



## SECTION 5

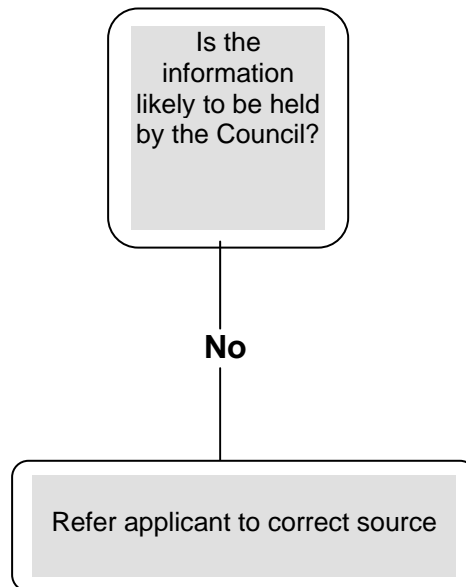
### WHO HOLDS THE INFORMATION?

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## SECTION 5

### WHO HOLDS THE INFORMATION?



#### Key Points

- An initial check should be done to determine whether it is likely or not that the Council holds the information.
- If not, the applicant should be referred to the most likely source.

Once you have a clear understanding of what the applicant wants, you will also have to consider whether the Council is likely to hold the information. This is separate from actually finding and providing the information itself.

#### 5.1 Is the information likely to be held by the Council?

There is often no way of being 100% certain that the exact information someone requests is held by your Department without spending hours searching for the information. What you have to do at this stage, is to undertake an initial probability check, which is likely to involve a quick search of archive systems, catalogues, readers' guides, leaflets etc. If the information could be held in uncatalogued records, you should consult whatever basic lists are available. It is likely to be a limited search, e.g. 15 minutes work. At this point, there is no need to find the information itself, just a need to decide on the likelihood of your Department holding the information. This judgement may involve an element of risk assessment. Log the request on to the FOI Monitoring System.



## **5.2 Was the information created by the Council or is it held on behalf of another public body etc?**

In some cases, it may not be clear whether information which is physically present on the Council's premises or systems, is properly to be regarded as 'held' by the Council i.e. created by the Council or held by the Council on behalf of another person, public body etc. Examples of the latter will include:

- private material brought into the office by Councillors or Officers;
- material belonging to other people or bodies;
- constituency material; and
- material relating to party political matters.

If you Department 'holds' information generated by KCC, you can either redirect the applicant to KCC, or transfer the request to KCC or deal with the request yourself in consultation with KCC, with KCC retaining the decision making role.

If you are in doubt about whether your Department 'holds' information, you must seek advice from the FOIO.

As a matter of good practice, you may wish to consider setting up a directory of external organisations' contact details for quick staff reference, if you receive many requests about information, which your Department does not hold.

If the information is likely to be Council generated information and you estimate that the fees may exceed the fees threshold, you should use this opportunity to send a Fees Notice to cover searching for and retrieving the information (refer to section 8 of this Manual).

Remember that you are not obliged to create new information to answer an enquiry. For example, if someone asks how many times a certain topic was discussed at a Council meeting, you would not be obliged to 'trawl' through the minutes to find out. What you could do instead, is allow the applicant access to the minutes to find the answer for themselves.

## **5.3 Transfer the FOI request?**

The s.45 Code provides for requests to be transferred from one public authority to another. If you decide to transfer the request, you must first consider a number of issues:

1. Does the other authority hold the information requested? If there is any doubt, then it should not be transferred. Consider contacting the other authority to ascertain whether it holds the information and whether it would



accept the transfer. However, do not provide them with the applicant's details at this stage.

2. Whether a transfer is appropriate – is a transfer the most efficient and useful way of assisting the applicant? Should you instead:
3. Contact the applicant and explain that the information may be held by another authority and, suggest that the applicant applies to them and provide their contact details.
4. Is the applicant likely to have any grounds for objecting to the transfer? If there is any doubt, the applicant's consent to the transfer should be obtained first.

All transfers must take place as soon as is practicable and noted on the FOI Monitoring System. You must also let the applicant know that their request has been transferred.

para.	S45 Code of Practice
17	If the authority has reason to believe that some or all of the information requested, but which it does not hold, is held by another public authority, the authority should consider what would be the most helpful way of assisting the applicant with his or her request.
18	<p>In most cases this is likely to involve:</p> <ul style="list-style-type: none"> <li>○ contacting the applicant and informing him or her that the information requested may be held by another public authority;</li> <li>○ suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and</li> <li>○ providing him or her with contact details for that authority.</li> </ul>
19	However, in some cases the authority to which the original request is made may consider it to be more appropriate to transfer the request to another authority in respect of the information which it does not hold. In such cases, the authority should consult the other authority with a view to ascertaining whether it does in fact hold the information and, if so, whether it is obliged to confirm this under section 1(1) of the Act. If that is the case, the first authority should proceed to consider transferring the request. A request (or part of a request) should not be transferred without confirmation by the second authority that it holds the information, and will confirm as much to the applicant on receipt of a request.



para.	S45 Code of Practice
20	Before transferring a request for information to another authority, the original authority should consider: <ul style="list-style-type: none"><li>○ whether a transfer is appropriate; and if so</li><li>○ whether the applicant is likely to have any grounds to object to the transfer. If the authority reasonably concludes that the applicant is not likely to object, it may transfer the request without going back to the applicant, but should tell him or her it has done so.</li></ul>
21	Where there are reasonable grounds to believe an applicant is likely to object, the authority should only transfer the request to another authority with his or her consent. If the authority is in any doubt, it may prefer to advise the applicant to make a new request to the other authority, and to inform the applicant that the other authority has confirmed that it holds the information.
22	Where a request or part of a request is transferred from one public authority to another, the receiving authority should comply with its obligations under Part I of the Act in the same way as it would in the case of a request that is received direct from an applicant. The time for complying with such a request should be calculated by regarding the date of transfer as the date of receipt of the request.
23	All transfers of requests should take place as soon as is practicable, and the applicant must be informed as soon as possible once this has been done.
24	Where a public authority is unable either to advise the applicant which public authority holds, or may hold, the requested information or to facilitate the transfer of the request to another authority (or considers it inappropriate to do so) it should consider what advice, if any, it can provide to the applicant to enable him or her to pursue his or her request.

#### 5.4 Not likely that the Council holds the information

If it turns out that the information is not likely to be held by the Council, then, if you conclude that the applicant is not likely to object, redirect the applicant to the likely/correct source, if you can suggest an alternative. The process of advising the applicant will be through the issue of a Refusal Notice [Annex J], within 20 working days of receipt of the request, specifying the following:

1. that the Council does not hold the information;
2. that you have searched a number of sources [and if possible detail the sources] ;
3. that the Council believes another authority may hold the information;
4. the contact details for the other authority;
5. that they should direct all future correspondence to the other authority;
6. the date the request was transferred; and
7. of their rights to complain etc.



It is not recommended that you actually forward the FOI request on to the organisation (i.e. 'transfer the request') in the first instance, until you have ascertained that the organisation has the exact information the applicant wants. In many cases, this is impossible to know in advance.

### **5.5 Information held (possibly) by an other public authority**

From time to time, you will receive requests for information which the Council does not hold, but which may be held by another public authority. You should let the applicant know that the Council does not hold the information in question, but that the information may be held by another public body and suggest they re-apply to the other public authority. Follow the Refusal Notice process referred to in section 5.4 of this Manual.

### **5.6 Information definitely held by another public authority**

If you know with some certainty that the information is held by another public authority (this may require you to contact the authority beforehand to confirm) then, if you conclude that the applicant is not likely to object, and this is the most expeditious way of dealing with the request, transfer the request and follow the Refusal Notice process referred to in section 5.4 of this Manual.

### **5.7 Part of the information held by the Council and part held by another public body**

The s.45 Code provides that if you hold some of the information but not others, then, if you conclude that the applicant is not likely to object, just redirect that part of the request to the other public body. In such cases, you should process your part of the request as normal and pass the request on to the other public authority for it to complete its part of the processing of the request. This should be done as quickly as possible and follow the Refusal Notice process referred to in section 5.4 of this Manual.

### **5.8 Applicant objects to transfer?**

Where you write to obtain the applicant's approval to the transfer but do not receive this promptly or, where the applicant objects or, where you have decided not to transfer the request, you must within 20 working days of receipt of the request, send the applicant a Refusal Notice on the terms (Nos. 1, 3, 4, 5 and 7) referred to in section 5.4 of this Manual.

### **5.9 Information Commissioner's Awareness Guidance**

Awareness Guidance No. 12 refers.



## 5.10 Duty to provide advice and assistance

In deciding on any of the actions referred to in this part of the Manual, you must bear in mind the duty to provide advice and assistance and the 20 working day deadline.

## 5.11 Request transferred to the Council

In cases where the Council receives a transfer from another public authority, the request should be dealt with in accordance with the guidance in this Manual.

### **ACTION**

- Set out a list of the information resources which could be searched by staff in order to do an initial 'probability check'.
- Compile directory of external organisations' contact details for quick staff reference.
- Do you understand the meaning of 'held' for the purposes of the FOI Act?
- Do you understand the principles relating to the transfer of a FOI request?