

REQUEST FOR INFORMATION: ARRANGEMENTS FOR HANDLING FREEDOM OF INFORMATION REQUESTS

Thank you for your e-mail of 7 January 2005 requesting information about arrangements in the Office of the Deputy Prime Minister (ODPM) for handling requests for information under the Freedom of Information (FOI) Act. You asked to be provided with information about any special arrangements for handling requests from journalists, Members of Parliament (MPs) and local or national officers of political parties; information about any arrangements for identifying and handling FOI requests which are judged to be potentially sensitive or may result in adverse publicity or comment; and for information about keeping ministers informed about the management of FOI requests.

In ODPM, all FOI requests, regardless of their origin, are treated in the same way. The Office has not adopted any special arrangements for dealing with FOI requests from certain types of applicants as we consider that to do so might ultimately undermine the FOI principle of equality of treatment of requests and requesters. However, whilst therefore, the treatment of particular requests and requesters will be no different, the Office does have some procedural handling arrangements in place for some of the types of requests you have asked about.

Dealing first with requests from journalists, all such identified requests (with the possible exception of a request such as your own which is about FOI management per se) are handled through the Press Office in our Directorate of Communication (DOC). This follows well established and long-standing procedures in government departments for liaison with the media.

The Office collects information about requests for information that have been submitted by MPs and, twice-weekly, reports that information to the Department for Constitutional Affairs (DCA). This is part of important monitoring arrangements aimed at assessing the impact of the FOI Act. Under the Code of Practice on Access to Government Information, requests from MPs accounted for 24% of total requests. The FOI Act is intended to make more information publicly available and the monitoring information on requests from MPs is of use in assessing its impact.

ODPM has not put any particular arrangements in place for handling requests from local or national officers of political parties.

Turning to the second part of your request, you asked about arrangements for the handling of potentially sensitive cases. As part of our general preparations for handling FOI requests, ODPM considered and implemented such arrangements. This was done so as to ensure that such cases could be identified, full and appropriate consideration be given to maximising the release or publication of information where possible, and legitimate consideration given to exemptions and the public interest test as appropriate. A copy of the Office's resulting procedures is attached. The summary diagram at Annex B of those procedures outlines how they are to be used to ensure that, when a case is identified, it is made known to the relevant part of the Office and full consideration can be given by the relevant parties to the possible release or refusal of information and decisions can be made at the appropriate level.

Finally, you also asked about ODPM's arrangements for keeping ministers informed about the management of FOI requests. Annex B of the sensitive case procedures again shows how relevant ministers are kept informed about particular cases as appropriate. The Office has also created a central FOI Advice Team within its Information Management Division (IMD). It is the responsibility of that Team and the Divisional Manager to ensure that the Permanent Secretary and ministers are kept informed more generally about the Office's performance in handling, and the management of, FOI requests received.

The FOI Advice Team in IMD acts also as the focal point in the Office for liaison on FOI matters with the DCA. As the lead government department on FOI matters, DCA has set up a Central Clearing House (CCH) that assists government departments in considering particularly complex requests for information or those that may have cross-government considerations. Requests that are considered to be potentially sensitive may be referred to the CCH. This is considered on a case-by-case basis. DCA has produced guidance in the form of a Toolkit for FOI practitioners in departments to use in referring requests to the CCH, a copy of which is attached. This is to be published shortly and will be available on DCA's web-site at <http://www.dca.gov.uk/foi/index.htm>.

If you are not satisfied with the outcome of your request then you may ask for this to be reviewed. Information about ODPM's review procedures and how to submit an appeal is available on our web-site and in the attached Appeals Procedures leaflet. This explains ODPM's internal procedure for reviewing a decision made on a request for information and, if you are not satisfied with the outcome of that review, your subsequent right of appeal to the Information Commissioner.

ODPM FOI sensitive cases alerting procedures

Issue

1. This paper proposes measures to alert key stakeholders in the Office to requests for information under the Freedom of Information Act that may have potential sensitivities. These procedures are intended to be compatible with those being proposed by the Department for Constitutional Affairs with regard to the handling of sensitive FOI cases.

Timing

2. Immediate: the Freedom of Information Act comes fully into force from 1 January 2005.

Consideration

3. There will be a number of areas within the Office that could be subject to potentially sensitive releases of information under the FOI Act. These are currently being addresses on a case by case basis, ensuring that the relevant information is gathered together in one place and forms part of the official record. In conjunction with Information management Division and Legal Directorate, the line is selecting which information should fall for release and which would not fall for disclosure due to the application of an FOI exemption. When the material that may be subject to disclosure is identified, DOC will be consulted with regard to potential Press handling, and the relevant Ministers and Board members consulted concerning potential release. The Department for Constitutional Affairs FOI Clearing House will also be consulted of necessary.
4. For future cases that may arise, all staff going on FOI training have been advised that the FOI Advice Team should be informed at the earliest opportunity of any potentially sensitive cases they have received. The FOI Advice Team will then inform the relevant part of DOC and Legal Directorate if appropriate. DOC will advise the appropriate Ministers and other key stakeholders.
5. In certain circumstances, the FOI Advice team will also alert the DCA's FOI Clearing House, for example in the case of round-robin requests. A full list of the triggers for this is attached in **Annex A**, and this list will be circulated to staff. In cases referred to the Clearing House, DOC will also be informed. DOC will also be informed of cases, for example round robins, that the DCA inform the FOI Advice team about.
6. As well as sensitive cases being identified by the recipient, Divisional Managers will also act as a monitoring point for the identification of sensitive cases, as their role will be to sign off the FOI response. In the first instance, when a member of staff has identified a sensitive case, their Divisional Manager should be informed..

7. In all cases of sensitive requests, whether they involve the DCA Clearing House or not, the Permanent Secretary's office will be informed. A flow chart of these triggers is attached in **Annex B**.
8. In addition to the procedure outlined in Appendix B, staff in both DOC and the FOI Advice Team will be able to monitor all FOI cases being handled by the Office via the electronic FOI Tracking System (FITS). This will allow sensitive cases, not initially picked up by the line, to be identified. This provides five ways in which potentially sensitive cases can be picked up:
 - a) by the line
 - b) by DOC via FITS
 - c) by the FOI Advice Team via FITS
 - d) by the DCA Clearing House
 - e) by the Divisional Manager.

Although the resolution of sensitive cases will tend to vary on a case-by-case basis, it is recommended that final sign-off of all sensitive cases be made at Director-General level, subject to relevant advice from DOC and IMD.

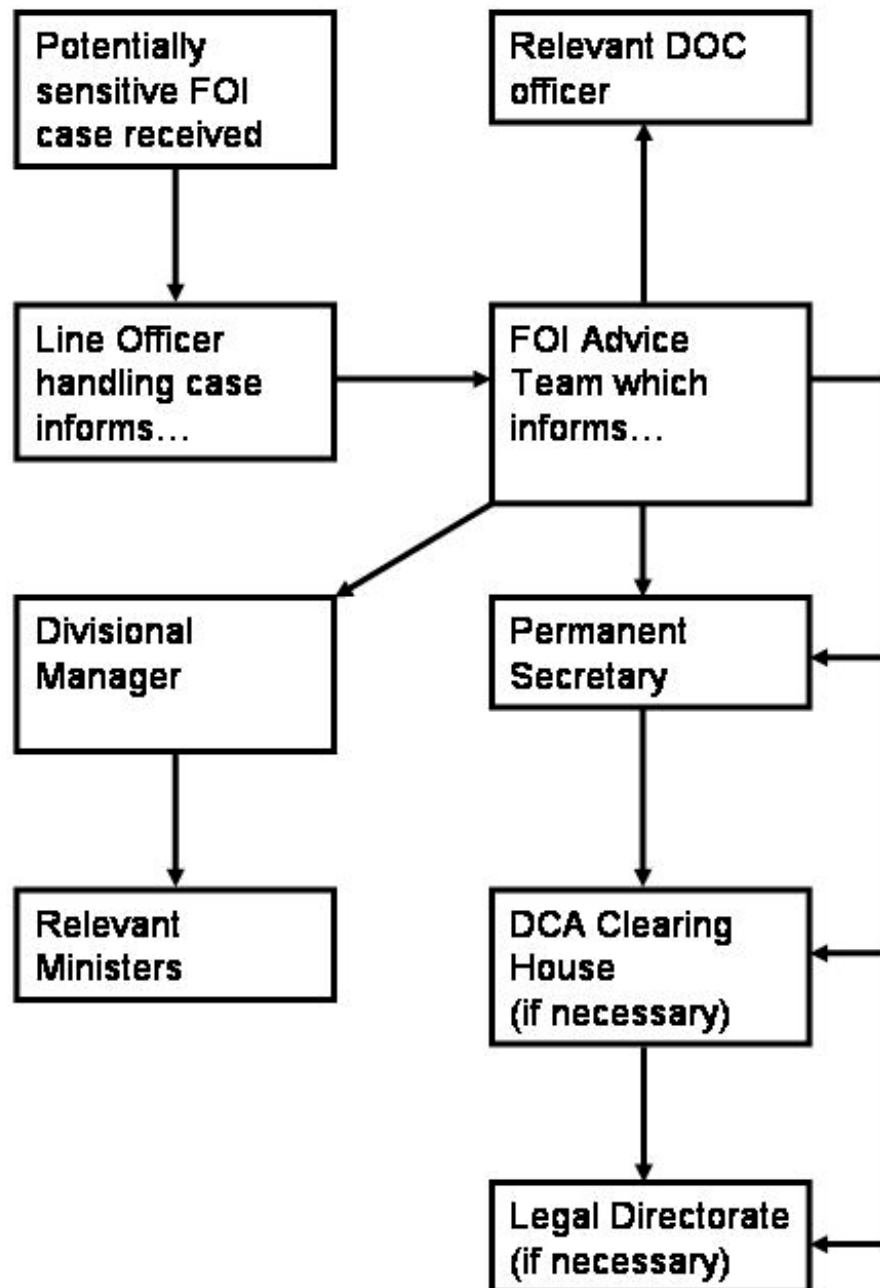
Annex A

DCA Clearing House referral triggers

- a) Complex and/or technically difficult cases;
- b) Requests relating to current high profile issues, or issues of historical significance;
- c) Cases where information less than 30 years old is held by the National Archives and there may be a dispute between the Department and TNA;
- d) Cases relating to communications with Her Majesty, other members of the Royal Family or with the Royal Household;
- e) Requests relating to the conferring of Honours;
- f) Requests for information that were previously disallowed under the Code of Practice on Access to Government Information;
- g) Cases relating to the work of Private Offices;
- h) All cases relating to Cabinet e.g. Cabinet Committee papers, minutes and meeting dates;
- i) Anything relating to the Prime Minister;
- j) Anything relating to Ministers e.g. Ministerial financial interests, diaries and propriety issues related to the Ministerial Code;
- k) All cases intrinsic to the operation of collective responsibility e.g. inter-Ministerial correspondence and notes of meetings between Ministers;
- l) Queries relating to Select Committee evidence and appearances;
- m) Round robin requests;
- n) Cases that obviously involve cross Whitehall issues;
- o) Cases which might lead to the use of Ministerial Vetos;
- p) Cases which might lead to the issue of s.23 or s.24 certificates;
- q) Internal reviews of Departmental decisions;
- r) Appeals to the Information Commissioner; and
- s) Appeals to the Information Tribunal.

Annex B

Sensitive case alerting chain



Freedom of Information

Access to Information Central Clearing House: Toolkit for Practitioners



Toolkit for Practitioners

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Access to Information Central Clearing House: Toolkit

INTRODUCTION

1. The Government has established a central Clearing House, located within the Department for Constitutional Affairs (DCA), to ensure consistency across central Government in relation to the application of the Data Protection Act (DPA), the Freedom of Information (FOI) Act, and the Environmental Information Regulations (EIRs).
2. The Clearing House will offer advice and assistance to Whitehall Departments in dealing with information requests which are particularly difficult or have cross Government implications, to ensure a consistent and appropriate approach is taken.
3. **This document is intended to provide advice to FOI practitioners 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.**

CLEARING HOUSE FUNCTIONS AND ROLES

4. The principal functions of the Clearing House are:
 - To ensure a consistent Government-wide position on round robin and potentially precedent-setting cases;
 - To provide guidance on all sensitive cases with a potentially high public profile;
 - To align the response to such cases with government policy and guidance; 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 will also deal with the Scottish Executive and the National Assembly for Wales on issues which 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 in the first instance to their sponsoring Whitehall Departments.

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7. The Clearing House will work in tandem with Cabinet Office (CO) Histories, Openness and Records Unit (HORU), who will take the lead on those cases intrinsic to the operation of collective responsibility, Cabinet and the role of Ministers, and those cases in which the Prime Minister takes personal interest. The Clearing House will forward these cases to HORU.
8. All cases must be referred to the Clearing House in the first instance. This ensures that all cases are consistently logged and monitored and that the Clearing House provides a seamless one-stop shop service for Departments.

CLEARING HOUSE WORKING PRACTICES

Which information requests should be referred to the Clearing House?

9. FOI practitioners should refer cases that are within the generic list of triggers at **Annex B**. The list of triggers is drawn deliberately widely in order to ensure we capture difficult cases and can offer a consistent approach. Upon receipt of a referral, a Clearing House case officer will assess whether Clearing House intervention is necessary and will return it to the referring Department for action if appropriate.
10. The list of triggers at Annex B is not intended to be exhaustive. It is possible that, in the light of experience, other categories (such as commercial confidentiality and Government contracts) may be identified as meriting special consideration through the Clearing House and the list of triggers will be revised accordingly. Similarly, our collective experience of FOI in practice may point to a need to reduce the scope of triggers over time.
11. The Clearing House will, in conjunction with colleagues around Whitehall, also develop triggers specific to Departments to reflect the sensitivities that might arise in their particular areas of work.
12. There may also be cases which need to be referred even though they are not caught by a trigger. The important point is that, consistent with promoting the information rights culture sought by the Act, Departments should stay alert to any request that may have the capacity to set precedents.

13. The Clearing House is also able to offer advice to FOI 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 there any doubt exists about whether a case should be referred then contact the Clearing House.

Internal reviews and appeals

15. FOI Practitioners should notify the Clearing House when requests are subject to internal review or appeal. While we may not necessarily need to be engaged in these cases, it is important that the Clearing House is aware of them.
16. Where the Clearing House has offered advice and the case is subject to internal review or appeal, it should be referred to the Clearing House immediately.

Round robin requests

17. Where the same or similar request is made to more than one Department a co-ordinated approach should be adopted to avoid an inconsistent approach being taken by different Departments, which would leave the Government open to criticism. FOI practitioners should inform the Clearing House if they receive a request that they suspect is a “round robin” or has gone to more than one Department.
18. If we suspect that a request is a “round-robin” we will use the FOI practitioners’ group to establish whether other Departments have received identical or similar requests. The Clearing House will co-ordinate the Government’s response.

Ministerial veto

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

Lord Chancellor’s Advisory Council on Public Records

20. At present, the Lord Chancellor's Advisory Council on Public Records considers requests for the extended closure of public records and requests from Departments who want to keep records beyond 30 years. It has been agreed this role will remain the same once the FOI Act is introduced. For records less than 30 years old transferred to The National Archives, the Clearing House will lead on the provision of advice in relation to any requests for such information.

How to make a referral?

21. Departmental desk officers will routinely deal with requests for information and refer cases to departmental FOI practitioners when these raise difficulties or give rise to the consideration of an exemption. The FOI practitioner will determine whether a case needs to be referred to the Clearing House and will be the liaison point between the Department and the Clearing House.
22. FOI practitioners must inform the Clearing House as soon as possible via Email (clearinghouse@dca.gsi.gov.uk) or telephone (020 7210 8986) if they wish to make a referral. They should then complete a referral form at **Annex C** and send this to the Clearing House together with copies of all the papers relevant to the request. In cases where the volumes or sensitivity of the relevant information require it, Clearing House staff may view the information in situ.
23. The referral form at Annex C must be completed every time a new case is referred to the Clearing House. It will not be necessary to complete this form if the same request needs to be re-referred to the Clearing House, for example because it is subject to an appeal. In these cases, FOI Practitioners must Email the Clearing House explaining why the case has again been referred to the Clearing House and quoting the Departmental and Clearing House reference numbers.
24. **It is important that referrals reach the Clearing House as quickly as possible. Referrals should be sent via Central Government e-mail, fax or messenger (see below for details). Papers with a protective marking of secret or above, or which you consider contain particularly sensitive information, must be sent via messenger or an appropriate secure method.**

Parliamentary Questions

25. **All responses to Parliamentary Questions (PQs) drafted by Departments which fall within one of the triggers for Clearing House advice must be referred to the Clearing House for approval. The Clearing House will respond to these PQs as soon as possible. As the process for handling PQs is different to cases normally referred to the Clearing House for advice, a different referral form should be completed. This is at Annex D.**

Clearing House process

26. A process map outlining the Clearing House workflow is at **Annex E**. All referrals will be logged on the Clearing House IT system and allocated to a case officer for

assessment or referred to HORU. HORU officials will engage with Departmental officials and the FOI practitioner in assessing a case. For tracking and monitoring purposes, however, the Clearing House will act as the point of contact for all cases that are referred.

27. The Clearing House case officer will aim to review the case on the day that the referral is received. They will determine initially whether the case requires the involvement of the Clearing House or whether it should be dealt with at a Departmental level. The Clearing House case officer will decide whether more time than the 20-day timelimit is required to assess the public interest in a particularly difficult case and will advise the referring Department if this is the case immediately. The Clearing House case officer will also determine at this point whether a case meeting is required and make arrangements to meet with Departmental officials and advisors as soon as possible.
28. The referring Department is responsible at all times for keeping the applicant informed of the progress of a case. This particularly applies if the Clearing House policy officer deems that more time than normal is required to assess the public interest in a difficult case.
29. In assessing a case, the case officer will seek advice from lawyers and expert advisors before drafting a response. They will also contact the specific policy officials involved in the area in which the request was made and the FOI practitioner, involving them closely in the development of an appropriate response. This response will be reviewed before the outcome is logged and the decision sent to the referring FOI practitioner.
30. The Clearing House is developing an IT system that will monitor each stage of the referral process. FOI practitioners and policy officials will be able to contact the Clearing House at any point and receive up to date information on the progress of a case.
31. There is potential for 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 F**. 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 G**) 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.

Meeting statutory timeframes

32. **The 20-day timelimit 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. It is important that Departments and the Clearing House endeavour to ensure that this timelimit is met in all FOI cases.**
33. FOI practitioners must advise the Clearing House as soon as they are aware of a referral. In any event, all referrals should be sent to the Clearing House within 5 working days of receipt by the referring Department. The Clearing House has a target of 10 working days in which to provide advice. If it is considered that it may

take longer than the 10 working day target to provide advice the Clearing House will inform the relevant referring Department as soon as possible.

34. If there is a prospect that “neither confirm nor deny” (NCND) would be invoked it will be important for the Clearing House to provide advice within 10 days. This must be highlighted on the referral form.

CONTACTING THE CLEARING HOUSE

35. A dedicated help line and Email address has been set up to offer prompt advice and to discuss whether cases should be referred to the Clearing House.

36. **Telephone enquiries should be directed to 020 7210 8986.**

37. **The Clearing House can be contacted via e-mail at clearinghouse@dca.gsi.gov.uk.**

38. **To refer a case you can either email 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**

39. Referrals can also be sent via fax to 020 7210 8388.

INFORMATION RESOURCES

40. In addition to telephone and Email 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;
- Portfolio of guidance;
- Codes of Practice under Sections 45 and 46 of the FOIA;
- Website – www.dca.gov.uk/foi/foidpunit.htm;
- Public Enquiries Line – 020 7210 8034.

Departments/Bodies within Clearing House Remit

Cabinet Office
Charity Commission
Commissioners for the Reduction of the National Debt
Crown Estate
Crown Prosecution Service
HM Customs and Excise
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
Forestry Commission
Department of Health
Home Office
Inland Revenue
Department for International Development
Law Officers' Department
The National Archives
Northern Ireland Office
Office of the Deputy Prime Minister
Office of the Leader of the House of Commons
Office for National Statistics
Ofgem
Ofsted
Ofwat
Prime Minister's Office
Privy Council Office
Public Works Loan Board
Serious Fraud Office
Department for Trade and Industry
Department for Transport
HM Treasury
UK Trade and Investment
Department for Work and Pensions

ANNEX B

Generic Triggers

FOI Practitioners are expected to refer cases to the Clearing House in the following instances:

- **Requests for, or relating to, complex and/or high profile procurement projects;**
- **Requests for papers of a previous administration;**
- **Where the application of FOI, EIRs or DP is complex and/or technically difficult;**
- **Requests relating to high profile issues, whether current or historical;**
- **Requests for, or relating to, Ministerial Diaries;**
- **Requests for, or relating to, Gateway reviews;**
- **Requests for shared information held relating to the Efficiency Programme;**
- **Cases where information less than 30 years old is held by the National Archives and there may be a dispute between the Department and TNA;**
- **Cases relating to communications with Her Majesty, other members of the Royal Family or with the Royal Household;**
- **Requests relating to the conferring of Honours;**
- **Requests for information that were previously disallowed under the Code of Practice on Access to Government Information;**
- **Cases relating to the work of Private Offices;**
- **All cases relating to Cabinet and its Committees, e.g. agendas, papers, minutes and meeting dates;**
- **Anything relating to the current Prime Minister;**
- **Anything relating to Ministers e.g. Ministerial financial interests, diaries and propriety issues related to the Ministerial Code;**
- **All cases intrinsic to the operation of collective responsibility e.g. inter-Ministerial correspondence and notes of meetings between Ministers;**
- **Requests relating to Select Committee evidence and appearances where information is not already in the public domain;**
- **Round robin requests;**
- **Requests that obviously involve cross-Whitehall issues;**
- **Requests which might lead to the use of Ministerial vetos;**
- **Requests where the use of the exemption under s.23 FOI Act is**

ACCESS TO INFORMATION CENTRAL CLEARING HOUSE REFERRAL FORM

CONTACT DETAILS

Name:
Department:
Address:

Email:
Telephone Number:
Fax:

TIMEFRAMES

Date request received:
Date case referred to Clearing House:
Date Clearing House advice required:
Is there a prospect of using NCND?:

CASE SUMMARY

Department Reference Number:

Which regime is this referral being made under?: *(Please tick all that apply)*

FOI DP EIR

Name of Applicant (and organisation, where appropriate):

What information has been requested? (please state the exact wording of the request):

If the Clearing House advises that information should be released, do you think it would be suitable for simultaneous release? :

Please provide a summary of the case:

What is the case about? / Why is there interest in the case? / What previous requests have been received? / What information is already in the public domain?

Case History:

What has happened since the request for information was received?

Please state which exemption(s)/exception(s) may apply to this request and why?:

Is there a possibility that a certificate under either s.23 or s.24 of the FOI Act will be issued at this stage?:

Why are you making a referral?:

Please state what you perceive as the key difficulties, and whether the public interest has been applied to any exemptions/exemptions. If so, please summarise the arguments, both in favour of disclosure and against disclosure.

HANDLING

As far as possible, please tell us what arrangements are in place to handle the release of information if the Clearing House advises that this information should be released:

KEY CONTACTS

Please provide the contact details of the key people within your Department to contact in connection to this case:

Policy Official(s):

Name:

Telephone Number:

Email Address:

Departmental Lawyer:

Name:
Telephone Number:
Email Address:

Press:

Name:
Telephone Number:
Email Address:

OTHER GOVERNMENT DEPARTMENTS

Are any other Government Departments involved?:

Yes No Possibly

If so, please provide contact details: _

Name:
Department:
Address:

Email Address:
Telephone Number:

Name:
Department:
Address:

Email Address:
Telephone Number:

ANNEX D

ACCESS TO INFORMATION CENTRAL CLEARING HOUSE PQ REFERRAL FORM

CONTACT DETAILS

Name:
Department:
Address:

Email:
Telephone Number:
Fax:

TIMEFRAMES

Date request received:
Date case referred to Clearing House:
Date Clearing House advice required:

PARLIAMENTARY QUESTION

Departmental Reference Number:

Please attach the PQ or state the question and name of the requestor.

DRAFT RESPONSE

Please attach your departments draft response and briefing note if one has been prepared or provide below.

WHY ARE YOU MAKING THE REFERRAL?

Unless otherwise stated in the briefing notes, please state what you perceive as the key difficulties, and whether the public interest has been applied to any exemptions/exemptions. If so, please summarise the arguments, both in favour of disclosure and against disclosure.

KEY CONTACTS

Please provide the contact details of the key people within your Department to contact in connection to this PQ:

Policy Official(s):

Name:
Telephone Number:
Email Address:

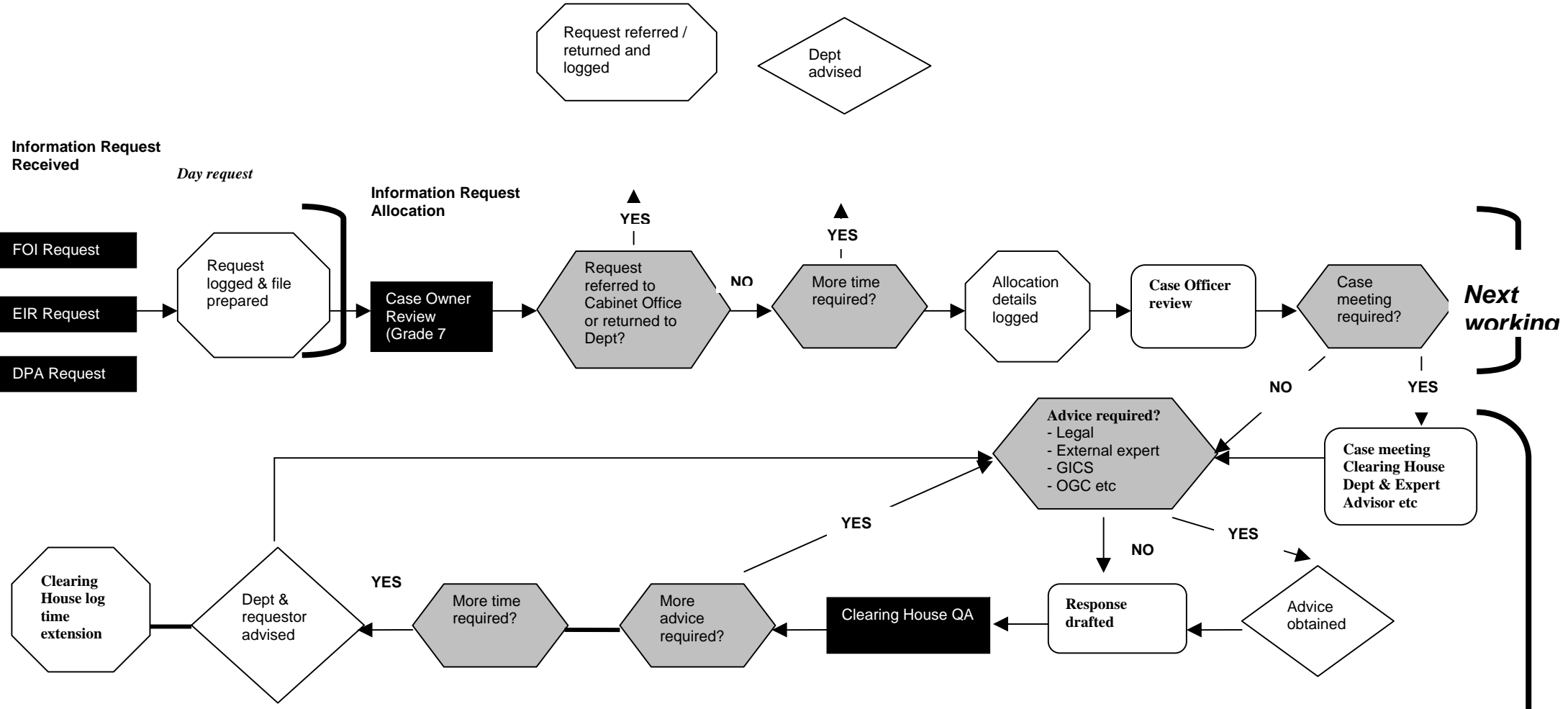
Departmental Lawyer:

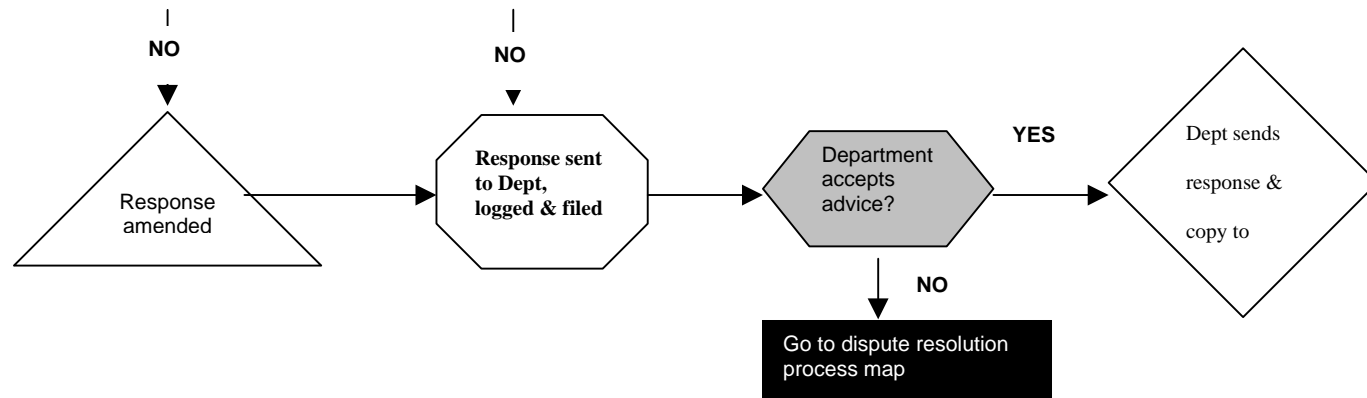
Name:
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Press:

Name:
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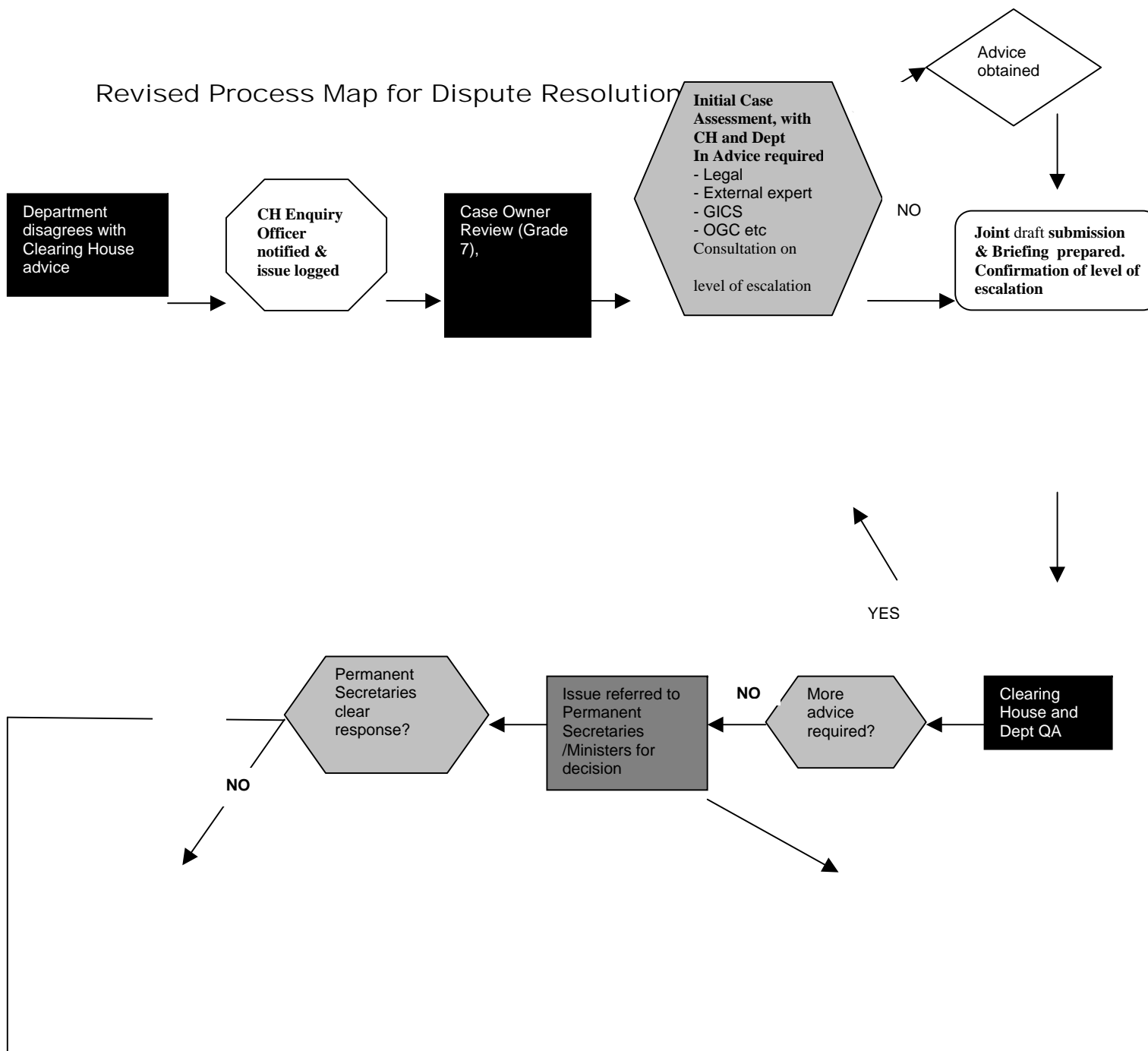
Process Map for DCA Clearing House Handling of Information Requests

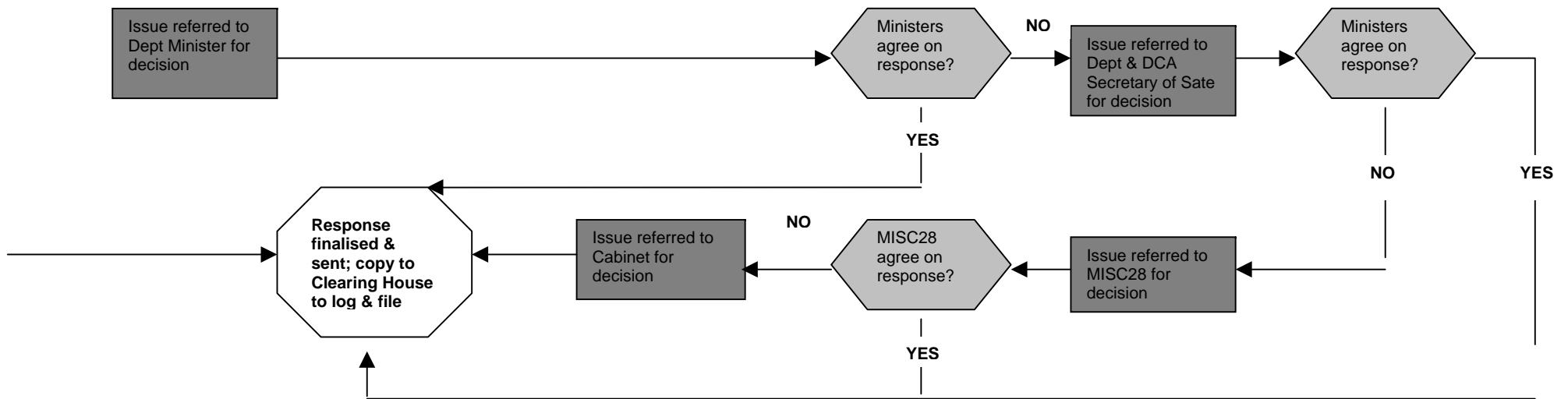




*10 working days
unless public
interest extension*

Revised 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.

ACCESS TO INFORMATION CENTRAL CLEARING HOUSE DISPUTE NOTICE

CONTACT DETAILS

Name:
Department:
Address:

Email Address:
Telephone Number:
Fax:

CASE DETAILS

Name of Applicant:
Information requested:

Department Reference Number:
Clearing House Reference Number:

NATURE OF DISPUTE

Please outline below which aspects of Clearing House advice your Department does not agree with?:

Please outline the reasons why this advice is being disputed?: