Contractor’s staff they should follow their internal procedures relating to enquiry handling.
2. If the request takes the form of a “general enquiry” and is straightforward in nature, the Authority will expect the Contractor to respond to the applicant with the information requested.
3. For more complex requests which, in the view of the Contractor, would be considered to be requests made under the Freedom of Information Act 2000 (“FOIA”) or the Environmental Information Regulations 2004 (“EIR”) if they were directed to the Authority, the FOI Officer at the Contractor should ensure that a copy of the request is sent in a timely manner (and in any event no longer than 5 working days after receipt) to the Authority FOI mailbox (foi@nda.gov.uk) marked for the attention of the “Information Access Manager” or his/her deputy.
4. The applicant should be advised by the Contractor’s FOI Officer or deputy that the Contractor is not a public authority as defined in the FOIA or EIR and therefore is not obliged to respond to the request. However, the applicant should also be advised that the request is being passed to the Authority.
5. The Authority’s Information Access Manager, or his/her deputy, will contact the Contractor’s FOI Officer to discuss the appropriate response to the request.
6. The Authority’s Information Access Manager will take responsibility for acknowledging receipt of requests and keeping legally admissible records of requests made and responses sent on the Authority’s Electronic Document Records Management System.
7. The Contractor should co-operate fully with the Authority in the supply of information requested within the timescales set out in the relevant legislation.
8. The Contractor should be consulted for its views on disclosure, for example on the applicability of any exemptions under the FOIA or EIR. The Authority will take these views into account, but ultimately reserves the right to apply exemptions and the public interest test, as it sees fit and in accordance with the legislation.
9. The Contractor will be given copies of all draft answers and be given an opportunity to comment before a final response is sent by the Authority to applicants.
10. Copies of final answers sent by the Authority will be copied to the Contractor’s FOI Officer for the Contractor’s records.

The Contractor and the Authority must keep each other informed of changes to relevant personnel and contact information.