

**SCOTTISH QUALIFICATIONS AUTHORITY**

# **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

## **Handling Procedures and Information**

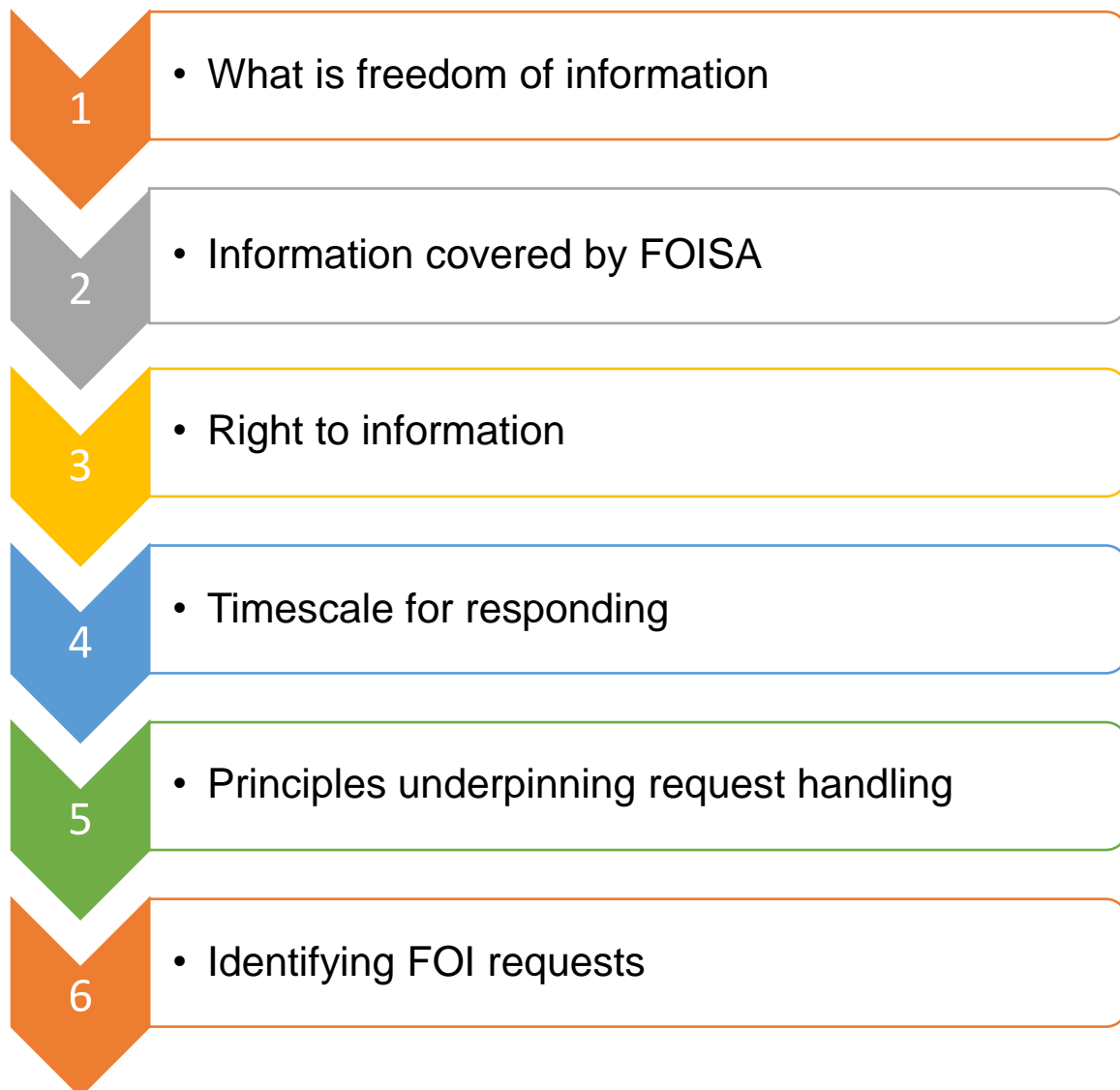
<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Amendment Details</b>
1.0	Jan 2021	Jocelyn Martin	New procedures for handling FOI requests.
1.1	Feb 2021	Jocelyn Martin	Minor amendments and additional paragraphs.
2.0	June 2022	Jocelyn Martin	Revisions around personal data and legitimate interests; the public interest test and new appendices

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## ABOUT FOISA



## **ABOUT FOISA**

### **1. What is freedom of information**

The Freedom of Information (Scotland) Act 2002 (hereinafter referred to as FOISA) is an Act of the Scottish Parliament to make provision for the disclosure of information held by Scottish public authorities. There are 2 key elements to this legislation - the proactive publication of information (the Publication Scheme), and the reactive response to individual requests for information. These procedures are about individual requests for information.

### **2. Information covered by FOISA**

Virtually all information created by staff can be requested and released under FOISA. FOISA applies to all information held by SQA including information received from a third party. FOISA covers information regardless of how it is recorded, or which format it is in, for example: electronic files, paper records, emails, post-it-notes, CCTV recordings and recorded meetings.

### **3. Right to information**

Anyone can make a request for recorded information, and they have various rights.

- ◆ FOISA provides a right to obtain information, not copies of specific documents. It is up to SQA to decide if a document is the best way to provide the information requested.
- ◆ Anyone who requests information from a Scottish public authority that holds it is entitled to be given it unless an exemption applies.
- ◆ The information to be given is that held by SQA at the date of the request.
- ◆ The Information requested is not to be destroyed before it can be given. Destroying information before it can be given is unlawful and may be a criminal offence if it is destroyed to prevent disclosure.
- ◆ Adding “confidential” or “commercial in confidence” does not prevent disclosure of information under FOISA. An appropriate exemption would need to apply to withhold information. Each case needs to be considered on its own merits.

### **4. Timescale for responding**

We are required to respond as quickly as possible, and in any event, within 20 working days.

### **5. Principles underpinning request handling**

To comply with obligations under FOISA, SQA applies best practice set out in the Scottish Ministers’ Code and takes account of the Scottish Information Commissioner’s own guidance and procedures for responding to requests. On this basis, we will conduct our case handling based on the following underpinning principles:

- ◆ We will ensure that a presumption in favour of disclosure is applied to all requests.
- ◆ We will offer appropriate advice and assistance to applicants, in line with our duty under section 15(1) of FOISA.
- ◆ We will respond to all requests for information promptly – the actual time taken will depend on the request and the information held, but we acknowledge that 20 working days to respond is an upper limit, not a target.
- ◆ We will treat applicants equally, regardless of their identity or type – that is, in a way that is ‘applicant neutral’.
- ◆ We will engage appropriately with our applicants to explain the reasons for our decisions to refuse requests or to exempt or redact information.
- ◆ We will publish responses (subject to appropriate redaction, such as to comply with data protection legislation) where information is disclosed.

## 6. Identifying FOI requests

Most FOI requests are submitted via an online form managed by the Information Governance team but some requests for information – that should be treated as FOI requests – are submitted to other teams in SQA, by email, post or through social media channels.

It is important to make a practical distinction between formal requests for information and routine enquiries and communications that are dealt with in the normal course of business. The information below will help teams to identify when to forward requests for information.

- ◆ When it clearly states that the applicant is submitting a FOI request.
- ◆ If the request is not normally received or answered as part of normal business as usual activity.
- ◆ The request is unusual or is asking for large amounts of information that would take time to locate and collate.

These requests should be forwarded immediately to [foi@sqa.org.uk](mailto:foi@sqa.org.uk) to ensure that SQA complies with its obligations under FOISA and a consistent approach is taken to the management of SQA’s information. Normal business processes should not be used to restrict or delay an individual’s right to access information. Members of staff should contact the FOI Manager if they are unsure if a request should be treated under FOI or business as usual activity.

**Note:** Where a request for information contains, what appears to be a FOI request, as part of another communication, for example, a complaint or a request for personal data, the request must be sent immediately to [foi@sqa.org.uk](mailto:foi@sqa.org.uk). The FOI part of the communication will be managed and responded to in accordance with the FOI process. The response to the request – and other responses to the communication – should make the recipient aware that parts of their communication will be dealt with by another team.

## HANDLING REQUESTS



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### 7. Case management

A case management approach will be taken to the management of FOI requests.

The FOI Manager will assign a Case Manager who will be responsible for leading on the identification, search, collection, and collation of information. This will normally be a Head of Service or a senior manager, but it may sometimes be a Director, particularly if the FOI request is complex or involves more than one directorate.

The FOI Manager will be available to Case Managers and Directors to provide advice on the application of FOISA to the specific information in the scope of requests, particularly around the application of exemptions. Where there is disagreement between the FOI Manager and the receiving Case Manager and/or Director on the approach to disclosure of information, the FOI Manager will escalate the request to the Head of Strategic Planning & Governance who will consider the details and either decide how to proceed or seek a legal opinion.

**The roles and responsibilities of staff involved in the handling of FOI requests is set out later in this document.**

### 8. Responsibility for decision-making

On receipt of an FOI request the FOI Manager will determine which business area(s) will be responsible for responding to the request. The Director for that business area will be responsible for approving the response to be issued to the applicant.

In some cases, an FOI request may be considered sensitive or complex. In these instances, the final response will be subject to approval by EMT, however, formal approval of the draft response will be the responsibility of the Director for the business area responding to the request, or the lead Director where a request spans multiple business areas or includes third parties. Where input of a number of Directors is required this should be undertaken and agreement sought prior to consideration of any such cases by EMT.

It is important that the decision to seek EMT approval of the response to an FOI request is justified because it may introduce a delay in responding to the applicant. The FOI Manager may seek the advice of SQA colleagues in some instances before making this assessment, and the responsibility for approval could change during the discovery phase of the process (any change still needs to take account of the 20-day deadline for responses). Broadly speaking:

- Sensitive cases are those considered to be matters of highly significant public interest. This may include a significant change in education or SQA policy that impacts a particular group, or a request for information that is currently political.
- Complex cases are those where SQA may be requested to provide information that SQA has received from other public bodies or third-party organisations; requests involve more than one business team; or where similar or related media enquiries have been received requiring a consistent approach to be deployed.



## 9. Clarification under FOISA

Where we need additional information to identify and locate information, or a request is unclear or voluminous, we should ask the applicant to clarify what information is sought as soon as reasonably possible.

Clarification of the request can save significant time and effort as well as ensure the applicant is provided with the information they seek. It is good practice to seek clarification immediately rather than delay. The 20 working days clock will not start until clarification has been received from the applicant.

## 10. Provide advice and assistance

Section 15 of FOISA imposes a duty to provide advice and assistance to applicants at all stages of a request. This provision includes seeking clarification from an applicant on their request after it has been made, whilst we are dealing with a request, or after we have responded to the request.

This also applies if we are going to refuse all or parts of their request, as we should consider how we can help them.

## 11. Consulting third parties

Consultation is likely to be appropriate where a third party's interest in the handling of a request will be significant or because disclosure would significantly affect them. Consultation is recommended in all cases where:

- ◆ The views of the third party may help us to determine whether an exemption applies to the information requested, for example, if disclosure would cause a substantial prejudice (ie, harm) to that third party's interests, or constitute a breach of confidentiality\*, the SQA would need evidence to support that view,
- or**
- ◆ The views of the third party may help the SQA determine where the public interest lies.

\*Where SQA receives documents directly or indirectly from a third party that are marked 'confidential', or they are provided to SQA in circumstances that 'import' a duty of confidentiality, it is essential that no decisions are taken by SQA until the third party(ies) has been consulted. This is because the disclosure of these documents or information therein by SQA would create an "actionable breach of confidence".

SQA should work towards meeting the statutory deadline for responding to a request, however, in the case of the paragraph above marked with an asterisk, **no documents or information should be disclosed without consulting or hearing back from the third parties concerned.**

## 12. Communications handling

Requests may raise reputational issues for SQA or other bodies, either because of disclosing or refusing to disclose information. However, this of itself is not a legitimate consideration in making decisions about what to disclose in response to a request under FOI law.

The role of the Communications directorate in the handling of FOI requests is to ensure a consistent approach is applied where there are related media enquiries; it is not the responsibility of the Communications directorate to provide advice on what should be disclosed. While related communications handling is appropriate, it must be dealt with as a parallel process that should not delay or impede a prompt response to the applicant.

Additionally, the FOI team will support the quality assurance process to ensure that responses are of good quality and that the content is consistent with messages and information already communicated. Responses will be shared with the External Affairs Team prior to issue, ideally at least 5 working days before the issue date.

## 13. Disclosure of employee names

Requests for information sometimes include a request to provide the names of specific members of staff. Information relating to an individual's role in the public sector is subject to disclosure although requests for personal information, such as home address, would be exempt from disclosure.

Every request for information will be carefully considered, however,

- ◆ the names of senior staff (heads of service and above) will be disclosed as part of a request, unless it is not relevant, and
- ◆ SQA may disclose the names of an employee below head of service level based on the nature and responsibilities of their role, and/or the content and context of the request.

An employee whose name will be disclosed in response to a request will be notified before the response is issued and sent a copy of the draft response.

This is also set out in [SQA's FOI Policy](#).

## 14. Quality assurance

A quality assurance check has been embedded into the process. This will ensure that our responses are:

- ◆ Accurate in terms of our advice, ensure any redactions are applied correctly, and that the response answers the request made by the applicant.
- ◆ Of good quality, explain our decisions and reasoning in a clear manner, and offer advice and assistance where appropriate.
- ◆ Technically competent, apply FOISA exemptions correctly and address any competing obligations, such as data protection legislation.

## 15. Publishing responses

Responses to FOI requests will be sent to the applicant by the FOI Manager. With some exceptions (for example, a request for information is personal to a requester because it relates to their child), the FOI Manager will publish FOI responses on a Disclosure Log on SQA's website on the same day that a response is issued to the applicant. This means that anyone that looks at SQA's website and accesses the Disclosure log page will see SQA's FOI requests and responses in full.

## 16. Disclosure control (masking small numbers)

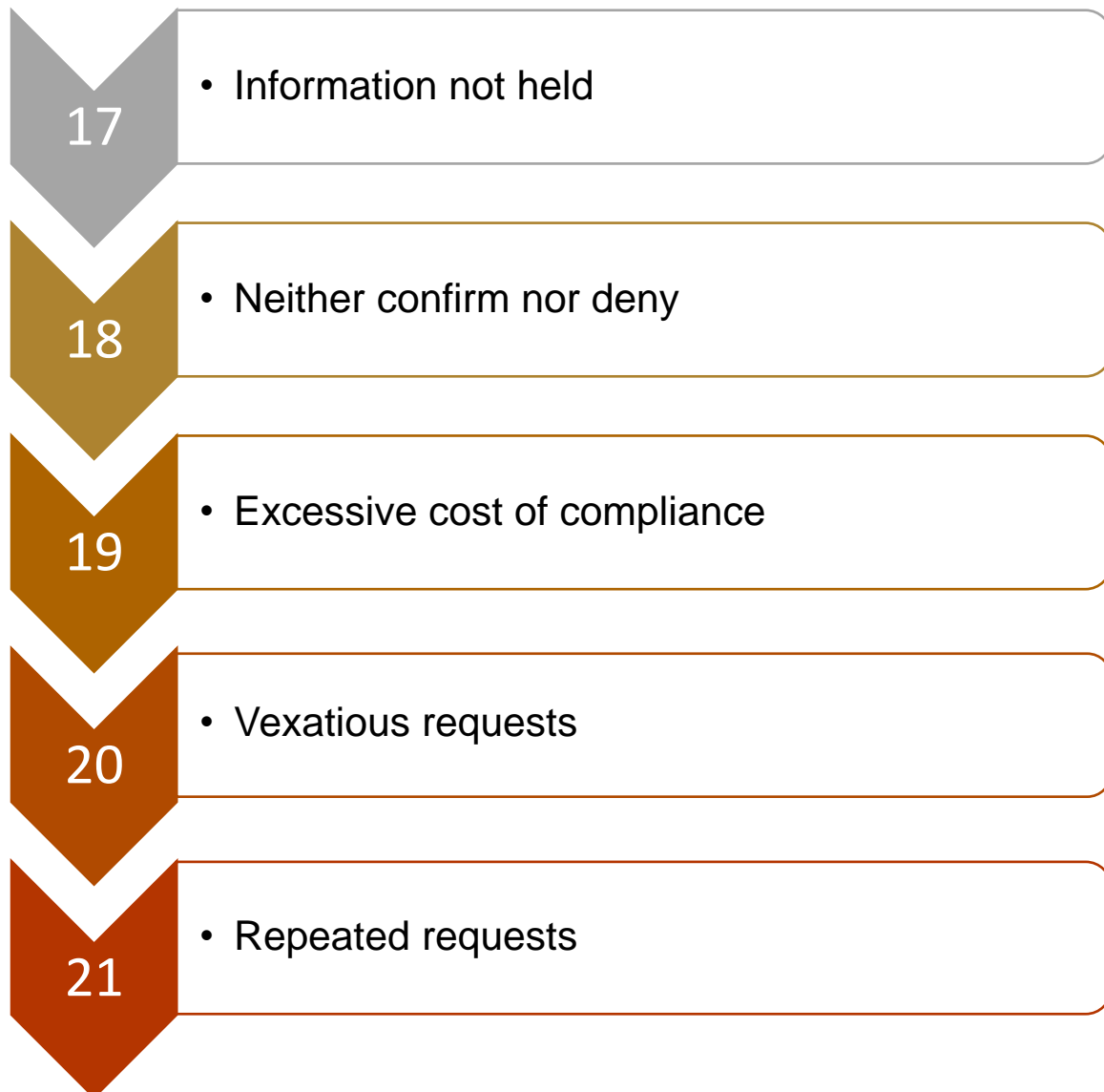
Statistical Disclosure Control (SDC) is a technique used to reduce the risk of identifying people in results of statistical analysis. Methods usually restrict the amount of, or reduce the detail, of the data released.

This is a valid method used for statistical information but does not always need to be applied where information relates to an FOI request according to the ICO's guidance on [Anonymisation: managing data protection risk code of practice](#) (page 31).

The code of practice states that there can be a distinction between a "statistical comfort zone" that eliminates almost all risk of identification, and other forms of information that pose a risk of an individual being identified. Small numbers in small geographical areas present increased risk, but this does not mean that small numbers should always be removed automatically.

For example, always removing numbers relating to five or 10 individuals or fewer may be a reasonable rule of thumb for minimising the risk of identification in a proactive disclosure scenario, but in the context of a specific freedom of information request a different approach may be possible, based on the application of tests in data protection legislation – see Appendix 2 for more information.

## WITHHOLDING INFORMATION



## WITHHOLDING INFORMATION

Under FOISA, anyone who requests information from a Scottish public body that holds it is entitled to be given it by the organisation. FOISA supports and encourages the disclosure of information, however, there are certain circumstances where SQA does not have to provide the information requested through an FOI request.

### 17. Information not held (Section 17 of the Act)

If information is not held then there is nothing to release.

### 18. Neither confirm nor deny (Section 18 of the Act)

FOISA requires a public body to inform an applicant if it holds the information specified in the request. However, there may be occasions when complying with this duty would itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances SQA can provide a 'neither confirm nor deny' response that does not reveal to the applicant if the information exists or not.

### 19. Excessive cost of compliance (Section 12 of the Act)

If the cost of compliance would exceed the £600 threshold, then the information is exempt and can be refused. The refusal must inform the applicant of the estimated cost and how the estimation has been reached using actual costs.

When estimating staff time, a maximum of £15.00 per hour may be used, however, if a member of staff's hourly rate is less than this, their actual hourly rate must be used. £600 at £15.00 per hour equates to 40 hours of work. It is good practice, where this threshold is breached, to advise the applicant that if they narrow the scope of their request this may allow for some information to be given. See Appendix 1 for further information about calculating the cost of compliance.

### 20. Vexatious requests (Section 14 of the Act)

SQA does not have to comply with a request for information if the request (and NOT the applicant) is vexatious. A request can only be considered vexatious where there is good evidence that the purpose of the request is not to obtain information but to disrupt the working of SQA. Receiving a large number of requests from the same applicant at the same time is not in itself vexatious. The following factors will be relevant to a finding that a request – which may be the latest in a series of requests or other related correspondence – is vexatious.

- ◆ It would impose a significant burden on the public authority
  - Complying with the request would require a disproportionate amount of time and the diversion of an unreasonable proportion of our financial and human resources away from statutory functions
  - We also need to demonstrate why other functions would take priority over our statutory duties under FOISA

- ◆ It does not have a serious purpose or value
  - We are not able to reach this conclusion lightly as the applicant may have a genuine desire and/or need to obtain the information.
- ◆ It is designed to cause disruption or annoyance to the public authority
  - Again, not to be taken lightly and need to look at all circumstances of the request.
- ◆ It has the effect of harassing the public authority
  - The language and tone of a request may be relevant here
- ◆ It would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
  - Factors to consider include the time and resources required to process the request and the impact on SQA's statutory and/or core operations.

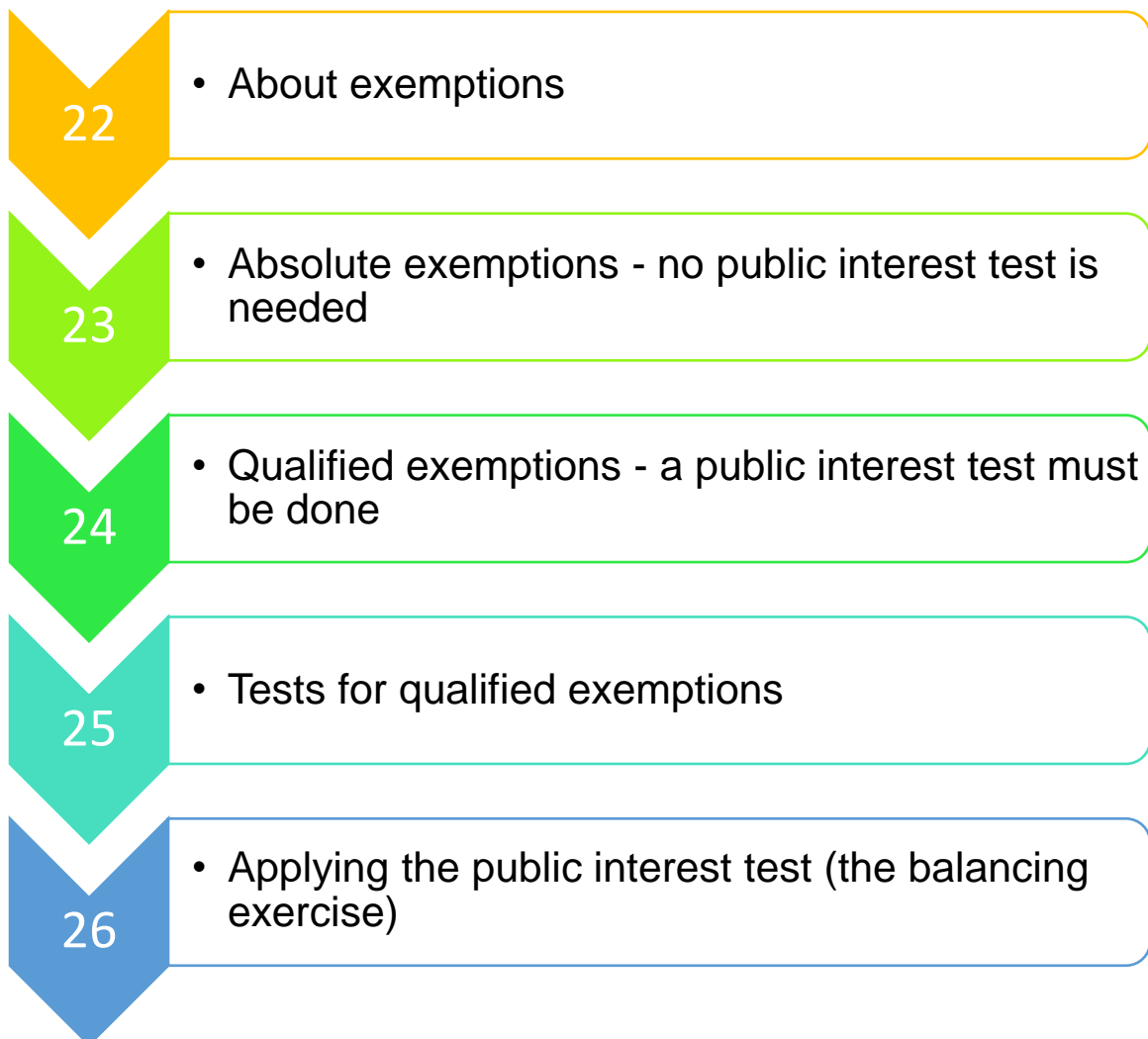
Note: this is not exhaustive and the above should not be used as a checklist.

These types of requests should not be confused with a request made with a view to obtaining information to embarrass SQA which would normally be a legitimate request.

## **21. Repeated requests (Section 14 of the Act)**

Where SQA has previously complied with a request for information, it does not have to comply with a subsequent identical or substantially similar request from the same person if there is no new information to provide to the applicant. If the information has changed between applications, it is unlikely to be viewed as a repeated request.

## FOISA EXEMPTIONS



## FOISA EXEMPTIONS

### 22. About exemptions

Exemptions are divided into two categories: 'absolute' and 'qualified'.

Where a qualified exemption applies, the information must be disclosed unless the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption. Where the competing public interests are evenly balanced, the information should be disclosed.

Exemptions which are not subject to the public interest test are known as 'absolute exemptions'. Where an absolute exemption applies, we are entitled to withhold the information without going on to consider the public interest.

See below for brief information about exemptions that have been applied by SQA. Any intention to apply an exemption must be discussed with the FOI Manager **before** any decision can be taken to withhold information.

The following should be noted:

- ◆ An exemption can be applied to all or just parts of a request.
- ◆ Exemptions are intended to protect sensitive or confidential information, not be used as a barrier to disclosure
- ◆ Are used when information is already published, intended for publication, or where information is not held by SQA
- ◆ SQA can decide to release information even if it is exempt.
- ◆ Where information has been withheld previously, it should not be assumed that any future requests for the same information should automatically be refused as the sensitivity of information can decrease with age.
- ◆ Even where an exemption is being considered, SQA should consider if any information can be provided that would be helpful to the applicant (this would fulfil our obligation under Section 15 to provide advice and assistance).

### 23. Absolute exemptions (no public interest test is needed)

#### ***Section 25 - Information otherwise accessible***

The requested information is available and reasonably accessible (for example, published on SQA's website)

#### ***Section 36(2) - Confidentiality***

Information is exempt if obtained from another person or organisation and disclosure would constitute a breach of confidence. For example, legal advice provided to SQA by its solicitors; information provided by another organisation. Also see section 11.



### **Section 38(1)(b) - Personal information**

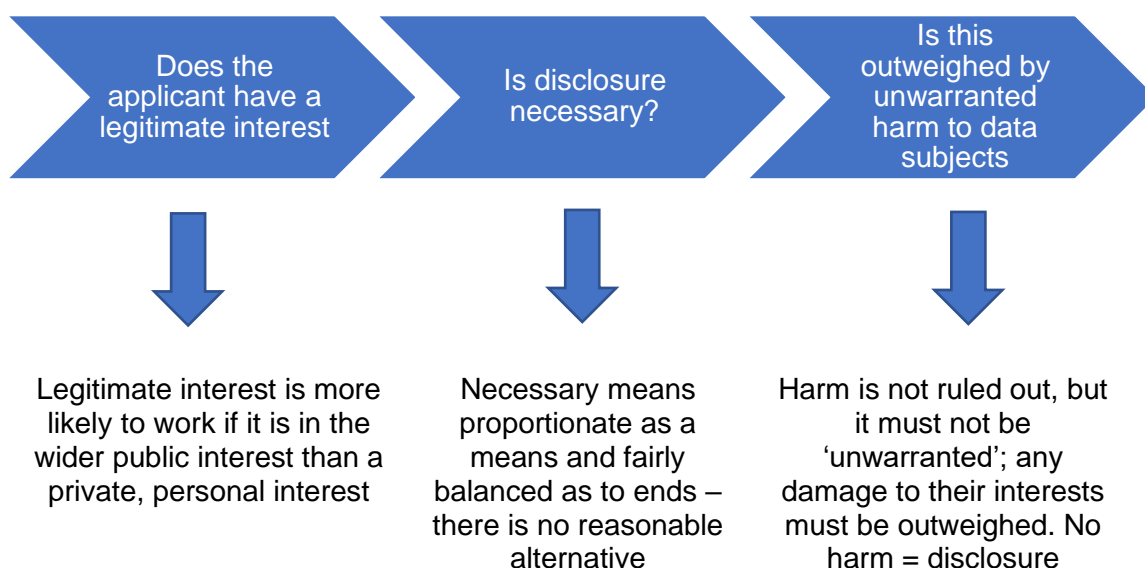
Personal information relating to a third party as it may breach data protection legislation.

Personal data is defined as meaning “any information relating to an identified or identifiable living individual.”

In the first instance, SQA must be satisfied that the information being requested meets the definition. Additionally, where the requested information relates to statistics or information that has been anonymised or pseudonymised, SQA must be able to explain why there is a ‘**realistic prospect**’ of individuals being identified or identifiable.

One of the three situations where third party personal data is exempt under section 38(1)(b) is where disclosing the personal data would contravene Article 5(1)(a) – the first condition - of the UK GDPR, ie lawfulness, fairness and transparency.

Although a public interest test is not required, SQA must consider if the applicant has a ‘legitimate interest’, which could mean that disclosure of the personal information is warranted.



Where application of this exemption is being considered, the Section 38(1)(b) Personal Data Exemption Consideration form at Appendix 2 must be completed and approved by the Information Governance Manager before a decision letter is issued to the applicant.

## **24. Qualified exemptions (a public interest test must be done)**

### **Section 27 – Information intended for future publication**

The requested information will be published within a maximum of 12 weeks of the date of the request. If not published within 12 weeks, the exemption does not apply.

### ***Section 30 – Prejudice to effective conduct of public affairs***

If the disclosure of information would be liable to harm the provision of free and frank advice by any individual or organisation, or the free and frank exchange of views.

### ***Section 33 – Commercial interests and the economy***

Information would be exempt if it constituted a trade secret or disclosure would be likely to prejudice substantially the commercial, economic, or financial interests of SQA.

### ***Section 35 – Law enforcement***

This is where disclosure of information could prejudice the prevention and detection of crime.

### ***Section 39 – Health, safety, and the environment***

This is where disclosure of information could put the physical, mental health or safety of any individual at risk.

## **25. Tests for qualified exemptions**

The public interest is not defined in FOISA but has been described as

- “something that is of serious concern and benefit to the public”, or
- “something that is in the interests of the public”.

It is not: something of interest to the public, or of individual interest.

When applying the public interest test SQA must consider whether it serves the interests of the public better to withhold or disclose information. The ‘public’ does not necessarily mean the entire population. It might relate to a relatively localised public or to the wider public.

In all cases of qualified exemptions, SQA must consider the public interest in making the information available. There are various factors that need to be considered in carrying out a public interest test so consult the [guidance](#) provided by the Scottish Information Commissioner before starting.

Where it is necessary to conduct a public interest test to determine if information (or parts thereof) should be disclosed, the FOI Manager will lead on the completion of this test in collaboration with the Case Manager and/or Director.

The Public Interest Test must be documented using the form at Appendix 3.

In some instances, a Substantial Prejudice test may be required. The FOI Manager will inform the Case Manager of the need to do this test.

## 26. Applying the public interest test (the balancing exercise)

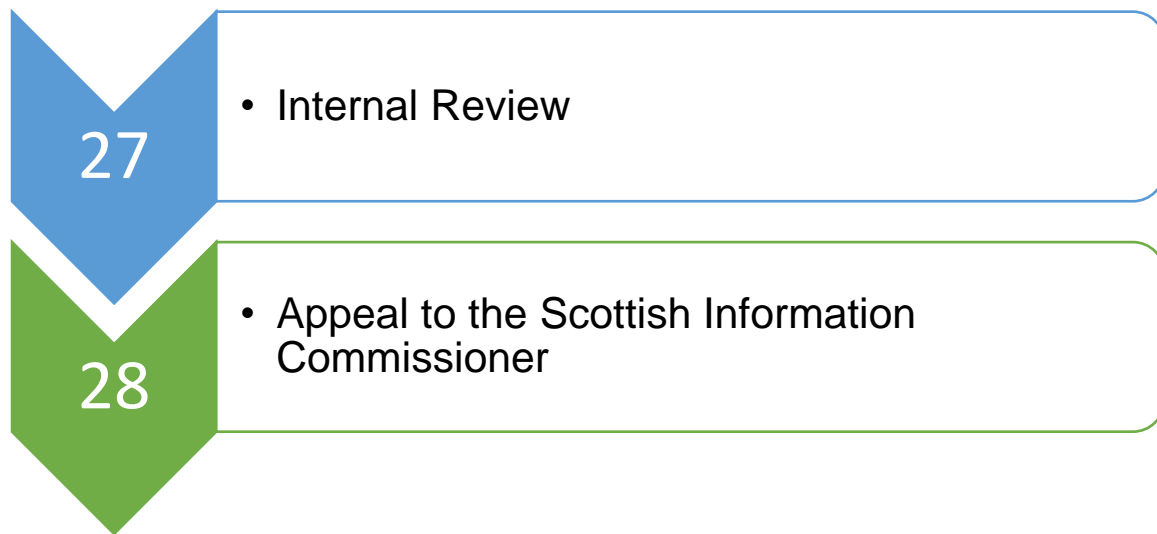
Before conducting a public interest test, the first step is to determine whether the exemption actually applies. Once this has been confirmed then the information is exempt information.

The second step is to apply the public interest test to determine whether, in all the circumstances, the public interest in maintaining the exemption outweighs that in disclosure of the information. This means that, even though the information is exempt from disclosure, it still has to be disclosed if the public interest in disclosure outweighs the public interest in maintaining the exemption.

- Identify and set out the competing arguments – for and against disclosure
- Carry out a balancing exercise to determine where the public interest lies - do this by looking at the content and context of the information and the likely effect of disclosure

The [FOISA guidance on the public interest test](#) provided by the Scottish Information Commissioner sets out examples of factors that should and should not be taken into account.

## INTERNAL REVIEW AND APPEAL



## **INTERNAL REVIEW AND APPEAL**

### **27. Internal Review**

The applicant has a right to a review by SQA if they are dissatisfied with the response to their request. Applicants normally have 40 working days after the deadline for issue of the original decision to request a review, although we can accept reviews after this period.

Responses to reviews adhere to the same timescale as other requests – 20 working days - and can again be clarified if they are unclear.

Currently, a review is carried out by a trained reviewer (a Head of Service) who was not involved with the original request. The reviewer will take a fresh look at the request and the applicant's complaint relating to the original response. The reviewer will record their findings and outcome in a formal report form (see Appendix 7), and this will be used by the FOI Manager to draft a response on behalf of the reviewer. The reviewer will be responsible for approval of the response, which will be issued by the FOI Manager.

### **28. Appeal**

If after review, the applicant is still dissatisfied, they have the right to appeal to the Scottish Information Commissioner (SIC). The applicant must submit their appeal within 6 months of their review. If the SIC decides to proceed with an appeal they will request comments from the SQA and decide if the applicant's complaint is valid. After that SQA will be required to provide the SIC with all information relating to the request, including information that SQA did not disclose to the applicant.

Appeals are dealt with on a case-by-case basis. Completed cases are reported on the decisions section of SIC's website.

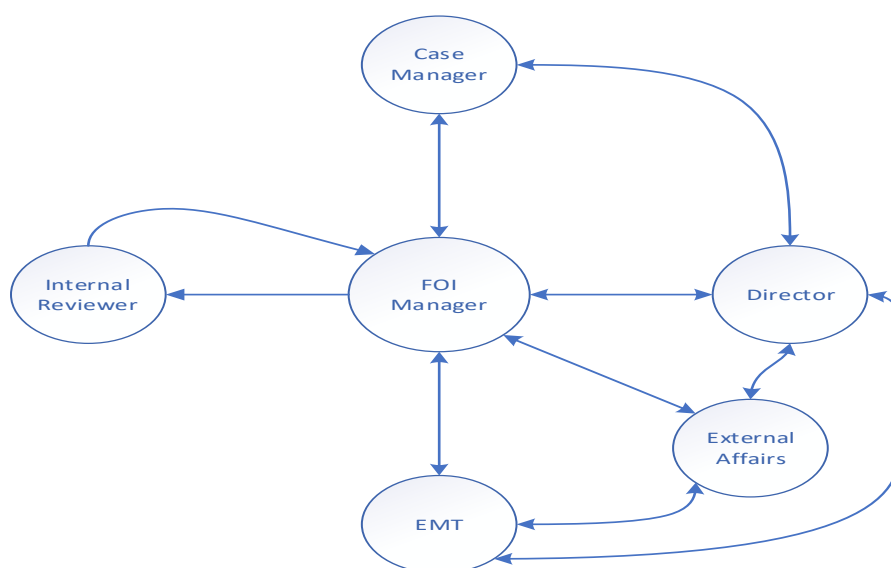
The FOI team is responsible for preparing the response to the appeal and will work with relevant teams to gather the necessary information.

## MAIN ROLES

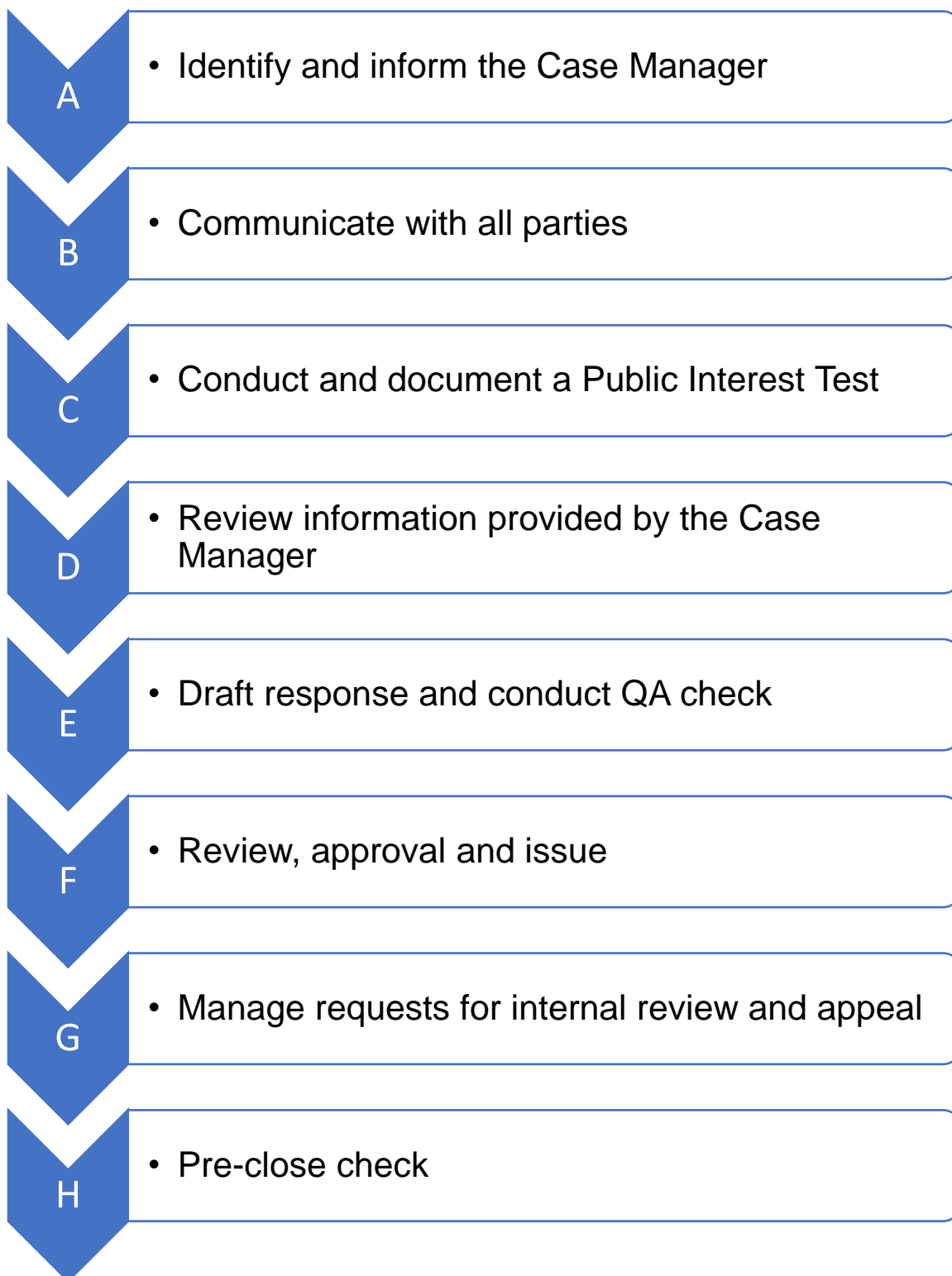
### 29. A summary of the main roles

Some roles/teams have specific responsibilities in the handling of FOI requests. An overview of these roles is provided below ahead of a detailed explanation of each role. Also see Appendix 4 for a high-level overview of the actions.

- ◆ The FOI Manager is central to the end-to-end procedure; they provide expert advice and guidance and must ensure that SQA complies with FOI legislation.
- ◆ The Case Manager may involve other employees to gather and collate information for the request on their behalf, but they are responsible for managing the request directed by the FOI Manager and their Director.
- ◆ The Director's role is to know and understand what FOI requests are currently being case managed in their directorate, provide guidance on the request to the Case Manager, keep EMT colleagues updated on progress, and approve the response.
- ◆ EMT will be notified of all FOI requests received and will be kept updated on progress by Directors. EMT may also approve responses to some requests that are particularly cross cutting and/ or where handling requires broader consideration.
- ◆ External Affairs team will alert the relevant Director and/ or EMT of any related media enquiries and support the drafting of responses when needed to ensure consistency.
- ◆ The internal reviewer will conduct an independent review of a response where an applicant is dissatisfied to check if we got right, and to fix it when we don't.



## ROLE OF THE FOI MANAGER



### 30. Role of the FOI Manager

The role of the FOI Manager is to oversee all FOI requests from receipt through to issue of the response and management of any request for review of appeal, in compliance with FOISA and published guidance, and to provide specialist advice and guidance to SQA staff involved in the process.

For each request, the FOI Manager has the following responsibilities:

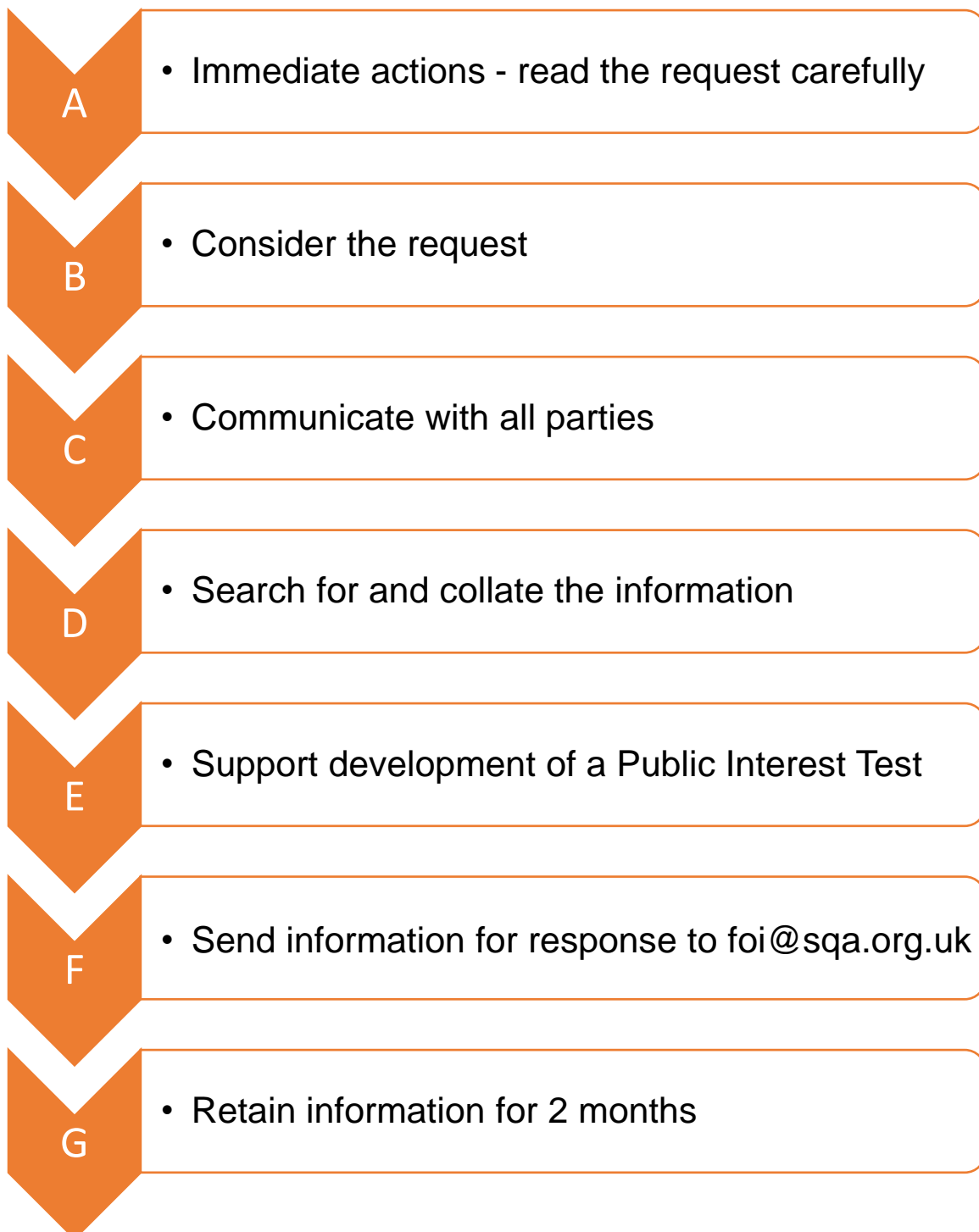
<b>A</b>	<p><b>Identify and inform the case manager</b></p> <p>Identify the team (or teams) responsible for providing the information requested, and the Case Manager(s). Where obvious or known, the FOI Manager will contact the Case Manager direct. Where this is unclear the FOI Manager will contact the Director believed to be responsible for the request for confirmation or direction. This should ensure that the FOI is assigned correctly from the beginning.</p> <p>Complete the Case Management form and send it to the Case Manager along with any relevant information. Copy the Case Manager's Director and the Director's Personal Assistant into the email (and follow up emails).</p>
<b>B</b>	<p><b>Communicate with all parties</b></p> <p>Contact the applicant where the Case Manager has requested clarification of their request.</p> <p>Inform External Affairs team of any requests which are potentially sensitive or complex, or which may be linked to previous or related FOI cases.</p> <p>Update the FOI Management Tracker with new FOI cases under case management and when any issues need to be reported to EMT. Email the Tracker to the Director of F&amp;CSs, the Corporate Office for EMT and the External Affairs team on a Friday morning.</p> <p>Escalate any disagreement with the approach to the disclosure of information to the Information Governance Manager.</p> <p>Contact the applicant to offer advice and assistance where SQA is unable to provide requested information (for example, it does not exist in the form requested), or the cost of providing the information exceeds the £600 limit.</p> <p>Make third parties aware of requests involving information supplied by them – with reference to section 7 of the Code of Practice.</p> <ul style="list-style-type: none"> <li>◆ <b>Where information or documents supplied by or via a third party contain confidentiality markings, or is provided with an expectation of confidentiality, ensure that a written response containing their views is received and communicated to the case manager and their director.</b></li> </ul> <p>Provide expert advice and guidance to Case Managers, Directors and EMT and keep responses on track to comply with legislative timescales.</p>



<b>C</b>	<p><b>Conduct and document a Public Interest Test</b></p> <p>Where it is agreed that an exemption should be applied, a Public Interest Test (PIT) must be conducted if required by the exemption</p> <ul style="list-style-type: none"> <li>◆ The FOI Manager will lead on developing the PIT but it must be done in discussion and collaboration with the Case Manager, and the Director where required</li> <li>◆ The FOI Manager should confirm with the Case Manager that the content of the PIT is accurate as parts will be used in the response to the applicant</li> </ul>
<b>D</b>	<p><b>Review information provided by the Case Manager</b></p> <p>Review the information provided by the Case Manager to:</p> <ul style="list-style-type: none"> <li>◆ Ensure it answers the question submitted by the applicant and liaise directly with Case Manager if information is incomplete</li> <li>◆ Remove and redact information not relevant to the request</li> <li>◆ Produce guidance notes for the applicant (where needed)</li> </ul>
<b>E</b>	<p><b>Draft response and conduct QA check</b></p> <p>Draft the response to the applicant ready for the review and approval stage.</p> <ul style="list-style-type: none"> <li>◆ Ensure that the final response is technically competent and written in a way that conveys meaning to the applicant. Liaise with the External Affairs team where needed (before it goes to the Director or EMT) and let them know that this team has been involved in the response.</li> <li>◆ Where staff names are included in responses ensure that members of staff have been made aware of the disclosure of their names in advance of the request being issued.</li> </ul>
<b>F</b>	<p><b>Review, approval, and issue</b></p> <p><b>Director approval</b> - send the draft response directly to the relevant Director(s) for approval. [Copy in their PA/Exec Assistant]</p> <ul style="list-style-type: none"> <li>◆ Do not issue the response unless formal approval is received.</li> </ul> <p><b>EMT approval</b> – once the draft is approved by the relevant Director, submit it to EMT for final sign-off.</p> <ul style="list-style-type: none"> <li>◆ Do not issue the response without formal approval from a Director or confirmation from the Corporate Office via email or the note of the EMT meeting that considered the draft response.</li> </ul> <p>Issue the approved response to the applicant within the statutory timescale.</p> <p>Inform the Information Governance Officer that the response is ready to be published on the Disclosure Log on SQA's website (in most cases).</p>

<b>G</b>	<b>Manage requests for internal review and appeal</b>  Arrange for an Internal Reviewer to conduct a review of a request where an applicant is dissatisfied with SQA's response to their request.  Act as liaison between the Case Manager and the Scottish Information Commissioner if an applicant submits an appeal that is subsequently investigated, and prepare the evidence and information requested. <ul style="list-style-type: none"><li>◆ Do not issue the response to the Scottish Information Commissioner's office unless formal approval is received from the Director of Finance &amp; Corporate Services.</li></ul>
<b>H</b>	<b>Pre-close check</b>  Before closing an FOI case on the log, carry out the following checks: <ul style="list-style-type: none"><li>◆ Copy of final response is saved to the network folder</li><li>◆ Any pertinent emails or documents relevant to the request have been saved into the network folder</li><li>◆ All emails relating to the request have been saved to the email folder</li><li>◆ FOI Management Tracker has been updated and closed off.</li><li>◆ All columns in the FOI Log have been updated and relevant comments included</li></ul>

## ROLE OF THE CASE MANAGER



## 31. Role of the Case Manager

The role of the Case Manager is to identify, search for, collect and collate the information required to answer the request and to provide it to the FOI Manager within the timescale indicated on the case management form.

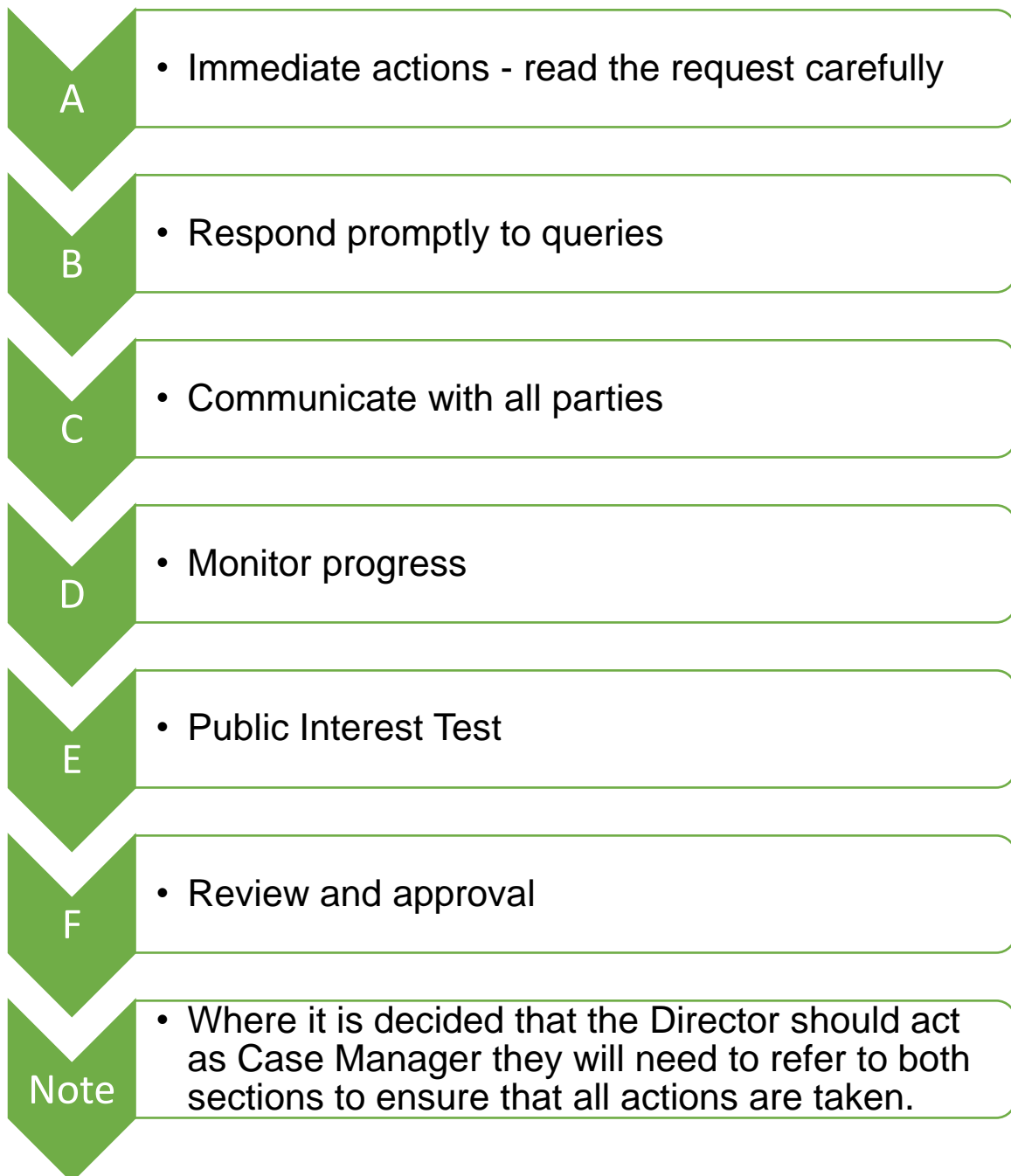
The Case Manager has the following responsibilities:

<b>A</b>	<p><b>Immediate Actions</b></p> <p>Review the request detailed in the Case Management form <b>on receipt</b>:</p> <p><b>Read the request carefully.</b> Do you understand what the applicant has asked for? If you are not sure – do not make assumptions – contact the FOI Manager to seek clarification from the applicant. See section 9 for further information about clarification.</p> <p>Advise the FOI Manager:</p> <ul style="list-style-type: none"> <li>◆ If you believe that the request is for a different Head of Service or a different business team/directorate.</li> <li>◆ If you are about to go on leave during the 20 days response time and advise them of an alternative member of staff to manage the response on your behalf.</li> </ul>
<b>B</b>	<p><b>Consider the request</b></p> <p>Contact the FOI Manager:</p> <ul style="list-style-type: none"> <li>◆ If you believe that to gather and collate the information will take more than 40 hours to complete and may be exempt on cost grounds. See Appendix 1 for details and guidance on calculating the costs.</li> <li>◆ If you believe that an exemption may apply to some, or part of the request. You will need to explain your reasons.</li> <li>◆ If the information or documents related to the request has been provided by or via a third party, for example, Scottish Government, or a supplier? If so, discuss with or inform your Director if necessary and discuss what is needed with the FOI Manager.</li> <li>◆ <b>Where information or documents supplied by or via a third party contain confidentiality markings, or is provided with an expectation of confidentiality, inform your Director, and agree actions and timescales for contacting the third party.</b></li> </ul> <p>Take a note of the timescale to respond to the request and any other instructions or supplementary information provided on the case management form.</p>

<b>C</b>	<p><b>Communicate with all parties</b></p> <p>Discuss the request – at any stage - with your Director or the FOI Manager if guidance or clarity is needed. If, at any stage, you are unsure about the request, or need further clarification, contact the FOI Manager.</p> <p>Keep your Director updated. Copy your Director into emails sent to the FOI Manager about the request, but only where relevant or useful.</p> <p>Contact the FOI Manager:</p> <ul style="list-style-type: none"> <li>◆ If you believe that certain information should not be disclosed in the response. Do not make the decision yourself to deliberately exclude information that is relevant to the request.</li> <li>◆ If more time is needed than indicated on the case management form to respond to the request. This allows the requestor to be updated if deadlines are going to be missed.</li> </ul> <p>Respond promptly to any queries raised by the FOI Manager or your Director about the request and the information provided.</p>
<b>D</b>	<p><b>Search for and collate the information (also refer to Appendix 6)</b></p> <p>Unless it is unnecessary because the information is easy to retrieve, conduct a full search for the information requested. Remember to check the SQA Retention Schedule to see if the requested information should still be available or has been destroyed.</p> <p><b>Note!</b> Keep a record of the searches made (see Appendix 5 for a form). If an applicant is dissatisfied with our response and requests an internal review, you will need to provide the internal reviewer with information on the search you undertook. If the applicant remains dissatisfied after an internal review, they can appeal to the Scottish Information Commissioner who will also want to receive this information.</p> <p>Notify the FOI Manager where information is already in the public domain and provide links to the information along with any necessary supplementary information needed.</p> <p>Contact the FOI Manager to discuss the request where the requested information is due for publication within 12 weeks of the request being received by SQA, so is exempt from disclosure within the statutory 20 days. Note that the exemption does not apply if publication of the requested information is longer than 12 weeks.</p> <p>Collate the information requested and remove duplicate correspondence and information. Refer to the case management form provided by the FOI Manager for any special instructions and note the guidance in <a href="#">Appendix 6</a>.</p> <p>To fulfil our obligation to provide assistance to the applicant:</p> <ul style="list-style-type: none"> <li>◆ Where necessary, provide context for requests to explain the response more clearly.</li> </ul>

	<ul style="list-style-type: none"> <li>◆ Produce a simple explanation for any acronyms, unfamiliar terms, jargon, or technical phrases.</li> </ul> <p>Where you need to extract and summarise information from a document to respond to a request, ensure that the information is written in plain English in a way that conveys meaning to the applicant. Avoid or explain jargon here too.</p> <p>If, during the search for information, your interpretation or understanding of the request changes, contact the FOI Manager to discuss the request to determine if any other actions are needed.</p>
<p><b>E</b></p>	<p><b>Support the development of a Public Interest Test</b></p> <p>Where it is agreed that an exemption should be applied, a Public Interest Test (PIT) must be conducted if required by the exemption</p> <ul style="list-style-type: none"> <li>◆ Collaborate with the FOI Manager, and the Director where required. on the development and documentation of a Public Interest Test (the FOI Manager will lead on this work)</li> <li>◆ The Case Manager must confirm to the FOI Manager that the content of the PIT is accurate as parts will be used by the FOI Manager in the response to the applicant</li> </ul>
<p><b>F</b></p>	<p><b>Send information for the response to <a href="mailto:foi@sqa.org.uk">foi@sqa.org.uk</a></b></p> <p><b>Before</b> sending the collated information to the FOI mailbox check that you have answered the question(s) being asked. Remember to put the FOI reference in the subject line of the email.</p> <p><b><u>For information:</u></b> The response comprises of a formal standard letter that contains standard paragraphs to comply with FOISA requirements. Where an exemption is applied this will be included in the standard response along with the reasons for applying the exemption. Where the information to respond to the request is short it will be included in the body of the response, otherwise it will be added as attachments. Information provided by the Case Manager will be redacted by the FOI Manager where necessary.</p>
<p><b>G</b></p>	<p><b>Retain information for 2 months</b></p> <p>Keep all paperwork, emails, and replies about the request and the information gathered for 2 months in case it is needed for an internal review.</p> <p>Information should be kept together where possible to make it easily accessible if needed. Keep a record if the information is held in multiple places.</p>

## ROLE OF THE DIRECTOR



## 32. Role of the Director

The role of the Director is to oversee the response to the request, review and approve the final response ready for issue to the applicant.

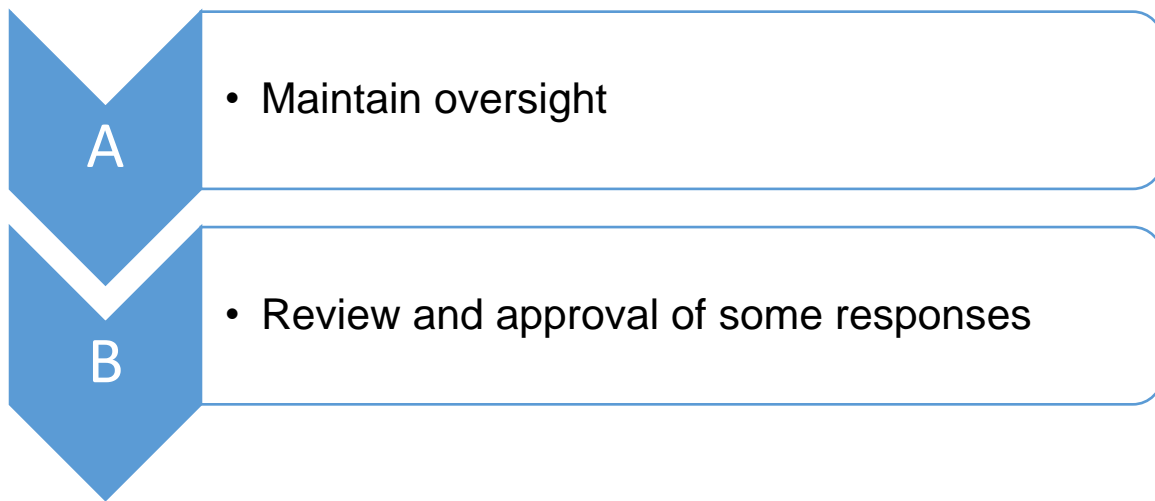
The Director has the following responsibilities:

<b>A</b>	<p><b>Immediate Actions</b></p> <p>Review the request detailed in the Case Management form <b>on receipt</b>.</p> <p><b>Read the request carefully.</b> If the request is unclear or appears complicated or sensitive, contact the Case Manager to confirm understanding of the request and discuss the information to be provided. If there is a difference in understanding of the request ask the Case Manager to seek clarification from the applicant, via the FOI Manager.</p> <p>Inform EMT and the FOI Manager as soon as possible if you believe that there are sensitivities or complexities to the request that would indicate EMT sign-off. This does not apply to information that may be considered embarrassing to SQA.</p>
<b>B</b>	<p><b>Respond promptly to queries</b></p> <p>Respond promptly to any queries raised by the Case Manager or the FOI Manager to prevent delays and ensure the right information is being gathered.</p>
<b>C</b>	<p><b>Communicate with all parties</b></p> <p>Provide direction to the Case Manager if needed, including the need to consult with any third parties, for example, Scottish Government, suppliers.</p> <p>Engage with other Directors/ Directorates where the request impacts or involves them.</p> <p>Update EMT at weekly meetings on FOI cases under your management.</p> <p>Advise the FOI Manager promptly of any changes needed to the details on the FOI Management Tracker.</p> <p>Inform the Case Manager of any updates or new information.</p>
<b>D</b>	<p><b>Monitor progress</b></p> <p>Ensure that the Case Manager gathers and collates the information required by the date indicated in the Case Management form.</p>
<b>E</b>	<p><b>Public Interest Test</b></p> <p>Where necessary support the FOI Manager and Case Manager in the development and documentation of a Public Interest Test.</p>

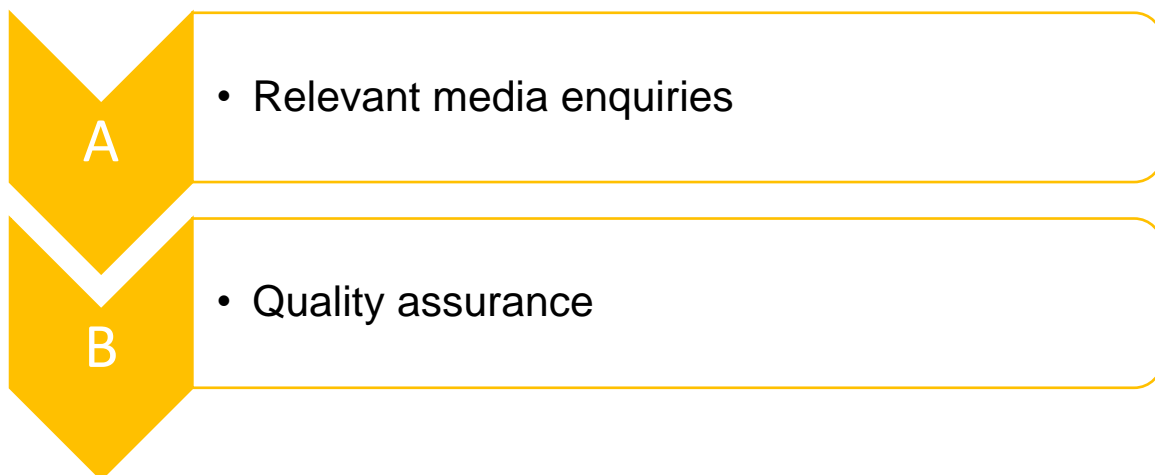


<b>F</b>	<b>Review and approval</b>  Respond promptly to the FOI Manager's request for review and sign-off of the final response.  Where sign off is required from more than one Director, ensure there is early engagement and confirmation of sign off on the response is received.  Where EMT sign-off is required, advise the FOI Manager that the draft is ready for EMT approval and it will be sent to the Corporate Office.
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## ROLE OF EXECUTIVE MANAGEMENT TEAM



## ROLE OF EXTERNAL AFFAIRS



### 33. Role of Executive Management Team

The role of EMT is to ensure compliance with FOISA and to be responsible for requests that are considered sensitive or complex.

EMT has the following responsibilities:

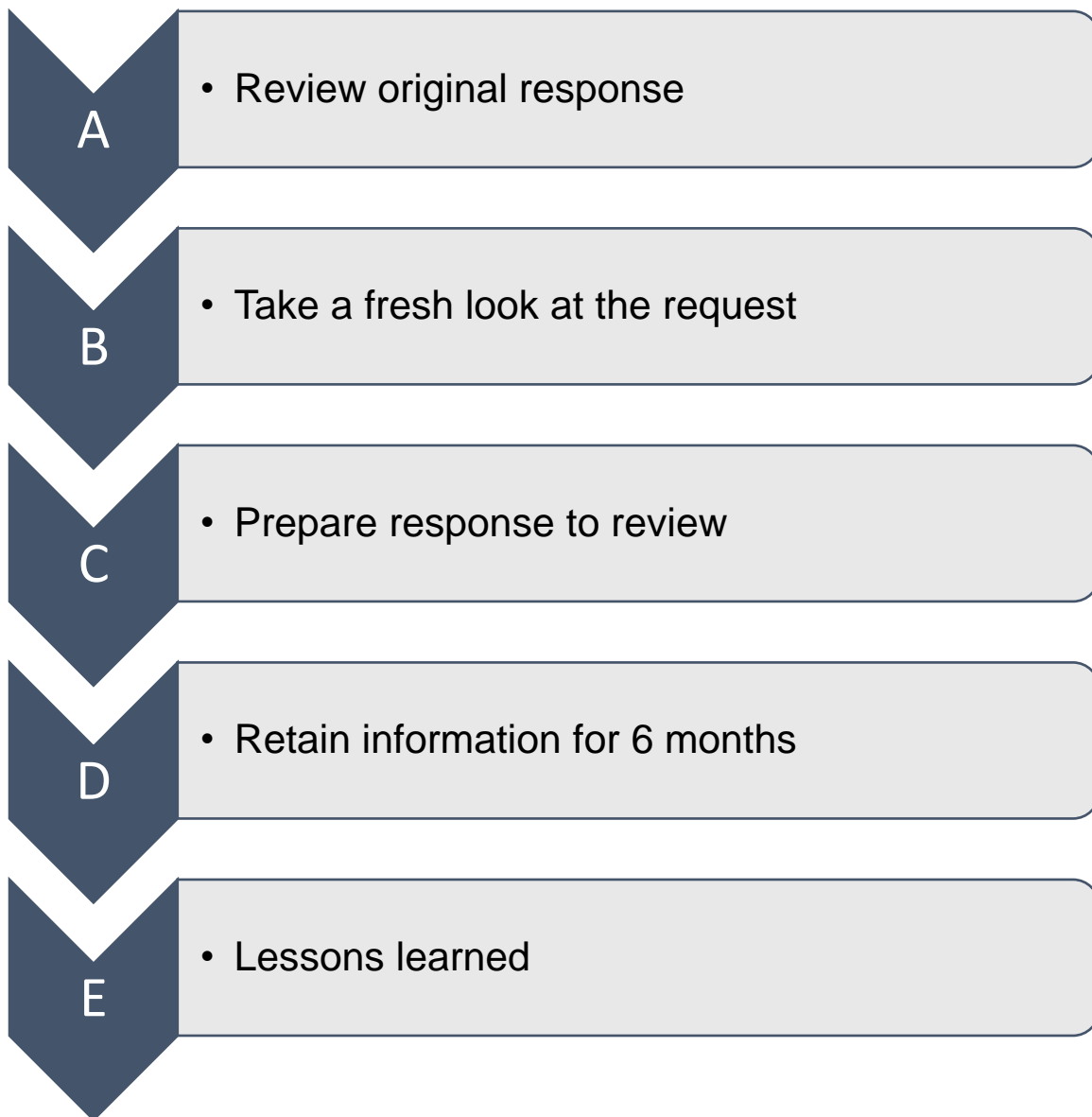
<b>A</b>	<b>Maintain oversight</b>  Maintain oversight of requests recorded on the FOI Management Tracker.
<b>B</b>	<b>Review and approval of some responses</b>  Review draft responses relating to sensitive or complex requests where EMT is responsible for approval.  Approve responses in a timely manner to ensure that responses are issued within the statutory 20-day time limit.

### 34. Role of External Affairs

The role of External Affairs staff is to:

<b>A</b>	<b>Relevant media enquiries</b>  Inform the Director and the FOI Manager of any media enquiries related to the request.  Provide advice on handling where needed to ensure that a consistent approach is applied in dealing with responses.
<b>B</b>	<b>Quality assurance</b>  Where required, support the quality assurance process to ensure that responses are of good quality and that the content is consistent with messages and information already communicated.

## ROLE OF INTERNAL REVIEWER



## 35. Role of the Internal Reviewer

The role of a reviewer is to take a fresh look at the response to an information request, to confirm the decision (with or without modifications), or to substitute a different decision.

The reviewer has the following responsibilities:

<b>A</b>	<p><b>Review original response</b></p> <p>Review the original request and the applicant's reasons for dissatisfaction with the response.</p> <p>Review the original response comprising of: the information available, the initial response and any exemptions that were applied.</p> <p>Liaise with the Case Manager and any other staff involved in providing the information that was used to prepare the original response. Identify if they need to provide you with any other information relating to the request.</p>
<b>B</b>	<p><b>Take a fresh look at the request</b></p> <p>Consider any specific issues identified by the applicant.</p> <p>(i) Determine whether the original decision was correct, with or without any modifications.</p> <p>(ii) Determine if a different decision should be made.</p> <p>Keep a record of the process undertaken, any searches made (see Appendix 6 for a template) and produce a review report, including any lessons learned (see Appendix 7).</p>
<b>C</b>	<p><b>Prepare response to review</b></p> <p>FOI Manager to produce a response based on the review report provided by the reviewer.</p> <p>Reviewer to read through proposed response and agree final response.</p> <p>FOI Manager to issue response to the review to the applicant.</p>
<b>D</b>	<p><b>Retain information for 6 months</b></p> <p>Keep all paperwork, emails, and replies about the internal review for six months from date of issue as the information may be needed by the Scottish Information Commissioner in the event the applicant appeals. <b>(If you leave SQA, send this information to the FOI Manager.)</b></p> <p>Information should be kept together where possible to make it easily accessible if needed. Keep a record if the information is held in multiple place.</p>

**E****Lessons learned**

The FOI Manager will keep a log of lessons learned and pass on information to relevant business teams.

## APPENDIX 1

### EXCESSIVE COST OF COMPLIANCE

There is provision in Section 12 of FOISA that allows a public body to refuse to comply with an information request where we calculate that it will cost more than £600 to do so. There are strict rules regarding what can be included in the cost calculation.

When estimating staff time, a maximum of £15.00 per hour may be used, however, if a member of staff's hourly rate is less than this, their actual hourly rate must be used. We must be able to demonstrate how we have arrived at the figures so, where possible, 5-10% of information must be collated to confirm how much time will be needed and the likely cost.

We can charge for:

- Direct and indirect costs incurred in locating, retrieving, and providing information
- Time spent redacting information

We cannot charge for:

- Determining whether we hold the information requested
- Determining if an exemption could apply
- Determining what information should be redacted

#### **Example**

<b>Task</b>	<b>No. of Hours/Hourly Rate</b>	<b>Cost</b>
Locating and retrieving information	35 hours at £15 per hour (1 x G4 and 1 x G7)	£525
Reviewing and redacting information	7 hours at £15 per hour	£105
Total Cost		<b>£630</b>

**Note:** Where the cost exceeds £600, SQA must provide reasonable advice and assistance by contacting the requester to find out if their request can be narrowed to bring it under the £600 limit. SQA must provide some information about costs for context to help the applicant narrow their request.

For more information see the Scottish Information Commissioner's guidance on [Excessive Cost of Compliance](#).

## APPENDIX 2

**SECTION 38(1)(b) PERSONAL DATA EXEMPTION CONSIDERATION**

This form must be completed jointly by the FOI Manager and the Case Manager in all instances where the Section 38(1)(b) exemption is being considered. Consult the [ICO guidance on identifying individuals](#) and the [Office for National Statistics guidance on Intruder Testing](#).

**This also applies where disclosure control is being applied.**

FOI reference & date completed	FOI xx/xx xxx	Add date
<b>Details of request</b>		
<b>Explain clearly and fully why the information is personal data.</b>  Personal Data is defined as <i>“any information relating to an identified or identifiable individual”</i>		
<b>What information do we think should not be disclosed under the section 38(1)(b) personal data exemption</b>		
<b>Can the requested information be disclosed in a way that would not lead to the identification of individuals?</b>		
<b>Why would disclosure of the data be unfair and/or unlawful (<a href="#">first data protection principle</a>)? [Reasons required]</b>		



**Have the legitimate interests of the applicant been considered?**

Have we asked the applicant why they want the information?

Did we consider that disclosure of the data was necessary to achieve the applicant's legitimate interests?

Do we consider that the interests or fundamental rights and freedoms of the data subjects override that of the applicant, and if so why?

Can the applicant's legitimate interests be met in some other way, ie without disclosing the information?

## APPENDIX 3

### PUBLIC INTEREST TEST

There are two aims of this test:

1. Identify and set out the competing arguments
2. Carry out a balancing exercise to determine where the public interest lies

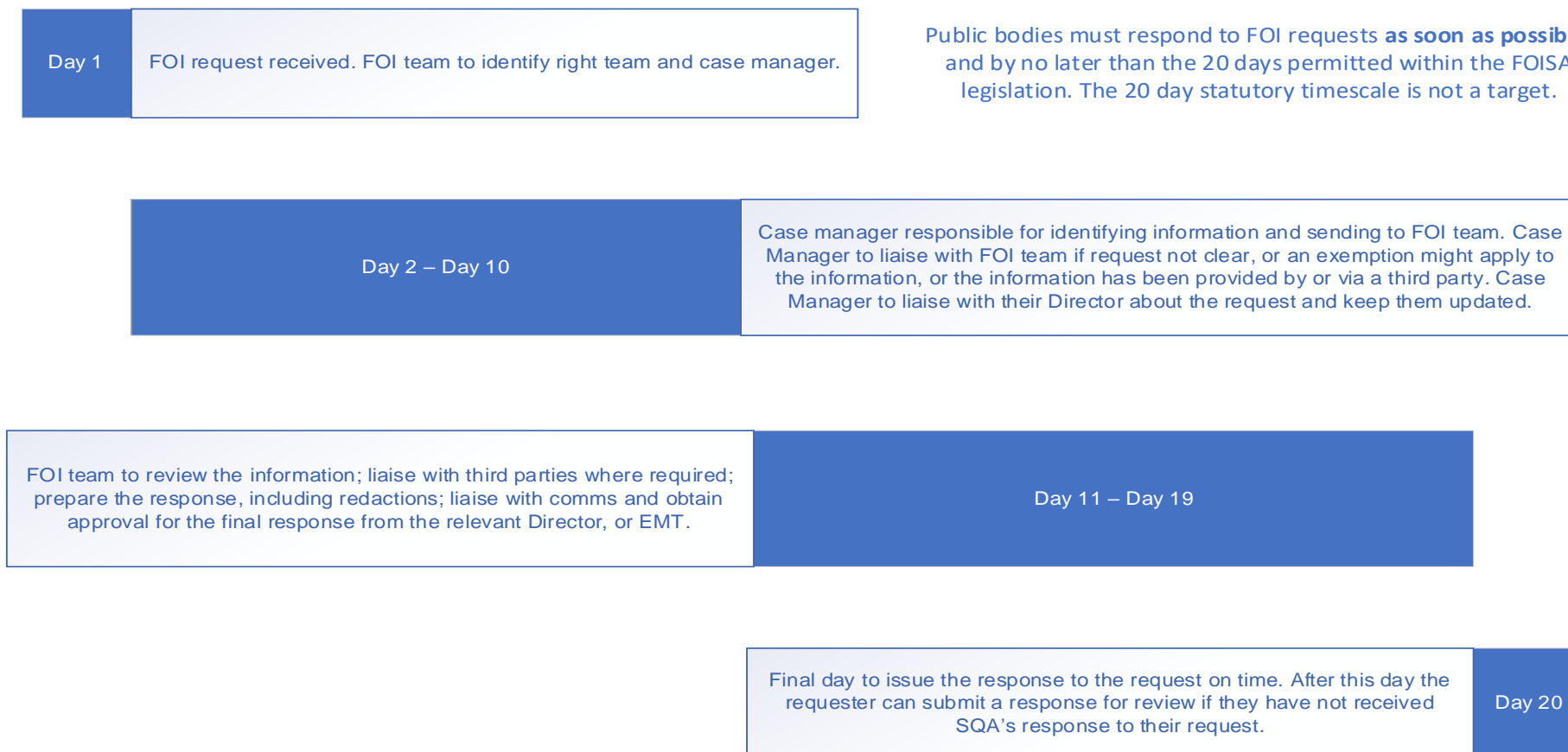
Before starting have a look at the Scottish Information Commissioner's guidance on applying the [public interest test under FOISA](#).

**Please note:** Where it is decided that the public interest lies in maintaining an exemption and so decides to withhold information from an applicant, the refusal notice (prepared and issued by the FOI Manager) must set out the competing public interest arguments and explain why.

<b>FOI Reference</b>	<b>FOI XX-XX XXX</b>
<b>Date completed</b>	<b>xx.xx.xxxx</b>
<b>Carried out by</b>	<b>add names</b>
<b>Details of the FOI request</b>	
Xxx	
<b>Public interest in maintaining exemption</b>	<b>Public interest in disclosure</b>
1.	1.
2.	2.
3.	3.
add as needed	
<b>Outcome of the balancing exercise</b>	
Xxx	

## APPENDIX 4

### TIMELINE FOR MANAGING A FOI REQUEST



## APPENDIX 5

**FOI REQUEST OR REQUEST FOR INTERNAL REVIEW**
**RECORD OF SEARCH<sup>1</sup>**

<b>FOI Reference</b>	
<b>Case Manager or Internal Reviewer</b>	

<b>Details of Request</b>
<b>Record of search</b>
<p><i>Please record all locations that you searched for the requested information</i></p> <div style="height: 400px;"></div>

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<sup>1</sup> This can be very useful as it can provide helpful evidence if a request for internal review is made, and if the applicant appeals to the Scottish Information Commissioner

## APPENDIX 6

### GUIDANCE ON THE COLLATION OF INFORMATION FOR A REQUEST

Here are some tips for making the process of collating and reviewing the information easier for everyone involved.

1. Use the FOI reference in all communications about the request to avoid confusion.
2. Make sure you understand the question(s) that is being asked by the applicant and provide information that is in scope of the request.
3. If you are responding to multiple questions, make sure that the information is collated and provided to the FOI team in a way that makes it clear what information relates to what question.
4. If you believe that an exemption(s) is engaged you need to inform the FOI Manager what exemption you think is engaged, why it should be applied (ie, provide clear and robust reasons) and to what information specifically the exemption(s) should be applied. This will be subject to review and confirmation by the FOI Manager.

Note: SQA is required to explain to an applicant clearly and fully why an exemption is applied in the response to the request. Failure to explain properly could lead to an applicant requesting a review of our decision and thereafter they could appeal to the Scottish Information Commissioner if they are still not satisfied. The reasons provided by SQA for not disclosing information will be scrutinised by the Scottish Information Commissioner's office, and they will decide if our decision was correct or not. All decisions are posted on the Scottish Information Commissioner's website.

5. On redaction of information, please note the following:
  - ◆ **You do not need to redact any names** in the information as this will be carried out by the FOI team as follows:
    - SQA employees - the FOI team will redact information in accordance with section 13 of this document and SQA's FOI Policy.
    - Non SQA individuals – the FOI team will normally redact all names unless there is a good reason to leave it unredacted.
  - ◆ If you believe that some of the information relevant to the request should be redacted then you need to 'highlight' – not remove - the relevant information and follow the guidance set out in 4 above.
6. If the request requires you to provide emails or a substantial number of documents, please note the following:
  - ◆ Remove any logos and footers from emails
  - ◆ Ensure that document names convey their content
  - ◆ For agendas and papers, ensure that all documents are present or explain gaps

