

A06

DISCLOSURE OF INFORMATION TO PARENTS AND OTHERS

Reference Points

- The Education (School Records) Regulations 1989
- Education (Pupil Information) (England) Regulations 2005 (SI 2005/1437)
- Data Protection Act 1998
- Freedom of Information Act 2000
- Information Commissioner's Office - <https://ico.org.uk/>
- ICO 'Report on the data protection guidance we gave schools in 2012' <https://ico.org.uk/for-organisations/education/>
- See also the following sections in this Handbook:
 - B06 - Data Protection Matters - DPA Model Policy
 - B14 – Parental Responsibility

Contact Points

School Liaison Officer (01522/554884)
Legal Services Lincolnshire (01522 552039)

Overview

The Freedom of Information Act 2000 (The Act) applies to the governing bodies of all maintained schools and institutions of further education in England and Wales and from October 2011 will include Academy Trusts. The Act provides any person with a right to be informed whether a public authority holds information and if so to be provided with that information, unless an exemption applies. Compliance with the Freedom of Information Act is overseen and regulated by the Information Commissioner's Office (ICO). The ICO website provides a large volume of very useful guidance on rights and obligations under the Freedom of Information Act. ICO guidance for the Education sector in general can be found at the link below.

<https://ico.org.uk/for-organisations/education/>

Publication Scheme

The Act requires maintained schools, in common with all public authorities, to set out in an approved 'publication scheme' what information they hold and where and how the information can be accessed by an interested individual.

The ICO introduced a model publication scheme that all public sector organisations should have adopted from 1 January 2009.

The ICO have produced a series of definition documents for the main public sector organisations. These documents identify the type of information that the ICO expect to be included in each class within the public authority's guide to information. The ICO have produced template guides to information for smaller authorities. The template guide can be accessed through the following link

<https://ico.org.uk/media/for-organisations/documents/1242/how-to-complete-template-guide-to-info-for-schools.pdf>

The requirement to publish and maintain a Publication Scheme is not optional. The ICO will make checks to ensure that public authorities have a publication scheme in place and that it complies with the model publication scheme requirements.

Right to Request Information

Appendix 2 provides a process map for receiving requests for information.

The Freedom of Information Act provides a legal right for any person to make a request to a school for access to information held by the school. All public authorities including schools are under a legal duty to provide advice and assistance to persons requesting information. Enquiries do not have to say why the information is wanted and the request does not have to mention FOI. The request must be in writing (which includes requests received by fax and email). All enquiries for information that are not covered by the Data Protection Act 1998 (i.e. requests from individuals to see their own personal information) or environmental information requests, are automatically covered by FOI. Requests for environmental information are covered by the Environmental Information Regulations. These Regulations also provide a right of access to recorded information and should be responded to in a similar way to Freedom of Information requests. You can find out more about the Environmental Information Regulations on the Information Commissioner's website at the following link:

<https://ico.org.uk/about-the-ico/what-we-do/environmental-information-regulations/>

The enquirer is entitled to be told whether the school holds the information (this is known as the duty to confirm or deny) and, if so, to have access to it. Access can include providing extracts of a document or a summary of the information sought, or access to copies of the original document. However the Act recognises the need to preserve confidentiality of sensitive information in some circumstances and sets out a number of exemptions which are capable of limiting the duty to supply information, and in some circumstances it will also limit the duty to confirm or deny if the information is held.

There are only four reasons for not complying with a request for information and in each instant you must provide the applicant with a detailed explanation of why you cannot comply with the request. The reasons are:

- One or more of the exemptions apply
- The information is not held
- The cost threshold is reached – The cost threshold is known as the 'appropriate limit'. The appropriate limit represents 18 hours work. When calculating the 'appropriate limit' you can only take into account:
 - 1) the time taken to determine whether you hold the information requested
 - 2) the time taken to locate the information or a document which may contain the information

- 3) the time taken to retrieve the information or a document which may contain the information
- 4) the time taken to extract the information from a document containing it. It cannot include time taken to consider exemptions, or to redact exempt information.
- The request is considered vexatious or repeated in accordance with section 14 of the Act and the Information Commissioner's guidance on vexatious requests: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

The FOI specifies a series of exemptions, of which perhaps 12 in total could be relevant to some information held by schools. The exemptions are intended to protect sensitive or confidential information. Four exemptions you are most likely to use are:

- The information is accessible by other means, Section 21 – this can be applied where the information is already published or otherwise available without the need to make a request for it. The information can be made available by the school or any other organisation.
- Personal information – Personal information relating a person other than the person making the request is likely to be exempt under section 40(2) of the Act. A request for access to personal information relating to the person making the request, or about a pupil for whom the applicant has parental responsibility is covered by subject access provisions of the Data Protection Act 1998 and the request should be processed under those provisions.
- Environmental information – where it is covered by the Environmental Information Regulations the request should be processed in accordance with those Regulations.
- Commercially sensitive information – If the information requested might prejudice the commercial interests of the school or any other person it may be exempt under section 43 of the Freedom of Information Act.

A response to a request for information must be responded to within 20 school days following receipt of the request.

Pupil Records

There are two rights of access to information held by schools about pupils.

1. Subject Access Right.

Under section 7 of the Data Protection Act a pupil or someone acting on their behalf has the right to a copy of personal information that the school holds about them. Requests must be made in writing and you can ask for any additional information you require to identify the information requested and to satisfy yourself of the identity of the person making the request. For the purposes of a subject access request made on behalf of a child, the school should apply the full legal definition of 'parental responsibility' when determining who can access a child's personal data. Generally, a child of 12 years or older is expected to be able to understand the request they are making and can make their own request. If the

child is 12 years or older and a person acting on behalf of the child makes the request for them you should take into account whether the child properly understands the request being made and the type of information they will receive and whether the child wants their parent, or the person with parental responsibility for them to be involved in the request.

If, in addition to the subject's own personal information, the records also contain personal information relating to another individual, consideration must be given to the privacy of the other individual and the information redacted if required. Further guidance on dealing with subject access requests involving other individual's personal information can be found on the ICO website at the following link:

<https://ico.org.uk/for-organisations/guide-to-data-protection/principle-6-rights/subject-access-request/>

Subject Access Requests for personal information that falls outside the definition of an 'educational record' must be processed within 40 calendar days.

2. Right to Education record –

Under the Education (Pupil Information) (England) Regulations 2005 a parent has the right of access to their child's educational record. For the purpose of responding to an Educational Records request, the School should apply the definition of 'parent' contained within the Education Act 1996. Please note this is a much broader definition than the legal definition required for subject access requests on behalf of a child. A request for access to an educational record should be responded to within 15 school days.

Further guidance on access to information by pupils can be found on the ICO website at the following link

<https://ico.org.uk/for-organisations/education/>

Any record kept at a school by a teacher and intended to be kept by that teacher solely for their own use, such as handwritten notes used to jog the teacher's memory throughout the day, is not subject to the disclosure requirements under Education (Pupil Information) (England) Regulations 2005.

Parents' access to their child's information

Where parents have separated, or divorced, the presumption must be that the non-custodial parent, like all parents, has a right of access to a pupil's records. Only if there is evidence that there could be detriment to the child or the non-custodial parent, or it is prohibited by a Court Order from such access, should information be withheld. (See also Section B14 on Parental Responsibility)

However, it is suggested that advice be sought from the School Liaison Officer or Legal Services if there is any uncertainty that the parent concerned has 'parental responsibility'. Schools which are in any doubt about whether, and to what extent,

pupils should be allowed access to their records should seek guidance from the Information Commissioner's Office.

Appeals

If an enquirer is unhappy with your decision, or about the way you have handled their request, they have the right of appeal, first to the school, and ultimately to the Information Commissioner. You must tell them of this. Use the complaints procedure to handle any written expression of dissatisfaction even if you are not specifically asked for a review.

Pupils' Achievements

At least once each year, parents of pupils from Reception Year to age 18 must be provided with a written report on their child's educational achievements. The report must cover the child's general progress and progress in all National Curriculum subjects and other subjects and activities. It must contain the pupil's results in any examinations (where they are not a school leaver) and National Curriculum assessments. The assessment results must be accompanied by a commentary putting them in context. The report must also show the child's attendance record when the child is of compulsory school age and say who the parents can discuss the report with at the school.

The Headteacher must provide school leavers with a report on their school achievements.

Information about Further Education Establishments

Schools are required to distribute to all pupils in the second year of Key Stage 4, copies of material provided by local further education colleges. They are under no obligation to make additional copies which would incur printing, photocopying or postage costs.

Police

If a Police Officer approaches a school and requests access to a child's file or notes in relation to an ongoing police investigation, in the case of community schools, the Headteacher should contact the Commercial and Information Governance team on 01522 552546 within Legal Services Lincolnshire before releasing any information. This is because it is likely that public interest immunity may apply. In terms of academies and foundation schools, Legal Services Lincolnshire would be happy to act the school's behalf when instructed to do so.

There are certain and very limited circumstances where a school can release information to other authorities. The ICO has produced guidance on this subject which can be found through the link below.

<https://search.ico.org.uk/ico/search>

If an approach is made by a defence lawyer for access to a child's file, the Headteacher should contact Legal Services Lincolnshire – the Commercial and Information Governance team, as per contact details above.

Charging

Schools may charge a fee for complying with requests, as determined in accordance with FOI regulations (see Appendix 2). If you do charge, you must give written notice to the applicant. Guidance has been written by the ICO in respect of charging fees. That guidance can be found here:

<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

Freedom of Information and the Data Protection Act

Personal information requested by the subject of that information is exempt under the FOI Act as such information is covered by the Data Protection Act. Individuals must, therefore, continue to make a 'subject access request' under the Data Protection Act if they wish to access such information. Personal information requested by third parties is also exempt under the FOI, where release of that information would breach the Data Protection Act. If a request is made for a document, e.g. Governing Body minutes which contains personal information whose release to a third party would breach the Data Protection Act, the minutes may be issued by blanking out the relevant personal information. Data Protection Act and FOI provisions concerning access to personal information held by schools are set out in Appendix 5.

Registering as a Data Controller

All schools are legally obliged to register with the Information Commissioner's Office as a data controller. All schools must complete a registration document and ensure that it is renewed annually. If you do not register as a data controller with the Information Commissioner's Office, you will be illegally processing personal data and you may be fined.

There is advice and guidance on the Information Commissioner's website explaining how to register with them. The guidance can be found at the following link:

<https://ico.org.uk/for-organisations/register/>

Records

You will need to keep records of all the enquiries received, how they were dealt with, your decisions and reasons for them, and of any complaints or appeals.

Responsibility

School Governing Bodies are responsible for ensuring a school complies with FOI. They may wish to delegate to the Headteacher or other appropriate individual day-to-day responsibility for FOI policy and the provision of advice, guidance, publicity and interpretation of the Act.

Wilfully concealing, damaging or destroying information in order to avoid answering an enquiry is an offence.

It is always helpful for schools to ensure that they have clear policies in place for parents which they can refer parents to when they wish to make requests for information, including information such as when parents should expect a response by to their request.

It is also essential that schools undertake basic training with all staff on a regular basis to ensure that there is a good understanding present throughout the school of the responsibilities and obligations placed upon staff and the school as a data processor and under legislation, including the Data Protection Act and the Freedom of Information Act 2000. Guidance for suggestions as to what should be included within any data protection training can be found here

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Practical_application/TRAININGCHECKLIST_V1_WEB_VERSION.ashx

<https://ico.org.uk/for-organisations/improve-your-practices/training-videos/>

What does this mean for my school?

To handle a request for information you will need to ask yourself the following questions:

- Are all staff aware of FOI and how you deal with requests for information?
- Is this a valid FOI request for information?
- Do we hold the information?
- Can we transfer the request?
- Has the information already been made public?
- Is this request a vexatious or repeated one?
- How much will it cost to comply with this request?
- Could this affect a third party's interests?
- Does an exemption apply?
- Is the exemption overridden by the public interest?
- How much can we charge?
- Have we sent the necessary notifications?
- Have we met the time limits?
- Have we kept appropriate records?

Links to further guidance

Guidance on the data protection implications of the use of biometrics in schools can be found at the following link:

<https://www.gov.uk/government/publications/protection-of-biometric-information-of-children-in-schools>

Guidance on pupil's right to access exam results can be found at the following link:

http://ico.org.uk/for_organisations/sector_guides/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/subject-access-code-of-practice.pdf#page=51

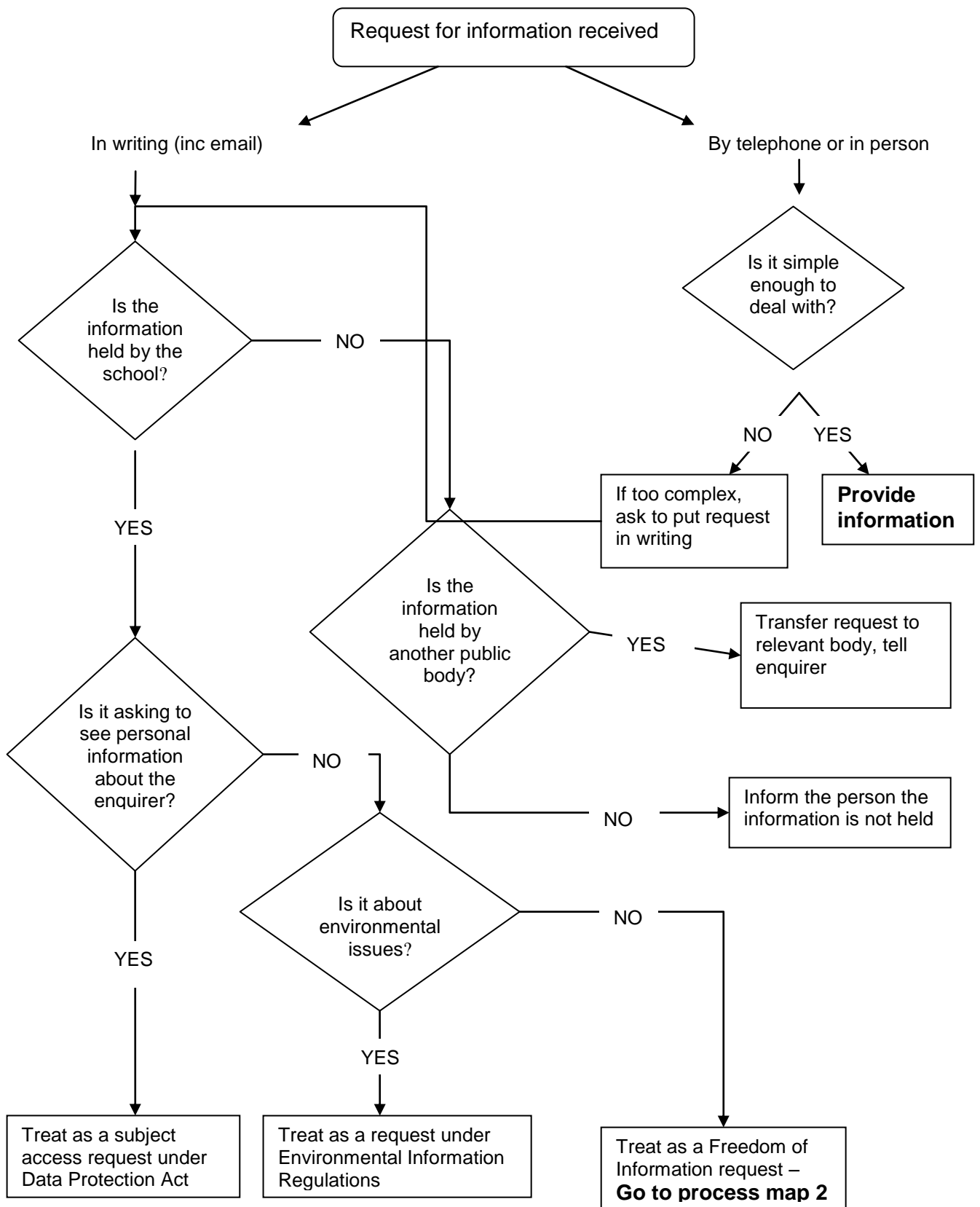
Guidance on the disclosure of exam results to the media can be found at the following link:

http://ico.org.uk/for_organisations/sector_guides/~/_media/documents/library/Data_Protection/Practical_application/publication-of-exam-results-by-schools-dpa-guidance.pdf

Guidance on when schools should be producing privacy notices can be found at this link.

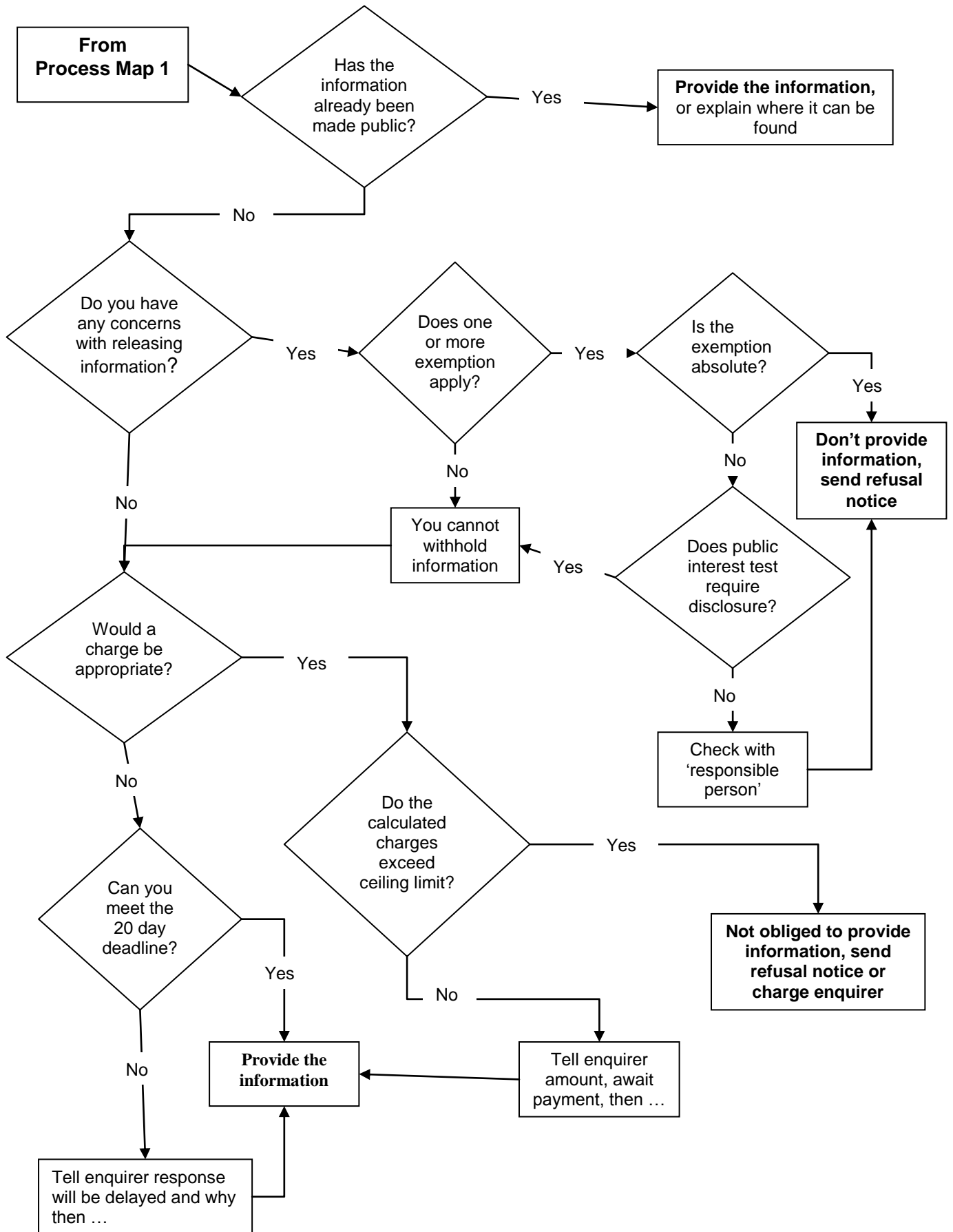
http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/PRIVACY_NOTICES_COP_FINAL.ashx

Appendix 1



1. PROCESS MAP FOR RECEIVING REQUESTS FOR INFORMATION

Appendix 2



2. PROCESS MAP FOR HANDLING FOI ENQUIRIES