

Amber Valley Borough Council

The Freedom of Information Act 2000

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Policy

1. Introduction

- 1.1. The Freedom of Information Act (the FOI Act) was passed on 30 November 2000 and comes into full effect on 1 January 2005. It will be enforced by the Information Commissioner, a new governmental post that combines responsibility for Freedom of Information Act 2000, Data Protection 1998 and Environmental Information Regulations 2004.
- 1.2. The FOI Act aims to increase openness and accountability in government and across the public sector by ensuring people have the right to all types of 'recorded' information held by public authorities. As a local authority, Amber Valley Borough Council must comply with the Act.
- 1.3. The aim of this Policy is to provide all Council employees with summary guidance of what is expected of them and a framework for dealing with requests for information and to inform the public of their right of access to such information under the Act.

2. Publication Scheme

- 2.1. We have an approved Publication Scheme as required by the Act. The purpose of this scheme is to let everyone know what information will automatically or routinely be published by the Council. It sets out:
 - classes of information
 - whether an exemption applies
 - where the information can be located
 - whether a fee applies
- 2.2. To ensure we meet the requirements of the Act, we will periodically review the scheme and increase the range of information covered by it.
- 2.3. The Publication Scheme is available on the Council's Website at <http://www.ambervalley.gov.uk/yourcouncil/foi.asp>

3. Dealing with Requests for Information

- 3.1. The FOI Act gives people access to information which does not already fall under the Data Protection Act 1998 or the Environmental Information Regulations 2004.

- 3.2. We deal with thousands of requests for information which may arrive in any department. The vast majority will reflect the normal business of the Council and are easily satisfied and there is therefore no need to add any additional process to the handling of these simple requests. Examples are requests for leaflets, or which departments to approach. We will continue to deal with these in the usual way.
- 3.3. After 1 January 2005, a request for information that is not routinely available will be handled differently (see Process for Handling Requests at Appendix A). A non-routine or potential FOI request will fall within one or more of the following categories:
- the FOI Act is mentioned in the request
 - cross-departmental requests
 - where exemptions may apply
 - where staff are thinking of saying “No” to the request
 - confidential information
 - complex requests that may take longer than 5 days to fulfil
 - personal information (Data Protection Act 1998)
 - environmental information (Environmental Information Regulations 2004)
- 3.4. An FOI request must be in writing, including fax and email. In all cases, it must clearly state the applicant’s name, address and details of the information required. The applicant does not have to mention the FOI Act or give a reason for requesting the information. If the request is unclear, we must try and contact the applicant to clarify what is required.
- 3.5. We will process an FOI request within 20 working days of receipt unless:
- the information requested is exempt from disclosure
 - the request is considered a nuisance, unreasonable or repeated
 - where the request is subject to a fee, the required amount is not paid within three months.
- 3.6. If a request is particularly complex and will take longer than the 20 working days to process, the applicant must be kept informed and given an estimate of how long it will take to provide the information.
- 3.7. An applicant has the right to request a preferred format for the information to be supplied. Where practicable, we will provide the information in the manner requested.
- 3.8. Although a FOI request must be in writing, we must make every effort to assist an applicant to obtain information. To be helpful, we will offer to take details of a request over the telephone and return the form to the applicant for a signature. This would usually be for information that is not routinely available and once the form has been returned to the Council this would

constitute a valid request.

- 3.9. The Council will put in place a system for logging and monitoring requests that fall within the FOI Act to ensure they are being answered within the timeframe and to enable us to gauge the type and quantity of requests received.

4. Exemptions

- 4.1. There are 24 exemptions to the general right of access to information under the FOI Act. A full detailed list of exemptions is attached at Appendix B.
- 4.2. Eight of these exemptions are, in whole or part, 'absolute' exemptions and information does not have to be released if one of these applies. The 8 absolute exemptions are:
 - 4.2.1. Information accessible to the applicant by other means - section 21
 - 4.2.2. Information supplied by, or relating to, bodies dealing with security matters - section 23
 - 4.2.3. Court records - section 32
 - 4.2.4. Parliamentary privilege - section 34
 - 4.2.5. Prejudice to the effective conduct of public affairs for information held by either House of Parliament; for all other information covered by this section, public interest test - section 36
 - 4.2.6. Personal information (absolute exemption for subject access requests and in certain other situations; the public interest test applies to third party requests - section 40
 - 4.2.7. Information provided in confidence - section 41
 - 4.2.8. Legal prohibitions on disclosure - section 44
- 4.3. The absolute exemptions highlighted above are most likely to apply to local authorities.
- 4.4. The remaining 16 are qualified exemptions and the balance of public interest has to be considered before deciding whether or not to release the information. The 16 qualified exemptions are:
 - 4.4.1. Information intended for future publication - section 22
 - 4.4.2. National Security - section 24
 - 4.4.3. Defence - section 26
 - 4.4.4. International relations - section 27
 - 4.4.5. Relations within the United Kingdom - section 28
 - 4.4.6. The economy - section 29
 - 4.4.7. Investigations and proceedings conducted by public authorities - section 30
 - 4.4.8. Law enforcement - section 31
 - 4.4.9. Audit - section 33
 - 4.4.10. Formulation of government policy - section 35

- 4.4.11. Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords) - section 36
 - 4.4.12. Communication with Her Majesty etc and honours - section 37
 - 4.4.13. Health and safety - section 38
 - 4.4.14. Environmental information - section 39
 - 4.4.15. Legal professional privilege - section 42
 - 4.4.16. Commercial interests - section 43
- 4.5. Exemptions will only be applied in appropriate cases.
- 4.6. We recognise that some information supplied to us is confidential in nature or commercially sensitive and we will have regard to that in our application of exemptions.
- 4.7. We must make third parties aware of our obligations to disclose information under the FOI Act. For example, information submitted in relation to contracts, development proposals and information held for licensing and regulatory purposes are subject to the Act
- 4.8. If a document contains some exempt information, those pieces of information can be withheld but the rest of the document must be released.

5. Fees

- 5.1. Most of the information we provide does not incur a fee, for example information on the Council's website can be downloaded free of charge.
- 5.2. The Government are issuing guidelines that will allow us to make a charge in some cases where information has to be prepared or extracted in order to satisfy a request.
- 5.3. It is anticipated that we will not be entitled to make a charge for information that costs less than £450 to produce and if the estimated cost to provide information exceeds £600 then we will not be obliged to fulfil the request. These figures may be subject to change once the Government have issued fees guidance.
- 5.4. If a fee is payable, an applicant must be notified within 20 days and the time for compliance to provide the information will be extended to three months to give the applicant time to pay. The request for information will lapse if the fee has not been paid within this period. We will not commence work to process the request until the fee has been received.

6. Turning down a Request

- 6.1. If we find it necessary to turn down a request for information, we will inform the applicant in writing giving details of whether or not we hold the information and the reason why the request has been refused. We must

also give details of the relevant exemption.

- 6.2. At the same time, we must enclose a copy of the Council's Complaints Procedure together with the address of the Information Commissioner should the applicant wish to make an appeal against the decision.

7. Transferring a Request to a Third Party

- 7.1. If we receive a request and believe that all or some of the information is held by another public body then we will either transfer the request to that organisation or inform the applicant where the information can be obtained.
- 7.2. If it is believed that the applicant is not likely to object, the request may be transferred without going back to the applicant, but the applicant will be informed that this has been done.
- 7.3. If it is believed that an applicant is likely to object, then we will only transfer the request to another authority with the applicant's consent. If there is any doubt, the applicant will be contacted and asked to make a new request to the other authority.

8. Records Management

- 8.1. In order to meet our obligations under the FOI Act, it is essential that we know what information we hold, where it is and how to access it quickly in order to fulfil a request.
- 8.2. We have a Document Retention Schedule that details the type of records we hold, examples of records and the recommended retention period.
- 8.3. We will refer to this document before destroying any information we hold and will liaise with Internal Audit to include any documents that are not already in the Schedule.
- 8.4. It is an offence to alter, damage, erase, destroy or conceal any record we hold with the intention of preventing all or part of the information from being released, once someone has asked for that information.

9. Information and Training

- 9.1. As far as practicable, the Council will provide information and training for employees and Councillors to ensure compliance with the FOI Act. A guidance leaflet has already been issued to all staff and Councillors and information is available on the Council's Intranet.
- 9.2. A 'Helping You' leaflet is available together with information on the Council's website to further inform the public.

10. Responsibilities and Contacts

- 10.1. The Chief Executive has overall responsibility for Freedom of Information and the Assistant Chief Executive for the day-to-day management of such information.
- 10.2. The Audit Manager is responsible for handling requests for information that falls under the Data Protection Act 1998.
- 10.3. The Director of Environmental Services is responsible for handling requests for information covered by the Environment Information Regulations 2004.
- 10.4. Members of the Freedom of Information Working Group (below) are also available to give advice and assistance:

Name	Department	Telephone Ext
Andy Bird	Borough Development	2559
Louise Hall	Environmental Services	1308
Sue Hewkin	Chief Executive's	1635
Tony Mark	Financial Services	1670
Andy Wilde	Financial Services	1530

- 10.5. The contact details for the Information Commissioner are:

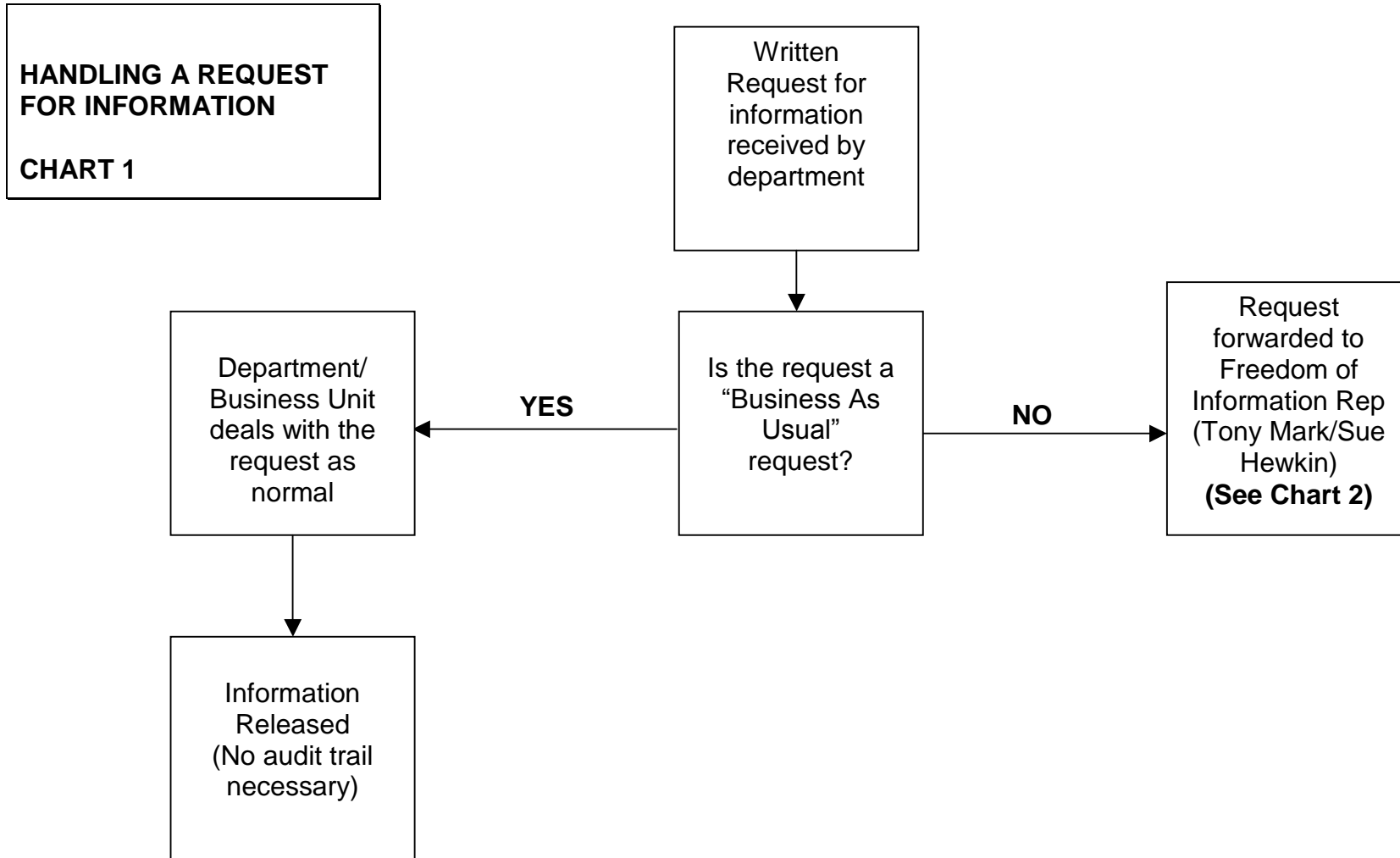
Information Commissioner
Wycliff House
Water Lane
Wilmslow, Cheshire. SK9 5AF
DX: 20819 Wilmslow
Tel: 01625 545 745 Fax: 01625 524 510 Email: mail@ico.gsi.gov.uk

- 10.6. All members of staff are obliged to adhere to this policy; failure to do so may result in disciplinary action. Managers at all levels are responsible for ensuring that the staff for whom they are responsible are aware of this policy and associated procedures. They are also responsible for ensuring staff are updated with regard to any future changes.

11. Review and Update

- 11.1. This Policy will be reviewed and updated periodically.

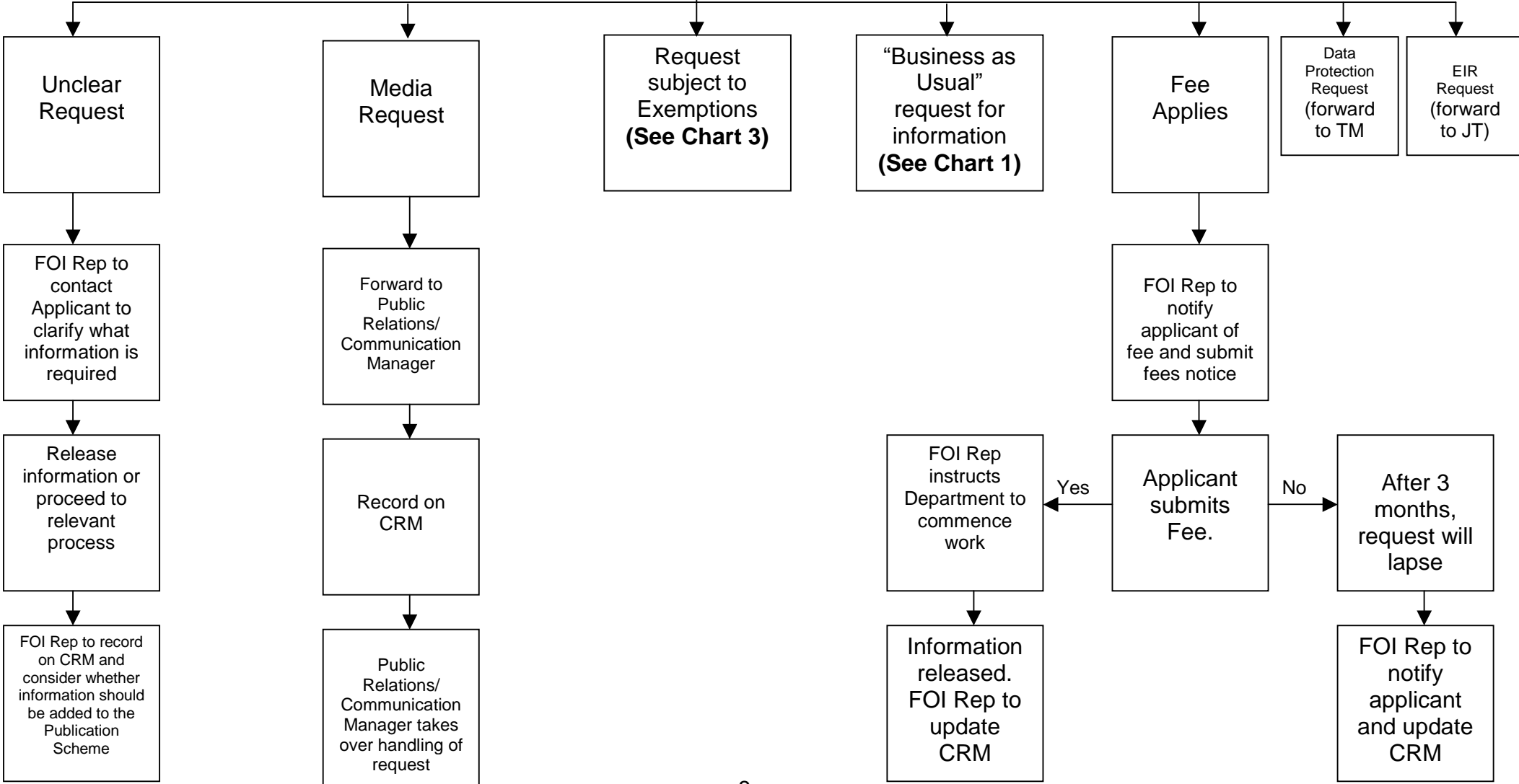
APPENDIX A (of this Policy)



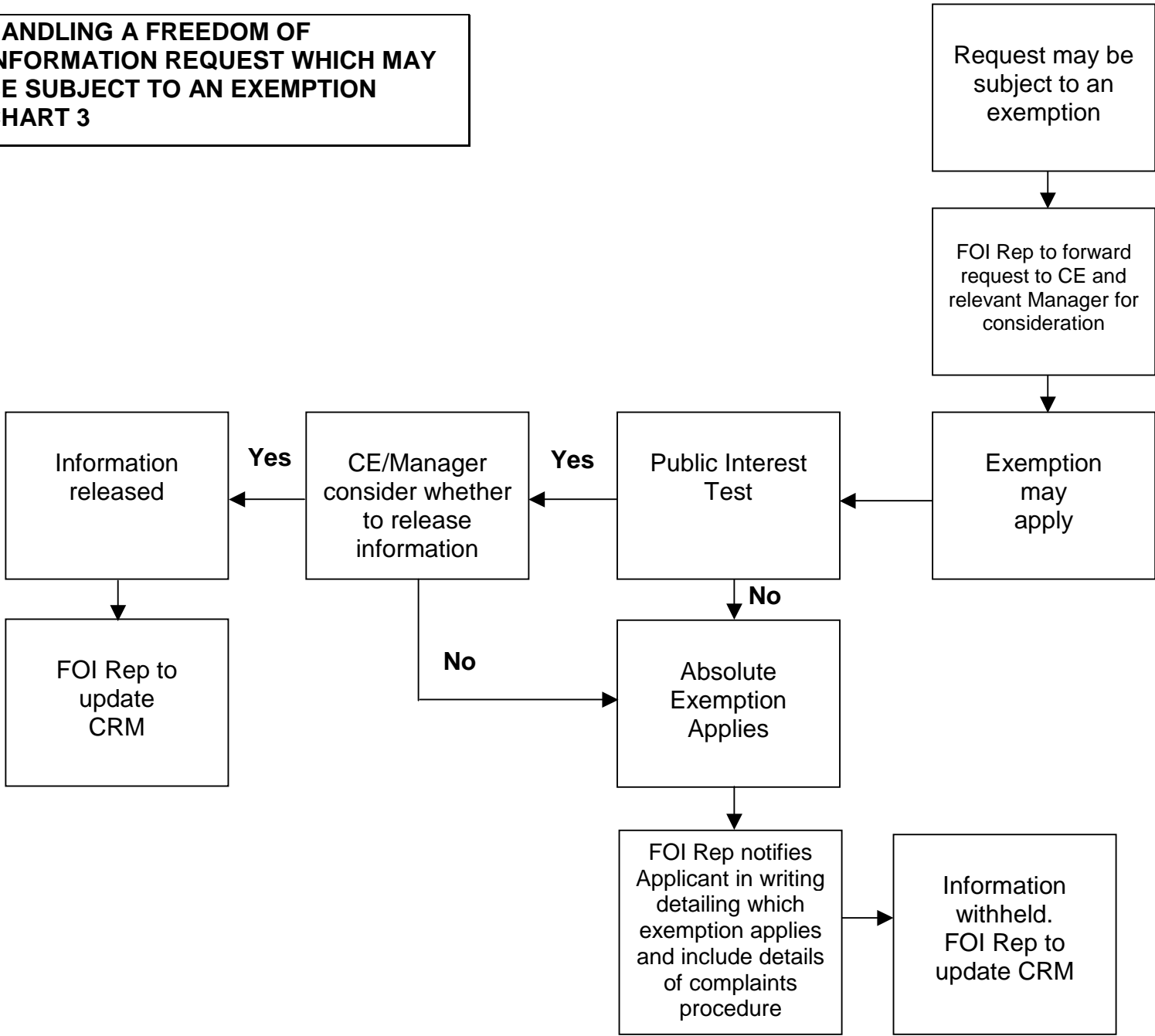
**HANDLING A FREEDOM OF INFORMATION REQUEST
CHART 2**

Request received by Freedom of Information Representative

Request logged in CRM and analysed by Freedom of Information Rep



**HANDLING A FREEDOM OF INFORMATION REQUEST WHICH MAY BE SUBJECT TO AN EXEMPTION
CHART 3**



APPENDIX B (of this Policy) - LIST OF EXEMPTIONS

The 8 absolute exemptions are:

1. Information accessible to the applicant by other means - section 21:

This relates to information that the authority is required by law to communicate or publishes in the context of its approved publication scheme. It must be 'reasonably' accessible to the applicant.

2. Information supplied by or relating to bodies dealing with security matters - section 23:

This only applies to information supplied by or relating to one of the security bodies listed in the section.

3. Court records - section 32:

Information that is only held as part of the documentation for a court or tribunal case, or a statutory inquiry.

4. Parliamentary privilege - section 34:

Prejudice to the effective conduct of public affairs (absolute for information held by either House of Parliament; for all other information covered by this section, public-interest test applies - section 36

This section applies to information held by any public authority. However, with the exception of statistical information, a 'qualified person' is required to operate the exemption. For authorities not listed in the section, including local authorities in England and Wales, this is either a Minister of the Crown or someone authorised for this purpose by a minister.

5. Prejudice to the effective conduct of public affairs for information held by either House of Parliament; for all other information covered by this section, public interest test - section 36

6. Personal information exemption for subject access requests and in certain other situations; the public-interest test applies to third party requests) - section 40:

This section operates as a gateway to the Data Protection Act. Subject access requests are decided under the terms of the DP Act. Third party requests for personal information are decided in accordance with the data protection principles, but within the overall framework of the FOI Act.

7. Information provided in confidence - section 41:

This exemption applies where disclosure would constitute an actionable breach of confidence.

8. Legal prohibitions on disclosure - section 44:

Information, the disclosure of which is prohibited by any other enactment, is incompatible with any community obligation, or would be a contempt of court.

The 16 exemptions that are qualified by the public-interest test are:

1. Information intended for future publication - section 22:

This applies where publication was planned at the time the request was made.

2. National Security (public interest test) - section 24:

Information that is not covered by section 23 above, but exemption is needed to safeguard national security.

3. Defence (public interest test) - section 26:

Information likely to prejudice national defence or the armed forces.

4. International relations (public interest test) - section 27:

Information likely to prejudice the UK's international relations to interests.

5. Relations within the United Kingdom (public interest test) - section 28:

Information likely to prejudice relations between the UK administrations: the UK government, the National Assembly for Wales, the Scottish administration, and the executive committee of the Northern Ireland Assembly.

6. The Economy (public interest test) - section 29:

Information likely to prejudice the economic interests of the UK or part of the UK, or the financial interests of the government or any of the national administrations in the UK.

7. Investigations and proceedings conducted by public authorities (public interest test) - section 30:

Information held for the purpose of criminal investigations and proceedings, and information obtained from confidential sources relating to these or civil proceedings arising out of them.

8. Law enforcement (public interest test) - section 31:

Information not covered by section 30 above, and which is likely to prejudice a wider range of investigations and conduct, including prevention of crime; assessment and collection of any tax; regulatory enforcement; health and safety; any civil proceedings.

9. Audit (public interest test) - section 33:

Applies to information held by public authorities which have functions relating to audit or examining the economy, efficiency and effectiveness of the use of resources of other public authorities; information is exempt if its disclosure is likely to prejudice those functions.

10. Formulation of government policy (public interest test) - section 35:

Information held by a government department or the National Assembly for Wales, relating to the formulation of government policy.

11. Prejudice to effective conduct of public affairs (for all public authorities except the House of Commons and the House of Lords) (public interest test) - section 36:

This section applies to information held by any public authority. However, with the exception of statistical information, a 'qualified person' is required to operate the exemption. For authorities not listed in the section, including local authorities in England and Wales, this is either a Minister of the Crown or someone authorised for this purpose by a minister.

12. Communication with Her Majesty etc and honours (public interest test) - section 37:

This applies to information that relates to communications with Her Majesty, member of the Royal family or Royal household, or the conferring of honours.

13. Health and safety (public interest test) - section 38:

Information that would, or would be likely to, endanger the physical, or mental health or safety of any individual.

14. Environmental information (public interest test) - section 39:

Environmental information does not fall within the FOI Act if it must be released in accordance with Environmental Information Regulations that will be introduced to implement the Aarhus Convention. However, if the information is subject to a discretionary exemption under the environmental regulations, then the FOI Act public interest test would apply.

15. Legal professional privilege (public interest test) - section 42:

This exemption applies where a claim to legal professional privilege could be maintained in legal proceedings.

16. Commercial interests (public interest test) - section 43:

This exemption applies to trade secrets, and to information which if disclosed would, or would be likely to, prejudice the commercial interests of any person, including the authority holding it.