

Freedom of Information and Environmental Information Regulations Procedure

1) Introduction

Taking a positive approach to information rights

Protecting people's information rights is vitally important. In Kingston we are taking a positive approach to protecting customer's information rights, which will deliver benefits to our customers, the organisation, as well as comply with the relevant legislation (Data Protection, Freedom of Information Acts and Environmental Information Regulations).

This will be achieved through our commitment to providing high quality services in accordance with our agreed Customer Service Standards. Our approach to customer service is to provide high quality advice and information in a friendly and professional way, and to answer enquiries and get it right first time.

The Freedom of Information Act (FOIA) and the Environmental Information Regulations 2004 (EIRs) are about the right of access to information and complement our customer service standards, complaints procedures and requests for personal information held on our files (Data Protection/ Subject Access requests).

The FOIA and EIRs aim for greater openness and accountability. They give the public a right of access to information held by public authorities including:

- Central government
- Local Authorities
- NHS
- Schools
- Police

2) The Council's Responsibilities

General Right of Access

Since 1 January 2005 all requests for information received by a public authority have had to be answered in accordance with the Freedom of Information (FOI) Act 2000 or the Environmental Information Regulations 2004 (EIRs). This gives public authorities a legal obligation to provide information through an approved publication scheme and in response to requests. The only exceptions are individuals' requests for their own personal data (Subject Access Request) which must be handled under the terms of the Data Protection Act 1998.

The public has a right of access to 'recorded' information held by public authorities in any form. In other words, with some exceptions, anyone can ask RBK for any information we hold and we must provide it.

The access legislation is primarily about a culture change from "need to know" to "right to know". For public authorities it represents a balance between greater openness and transparency of decision making on the one hand and the need to protect information where disclosure would cause harm or otherwise be contrary to the public interest on the other.

Information that is publicly available

RBK has a large amount of information available through the RBK website. The website has a Google search facility which allows members of the public to search for content that we have available. If a request is made for information that is already publicly available you should advise the applicant where they can find this information for themselves through the website. The FOI search pages can be found on the RBK website: http://www.kingston.gov.uk/foi_information_search.htm

When you reply to a request, consider whether or not the information provided is likely to be of general public interest. If so, consider whether it should be included on the RBK website.

Using a publication scheme

All public authorities must adopt and maintain a Publication Scheme. This represents a commitment to release information proactively. The public can contact RBK by telephone, in person, by e-mail, fax or letter and ask to see the publication scheme. They can then make a written request for any of the information in the scheme. If the information is not included in the publication scheme, they can make a separate request through the General Right of Access, ie members of the public can send an FOI or EIR request.

What information is subject to the FOI Act and EIRs?

All recorded information held by, or on behalf of, a public authority is within the scope of the Act or the Regulations (although both recognise that the disclosure of personal data is subject to the Data Protection Act). The legislation applies regardless of the age, format, origin or classification of information. It covers files, letters, databases, loose reports, e-mails, office notebooks, videos, photographs, wall charts and maps etc. It extends to closed files and archived material as well as information in current use.

Requests for Information under the General Right of Access

Any correspondence could include a request for information. If it is written (this includes e-mail, Facebook and Twitter), legible, gives the name of the applicant, an address for reply (which could be electronic), and includes a description of the information required, then it will fall within the scope of the legislation.

The applicant does not need to inform RBK that they are applying under the FOIA and *RBK should not ask why information has been requested.*

Legal requirement on public bodies - Risks of doing it wrong

The principles of the FOI and EIR legislation must be applied to all written requests for information received by a public authority, including answering requests within 20 working days from receipt of the request.

It is important to respond to Freedom of Information requests in a timely and fair manner. It is important to note that when requests are not answered in a satisfactory manner or answered within the timeframe that this can lead to internal reviews being undertaken and if the enquirer is still not satisfied it can then be escalated to the Information Commissioners' Office to investigate.

Enforcement

The Information Commissioner is mainly responsible for overseeing the Act, but sometimes the courts may become involved. It is a criminal offence for anyone to prevent disclosure by destroying or erasing information after a request has been received. The offence carries a fine of up to £5000.

Protecting people's information rights is important to RBK and we must all take a positive approach to our responsibilities to comply with the relevant Acts (DPA, FOI and EIR). A data breach can be expensive to put right and will reduce customers' confidence. *RBK could receive a monetary penalty*

of up to £500,000 from the Information Commissioner's Office (ICO) for not complying with these Acts.

Key Points:

- Any written request for information may be an FOIA or EIR request
- All requests must be dealt within 20 working days
- Pass on without delay any request which is not your responsibility
- Practice good records management to ensure information can be quickly identified and retrieved
- If you have a query about an FOI, particularly with regard to an exemptions or exceptions, contact Legal Services

3) The FOI and EIR Process

a) Receiving Requests

When a FOI or EIR request is made to the Council it is logged by the Contact Centre on the Council's Customer Relationship Management System (CRM) and passed to the relevant team leader/manager to respond. By using the CRM call guide to register all FOIs, it allows us to maintain a single record across the organisation.

If you receive a request directly you need to ensure that this is recorded on the CRM system. If you receive a request from the Contact Centre that is not for your area, you have a responsibility to promptly send this to the relevant person (if you know who that is), or pass this back to the Contact Centre. The 20 working day period starts when the request is received by a public authority, not when it reaches the "right" desk, so it is important to do this as quickly as possible.

b) Who Should Answer?

Team Leaders and Managers within Service Areas are responsible for FOIs for their respective areas. Requests will be sent to Team Leaders and Managers, who can then either respond directly, coordinate a response within their team or escalate to Senior Managers where necessary.

If a request is for more than one service area or team the request will be coordinated and responded to by the Contact Centre. Team Leaders and Managers will still be responsible for ensuring that they provide the information for their service area or team and in a timely manner, to allow the Contact Centre to collate and respond within the statutory deadline. The FOI and EIR lead in the Contact Centre is the Complaints Officer Jason Denyer who can be contacted on: Jason.denyer@rbk.kingston.gov.uk or 020 8547 5977.

c) Response Times

RBK has 20 working days in which to respond to a request. Bank holidays and weekends are excluded from the calculation of working days.

There is some scope to extend this timescale if a qualified exemption is being considered. However, you must still respond within 20 days, saying which exemption is being considered and giving an estimated date of response. This extended timescale must be reasonable, and guidance issued by the Information Commissioner suggests that a reply within a further 20 days should be possible even when it is necessary to consider the balance of public interest.

Example of FOI and Timescales:

Request: Please send me a breakdown of post-code data for all persons in the borough who completed your budget consultation 2011/12

Response: The applicant has described the information they seek, however full post-code data is exempt as it would make the participants identifiable and would breach the principles of the Data Protection Act. RBK respond explaining that we will not be able to provide full post-code information and suggest other formats the information could be provided in (by Ward, Neighbourhood area etc). As RBK requires further information (eg confirmation of what format they would like the information in), then the 20 working days does not start until RBK has been supplied with that information.

If the collation of this information will take longer than the deadline timescale, in terms of locating and formatting the information etc, then you should write to the respondent explaining that you will need longer than the 20 working day timescale. You should estimate a new timescale for your response and ensure that this do not exceed a further 20 day period.

Remember: If you need further clarification, reply as soon as possible and ask for further information. Do not delay responding to give yourself more time to respond.

d) **How to answer a request**

When you answer an FOI or EIR request you should use the letter template which is available in the CRM system. Insert your response to the template, attaching any documents if necessary. Send the information to the enquirer. Once you have responded you should attach your full response to the CRM system, update the status of the request and any recommendations, for example that you think that the information should be made publicly available on the website.

If the Contact Centre is coordinating a request (because it is for more than one area), they will contact the enquirer directly for clarification if necessary and/or contact Legal Services if they believe that an exemption or exception may apply to some, or all, of the request.

If the Contact Centre sends a request to a Team Leader or Manager to answer directly and the Team Leader believes that clarification or Legal advice is needed it is their responsibility to contact the enquirer directly or contact Legal, as required.

If the Contact Centre is coordinating a response from different areas, the Team Leaders/Managers involved should provide the information for their team or service area in a timely manner. This is to allow the Contact Centre to collate and respond within the statutory deadline.

If attaching documents, you will have the following options when releasing information:

- If it is not necessary to claim any exemptions and the whole document is relevant to the request, release it in its entirety
- If sections of the document are exempt, redact (ie remove by cutting out) these sections and release the remainder. You should make a note of any redactions with the exemption(s) / exception(s) that apply to each
- If redaction would make the document incomprehensible or if the relevant information is contained within a small section of a document or dispersed throughout several documents, assemble into a readable document

If you have made redactions you need to maintain an audit trail of information sources consulted and any redactions made. A copy of what is finally sent to the applicant will be held on the CRM system.

e) **Exemptions and Exceptions**

The public has a right of access to 'recorded' information held by public authorities in any form. In

other words, with some exceptions, *anyone can ask RBK for any information we hold and we must provide it.*

In order to withhold information it will be necessary to be able to cite exemptions (FOI) or exceptions (EIRs) in accordance with the legislation. If the applicant requests exempt information, they should be told why it is exempt. There are 23 exemptions from the general rights of access. Examples include information that is commercially sensitive, subject to other legislation such as the Data Protection Act (DPA), relating to national security or easily available (eg in the publication scheme or on the website). Some exemptions need RBK to consider whether withholding the information is in the public interest (or prejudicial to the conduct of RBK). More information about the scope and use of the exemptions and exceptions can be found in the relevant sections of the Information Commissioner's Office (ICO) website: www.ico.gov.uk

The only other circumstances in which it will be possible to refuse a request are as follows:

- **Time taken to respond to a request exceeds the appropriate limit:** As a guide, it is seen as unreasonable for a request to take over 18 hours to compile. This includes:
 - determining whether RBK holds the information,
 - locating the information,
 - retrieving and extracting the information

- **If a request is vexatious or repeated (FOI) or manifestly unreasonable (EIR):** the legislation recognises that there is a risk that some individuals and some organisations may seek to abuse their information rights with requests which are unreasonable and which would impose substantial burdens on the financial and human resources of public authorities. Such cases may well arise in connection with a grievance or complaint which an individual is pursuing against the authority. The ICO include in their definition of vexatious or unreasonable those requests which:
 - clearly do not have any serious purpose or value;
 - are designed to cause disruption or annoyance;
 - have the effect of harassing the public authority; or
 - can otherwise fairly be characterised as obsessive or manifestly unreasonable

You must give a clear explanation of any exemptions or exceptions claimed for information withheld. Also consider the implications of disclosing information which is either held on behalf of or may affect other public authorities. In such cases, it is good practice to consult those who may be affected.

If you have any concerns about disclosing the information and need advice about whether an exemption or exception applies, you can contact Legal Services for advice and assistance. The relevant Legal Officers are listed below:

- **Learning and Children's Services:** Neeta Sharma, Principal Solicitor:
neeta.sharma@rbk.kingston.gov.uk or on 020 8547 5128
- **Health and Social Care (Adults and Children):** Neeta Sharma, Principal Solicitor:
neeta.sharma@rbk.kingston.gov.uk or on 020 8547 5128
- **Environment and Property:** John Newnham, Principal Solicitor:
john.newnham@rbk.kingston.gov.uk or on 020 8547 4631
- **Chief Executive and other:** David Fellows, Senior Principal Solicitor:
david.fellows@rbk.kingston.gov.uk or on 020 8547 5149

f) **Charges**

The applicants will not be charged for time and resources spent responding to a request. The only exception is if you estimate that it will cost over £450 in resources to comply with the request. The £450 is based on 18 hours work at £25 per hour.

RBK must inform the applicant in writing that there would be a fee for this information and the 20 working days for response does not start until the fee is received. If the fee is not paid within 3 months, we can assume that the applicant no longer wants the information. RBK should assist the applicant in how to request the information in a less consuming/costly way if possible.

If you don't know whether information is exempt or how you should deal with requests, contact Legal Services (details above).

g) **Duty to provide assistance**

RBK must give advice and assistance to anyone who has made or is thinking of making a request. You should help applicants understand their rights under the Act and identify the information they require.

h) **Appeals**

In cases where a service area decides that it is inappropriate to supply people with information they have requested under the FOI Act, applicants have a right of appeal. The appeal process will be coordinated by the Strategic Business Complaints Team and a judgement on each case will be made by an investigating officer. In the first instance appeals should be sent to the Contact Centre to be logged. The Contact Centre will then send all appeals to the Strategic Business Complaints Team (contact: Oliver Durrant, email oliver.durrant@rbk.kingston.gov.uk).

In cases where the appeal is not upheld or particular elements are not upheld, the applicant has the right to take their case to the Information Commissioner rather than the Local Government Ombudsman.

The Information Commissioner can be contacted at:

Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF
Telephone: (01625) 545700.

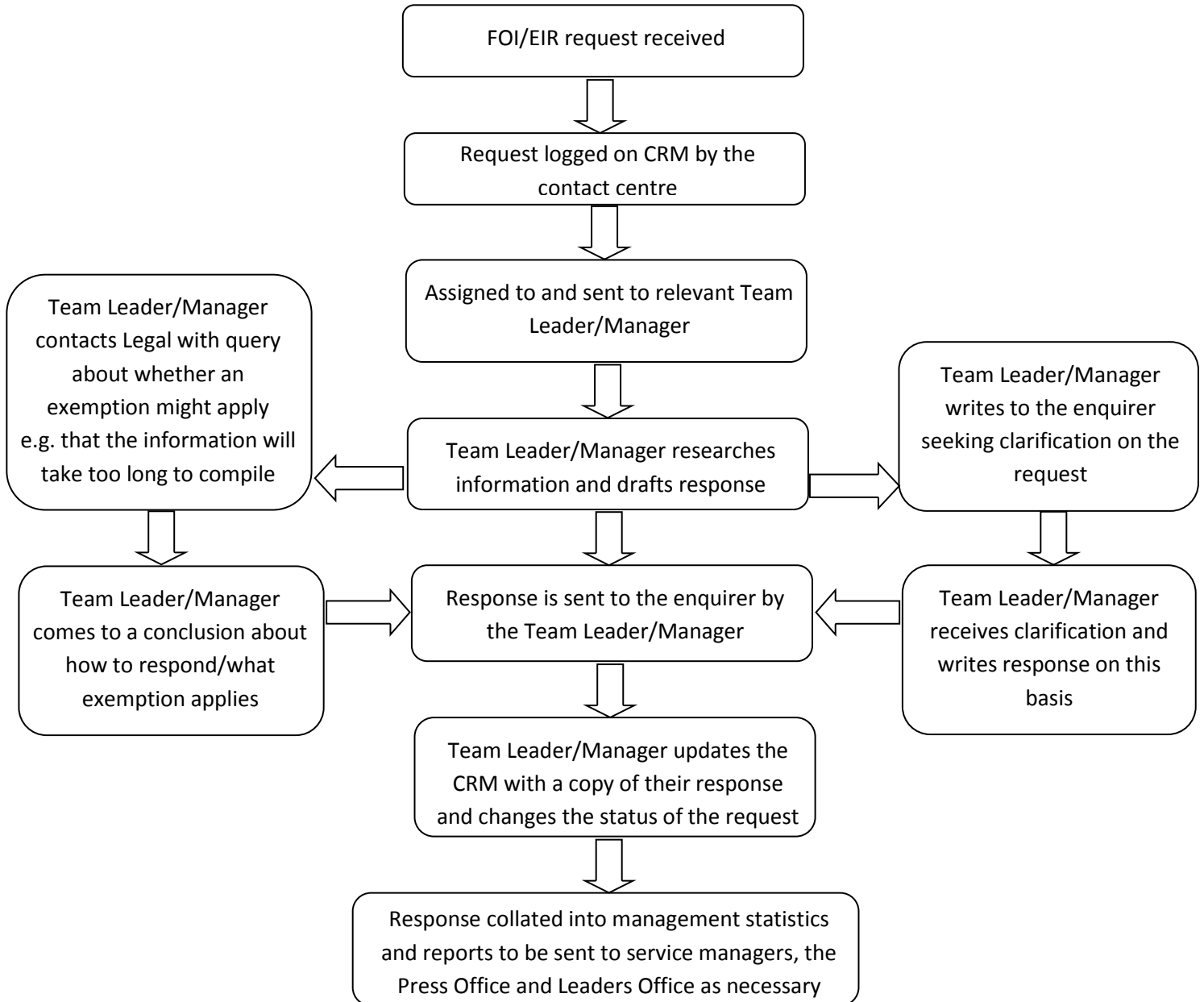
The Information Commissioner's web site can be found at: www.ico.gov.uk.

4) Summary of FOI/EIR Process

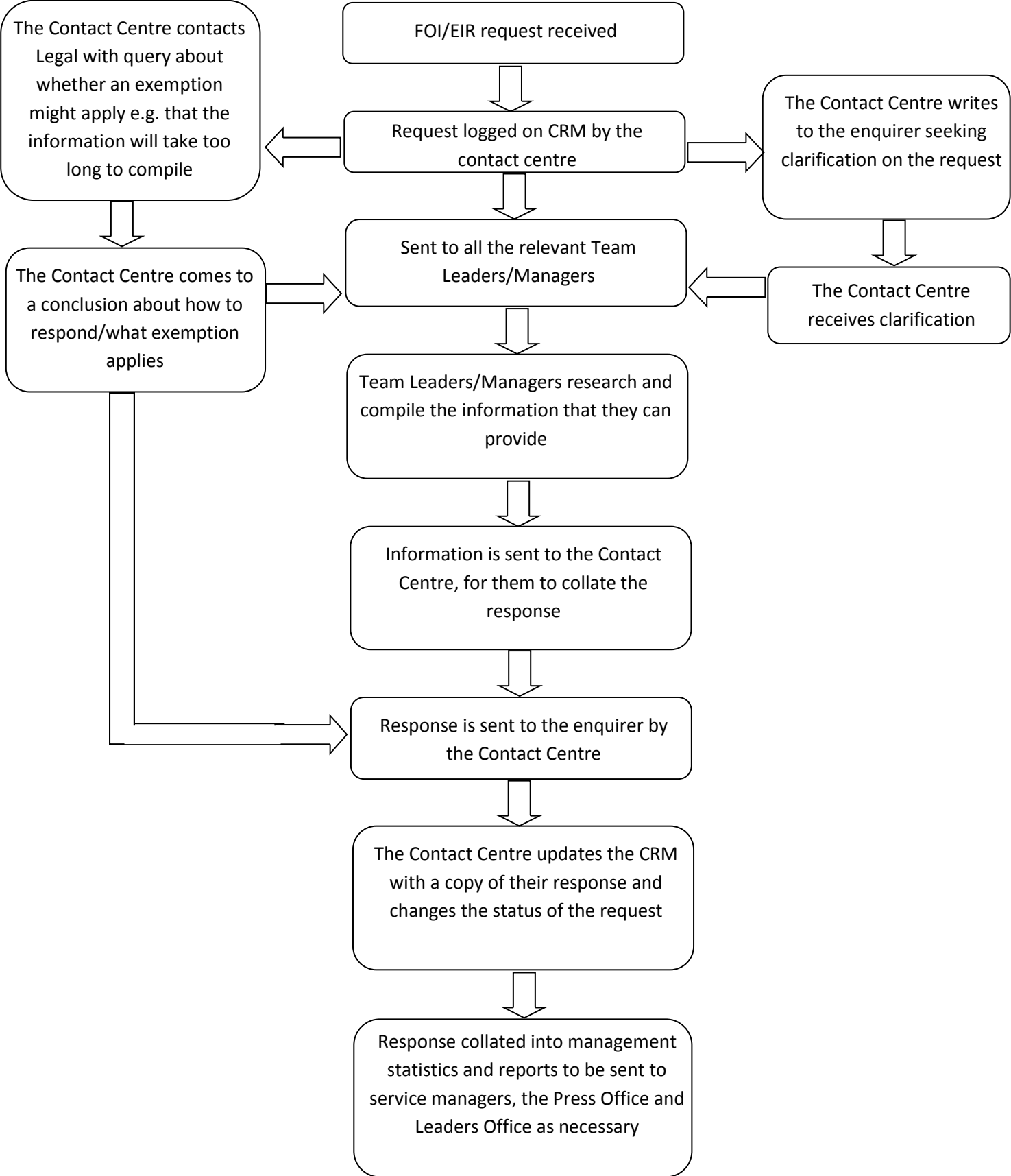
The flow charts on pages 7 and 8 summarise:

- the process when receiving an FOI or EIR which is on one subject area (ie a Team Leader will be responding directly to the enquirer) (page 7)
- the process when receiving a request for multiple areas (page 8)

Single Subject Request



Multiple Subject Request



5) General Advice

What is the difference between FOIA and EIR?

These procedures covers both FOI and EIR, as there are many similarities between the two regimes. If you receive an EIR request and have any questions about the difference between them and FOI requests please contact RBK's Complaints Officer, Jason Denyer at Jason.denyer@rbk.kingston.gov.uk or on 020 8547 5977.

What is the difference between FOIA and DPA?

If the information is personal and about the individual making the request, then the Data Protection Act (DPA) 1998 will apply and the request should be treated as a Subject Access Request (SAR). An FOI response may involve personal information but not about the individual as with SARs.

For example, if a parent was seeking all information RBK held on their child (who had recently been excluded from school) this would be a SAR rather than a FOI. An FOI request may ask for numbers of school exclusions by year group and school. The principles of the Data Protection Act (in terms of protecting the children's identities) would still need to be applied to this FOI request. Therefore we may provide this information by school or year group for all schools to ensure the children/young people are not identifiable.

What do I do if I receive a Subject Access Request?

If you receive a SAR requests please contact the relevant person below.

Environment:	Jason Denyer	jason.denyer@rbk.kingston.gov.uk
Finance :	Jeremy Randall	jeremy.randall@rbk.kingston.gov.uk
Housing:	Mark Lycett	mark.lycett@rbk.kingston.gov.uk
Social Care (Adults and Children):	Karen Fenwick	karen.fenwick@rbk.kingston.gov.uk

SAR requests are not recorded in the CRM system.

What do I do if a request is unclear?

If you are leading on a request which is unclear it is your responsibility to contact the enquirer for clarification. If the Contact Centre is coordinating a response from many teams it will be their responsibility to contact the enquirer for clarification.

The key requirement is to establish a dialogue with the applicant. If clarification of the request is needed in order to identify and locate the information, this must be requested promptly and in any event no later than 20 working days from receipt of the request. The day after the clarification is received the 20 working day period begins. It will often be helpful to explain what information is readily available, or to explore ways in which a request could be made more specific. This will be particularly important if the original request would be refused due to excessive cost. You should keep a written record of any conversations with the applicant.

How long should I spend answering FOI requests?

The public has a right to access recorded information held by public authorities, therefore we should aim to provide information requested. However if the cost of compliance exceeds the appropriate limit set out in the Fees Regulations then we can use an exemption. As a guide, in terms of time taken to compile information for a request, over 18 hours is considered the limit. Therefore this information is exempt unless the applicant is prepared to pay for the information at a rate of £25 per hour for each hour above the 18 hours. If it is possible to provide some information which does not answer the request exactly but is something that might be useful and can be captured more easily, we should make this suggestion to the person making the request.

What format should I provide the information in?

It is not necessary to create new information in order to answer a request, even if this can be easily done from other information that is held. However, the authority should provide the requestor with advice and assistance so that they may understand what information is held and could be requested.

Also note that both the FOI Act and the EIRs allow applicants to express a preference about the form in which information is communicated. In particular, information may be requested in the form of copies of original documents, a variety of electronic formats, or via an opportunity to inspect the record containing the information. Where it is reasonable to do so, you should meet any such request. If you are unable to comply with an expressed preference you should explain why.

Also consider the readability of your reply and follow the RBK Style Guide by:

- using an Arial type font and a minimum text size of 11pt
- avoiding abbreviations or jargon,
- using plain English and remember you cannot assume that applicants will have background knowledge of the subject matter

Where can I learn more about the Customer Relationship Management (CRM) system?

Training is available through CRM User Guide module on [Evolve](#). This provides useful screen shots, guidance and tips for using the CRM system.

How do I add documents to the Publication Scheme?

If you think that there is information or documents that could be added to the Publication Scheme and/or RBK's website, then please contact RBK's Complaints Officer, Jason Denyer: at Jason.denyer@rbk.kingston.gov.uk or on 020 8547 5977.

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