



CMA FOI PROCESS

Version 3.0

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Introduction

[The Freedom of Information Act 2000 \(FOIA\)](#) gives an individual a right of access to recorded information held by a Public Authority.

The FOIA specifies that, as a public authority, the CMA is obliged to respond to FOI requests. For each request we must comply with the following sections of the FOIA by:

Section 1: Informing the applicant (in writing) if we **hold** the information falling within the scope of the request, and if so communicating that information to the requester (subject to any exceptions/exemptions).

Section 16: Providing **advice and assistance** to the requester wherever possible.

Section 17: Specifying the relevant exemption(s) engaged and stating why the exemption is engaged, in cases where information is **exempt** from disclosure.

The statutory deadline to comply with a FOI request is 20 working days from the receipt.

Scope

- All CMA staff
- All CMA information assets
- All IT systems and repositories

Roles and Responsibilities

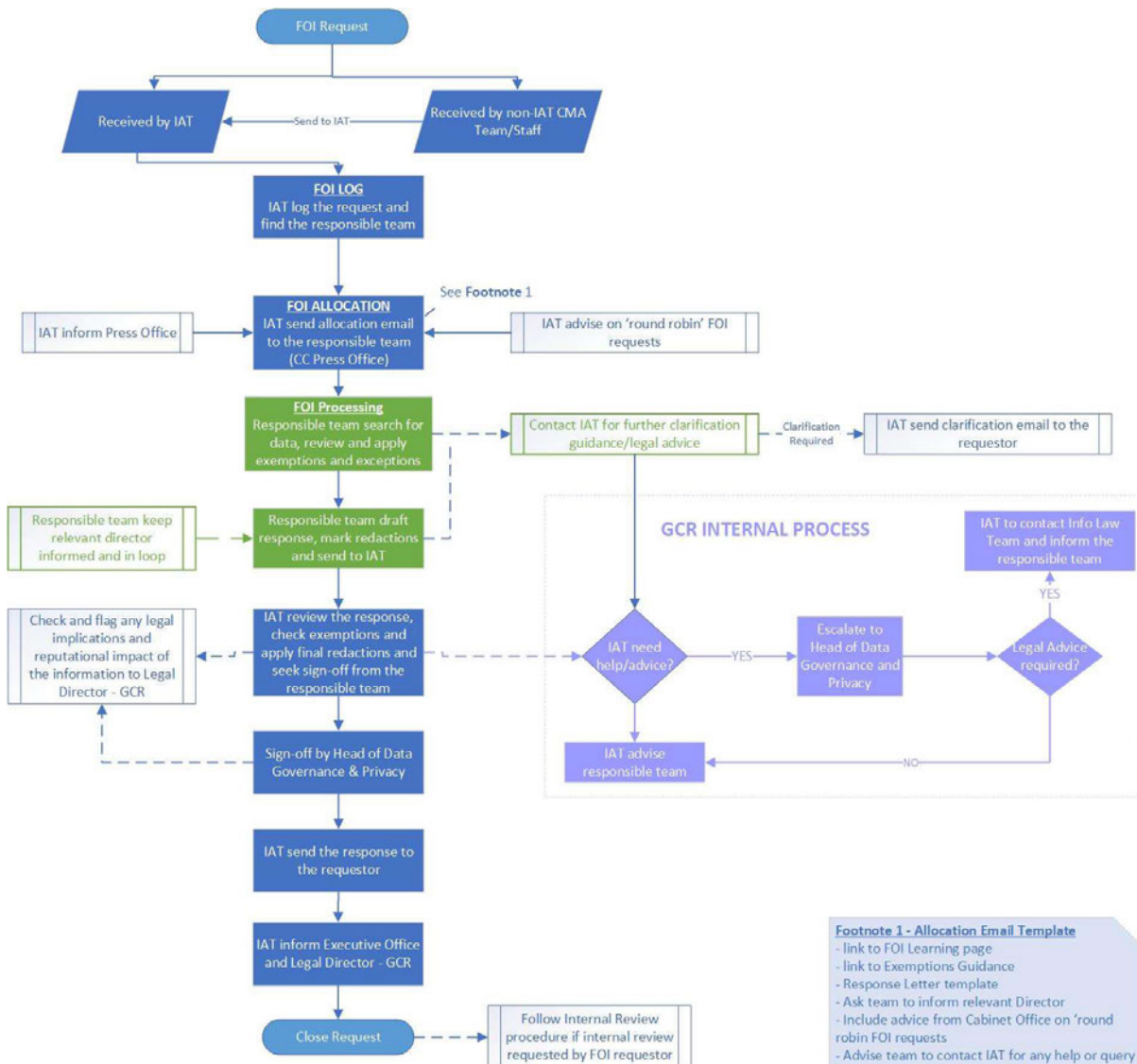
The FOI process is developed and managed by the following functions and teams:

- The Information Access Team (IAT) is responsible for the day-to-day administration of the FOI process and for sending out all completed FOI responses.
- CMA teams/directorates (referred as 'Responsible Team' hereafter) have responsibility to search and review the requested data and draft FOI responses.
- The Information Law team ('Info Law Team') gives legal advice on FOI responses and also handle Internal Reviews and ICO complaints related to FOI. Note that, where applicable, case team lawyers should give legal advice in the first instance.
- The Head of Data Governance & Privacy oversees the FOI process and signs off FOI responses.
- The Legal Director of Governance, Compliance & Risk signs off Internal Reviews and ICO Complaints.

CMA FOI Process

FOI Flowchart

The following flowchart shows the internal FOI procedure at the CMA:



FOI Procedure - Overview

1. **FOI Allocation:** If the request clearly sets out the required information, IAT will contact the team/area which holds it and ask them to nominate someone to reply to the request, and to think about whether an exception/exemption should be applied to any or all of the information. IAT also sends out an 'allocation' email detailing the request and its' statutory deadline, as well as providing links to standard letters and sources of advice for perusal of the responsible team.

2. **FOI Processing:** To ensure the statutory deadline is met, IAT ask the responsible team to send their draft responses to them by **day 15** of the process outlining what information is held, and any exemptions applicable to it. If the responsible team has not sent their draft response to IAT by day 15, IAT will send them a reminder and will also notify the Head of Data Governance and Privacy. If the responsible team do not respond to their reminder within two working days, the Director of Governance, Compliance and Risk Assurance will be notified.
3. **FOI Review:** The IAT use the remaining time to check the draft reply, obtain any advice needed from the Info Law Team (or case team lawyers) and make redactions to material being disclosed (if necessary). If the responsible team think that redactions to documents are needed before they can be sent out, please clearly mark these redactions and IAT will do them for you.
4. **Sign-off:** IAT seek sign-off from the Head of Data Governance and Privacy and the Responsible Team (in case there are any changes during the review and sign-off). If the response has been drafted or reviewed by one of the information lawyers, then there is no need for the Head of Data Governance and Privacy to sign off.
5. **Sending out Responses:** IAT send the final response to the requestor and notify the Executive Office and Press Office. Thereafter, the FOI request is closed on SharePoint.

FOI Processing Guidelines

Identifying a valid FOI Request

A valid FOI request must:

1. Be submitted in writing, e.g. by letter, email, fax, twitter
2. Provide clear contact details, e.g. an individual name (that appears genuine and is not a pseudonym or group name), and return address
3. Ask for recorded information, such a copy of a report or emails created by officials
4. Be clearly communicated, enabling CMA to easily identify whether the information requested is held by the CMA

FOIs from anonymous requesters

1(a). In line with the ICO guidance, where it is clear that an individual has not provided their real name (e.g. initials only), or we have a suspicion that they are using a pseudonym, then we ask for a full name.

1(b). If we are not satisfied with the response, then we ask for ID.

2. If we think that someone under (1) above is a repeat requester using an invalid name (as is currently the case with [REDACTED]) then we can ask for a full name and ID at the same time. I expect this will be very rare.

FOIs from journalists and campaign groups

1. If the CMA receives an FOI request from a journalist or from a member of a campaign group that seeks to generate publicity for its causes (eg the TaxPayers Alliance), the CMA Press Office need to be made aware of the request, but without being told the identity of the requester. Normally this will be achieved

by copying in a named member of the Press Office (eg [REDACTED]) to the weekly FOI/SAR update email that IAT send to the Legal Director of Governance, Compliance & Risk, the Head of Data Governance & Privacy and the information lawyers. For higher profile requests, Press Office should be informed immediately; the Director of Communications, Anthony Wright, and the Head of Media Relations, [REDACTED], must always be included in these communications.

2. Press Office should be provided with the final draft of the FOI response several days before it is due to go out, to give them sufficient time to review the response and make any comments, as well as sufficient time for them to be prepared to respond to any news stories that subsequently appear.

3. The Chief Strategy and External Affairs Officer, Jessica Lennard, should be informed immediately about all data, tech and AI-related FOI requests, regardless of who has submitted the request.

Requesting Clarification

1. If the requester does not describe the information sufficiently for CMA to be clear about what they want, IAT will issue a clarification letter under section 1(3) of the Act.
 2. When such a letter is issued the clock is effectively stopped and no further work is done on the request.
3. Once the requester submits a response containing sufficient detail to enable us to identify the information they are seeking, the 20 working day deadline begins again.

Round Robin Requests

1. Cabinet Office share with IAT a spreadsheet of 'Round Robins' - FOIs which have been sent to more than one government department by the same person. For many of these requests, they offer advice on how they should be handled and the exemptions that should be applied so there is a consistency of approach across government.
2. The IAT notify Cabinet Office when the CMA have received a request on their list or when CMA get a new request which IAT think might be a Round Robin.
3. IAT circulate the relevant advice on Round Robin requests with the Responsible Team.

Conducting Searches for Information

Responsible team must consider the following when searching for information:

1. Search for all held or recorded information including:
 - Information held electronically such as personal/ shared drives, the CMA's SharePoint system, Google Drives or Gmail, and Outlook emails.
 - Information recorded on paper (e.g. letter, memo, papers in a file, CMA's off-site file stores)
 - Sound and video recordings (including Microsoft Teams chats, recordings from work mobile phones, etc)
 - Hand-written notes or comments, including those written in pads or on Post-it notes.
2. The CMA is not required to create new information in order to answer a request. The FOIA enables access to information that already exists and is held on record. The responsible team should be clear of the distinction between creating new information and compiling it from

different sources or extracting it from a database (i.e. 're-presenting' information in a different form to what it is held).

3. The CMA is not required to search for the information in back-up systems or files maintained by Technology and Business Services (TBS) or provide information that has been deleted in line with the CMA's Retention & Disposal Schedules.

Refusing a FOI Request

The CMA may decide not to release the requested information because there are exceptions in the Act that may be applicable.

A table of exceptions is provided, for the perusal of all concerned stakeholders within the CMA, in [Appendix 1 – FOI Exceptions](#).

Withholding Information

CMA may withhold information in full or part if an exemption under the Part II of the FOIA applies.

A table with most commonly applied exemptions by the CMA along with example scenarios and past example is provided in [Appendix 2 – FOI Exemptions](#).

Drafting and Reviewing Responses

1. Responsible teams must draft responses using the templates provided by the Info Law team available on the Learning page.
2. IAT also check if the supplied information may have any legal implications or reputational impact on the CMA.
3. For any response drafted by [REDACTED] or [REDACTED], they will submit it to peer review by the other, before then submitting to [REDACTED] for sign off
4. Where an FOI response has been drafted or signed off by one of the information lawyers there is no need for it to be further peer reviewed or signed off by IAT

Dealing with non-FOI requests

1. For any correspondence that is not an FOI or for the parts of an FOI request that do not fall under FOI, IAT forward it to General Enquiries. Examples of requests that fall under General Enquiries are:
 - General advice or explanations of a specific policy
 - Opinions on a particular decision
2. For correspondence about whistleblowing issues, IAT forward the email/letter to whistleblower@cma.gov.uk

Enforcement Route

Where requesters are unhappy with their FOI response there are a number of options open to them to complain and then escalate their complaint; the stages are set out below:

Internal review

Internal reviews have 20 working day response time and should be requested within 40 working days of response being sent.

1. IAT receives the requests for internal reviews in the FOI inbox and sends them to the Legal Director of Governance, Compliance and Risk for allocation.
2. A member of the Info Law Team conducts a fair and thorough review of procedures and decisions taken in relation to the FOIA request, with support from the information owner
3. Completed Reviews are sent to Legal Director of Governance, Compliance and Risk for review and sign off.

The Information Commissioner

If the requester is dissatisfied with the outcome of the Internal Review, they can submit a complaint to the ICO. The ICO will ask the CMA for submissions in support of its decision and any request for these must be dealt with promptly. The CMA has 20 workings days to respond to such an ICO request.

- ICO complaints are received by the IAT who then inform the Info Law team. The response to the ICO complaints is prepared by the Responsible Team with support from the Info Law team
- IAT provides the required support to the Info Law team such as collating information and drafting/sending out response to the ICO.
- If the matter remains contentious, the ICO issues a legally binding decision notice. This decision either:
 - Upholds the CMA's original decision in full
 - Upholds the CMA's decision in part and orders the information not subject to an exemption to be released
 - Finds in favour of the requester and orders the information to be released
- If the requester, or the CMA, are unhappy with the ICO's decision, either party may seek permission to appeal to the Information Law Tribunal.

The Tribunals

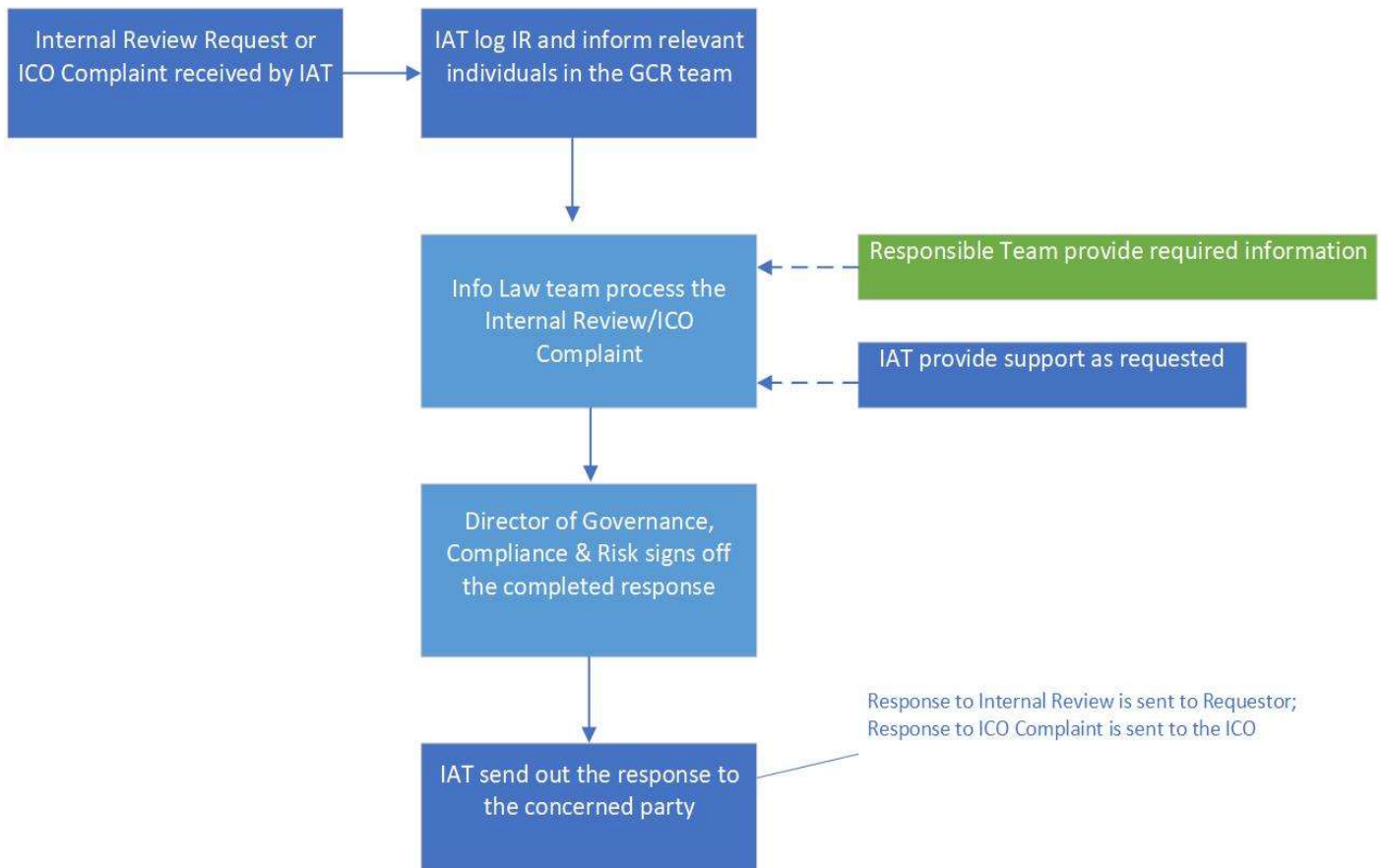
Appeals can be made on points of law and fact to First Tier Tribunal (General Regulatory Chamber), and on a point of law only to the Upper Tribunal. The CMA would have to submit witness statements for both.

The Courts:

Appeals can be made on points of law to the Court of Appeal and to the Supreme Court.

NOTE: All tribunal and court cases related to FOI are handled by the CMA Litigation Unit with support and advice from the Info Law team.

The following flowchart details the GCR team internal process for processing Internal Review Requests and ICO Complaints:



Appendix1: FOI Exceptions

Table of Exceptions

The table below lists the exceptions available under FOI and past examples of how these were previously applied at the CMA.

Type of Exception	FOI Exception	Description	Past Examples/Scenarios	Response Letter Template
A	12(2)	Requests for information where it would take the CMA more than 24 hours of staff time to find out whether it held this information or not	Requests for details of any meetings with a large technology company being investigated by multiple areas of CMA	
A	12(1)	Information that would take the CMA more than 24 hours of staff time to retrieve	All communications regarding establishment of Digital Markets Unit	
A	14(1)	Repeated FOI requests on the same topic where the prime purpose is not to obtain information but to get the CMA to undertake actions that it has already decided not to take	Seventh FOI request from the same person regarding horse racing in three years	

Appendix 2: FOI Exemptions

Exemptions

A full list of all the FOI exemptions can be found on the ICO website on the [When can we refuse a request for information?](#) web page. The first part of this ICO webpage describes the section 12 and section 14

exemptions, whilst the lower half describes all the exemptions which fall under Part II of the FOI Act ie sections 21 to 44 inclusive. Not all these exemptions are normally applicable to the CMA, for example the section 37 exemption concerning communications with the royal family is unlikely to be needed.

FOI Exemptions – Past Examples

The table below lists the exemptions most commonly used when answering FOI requests in the CMA, and provides a link to examples of previous FOI responses which have used this exemption.

FOI Exemption	Description	Past Examples/Scenarios	Response Letter Template
S21(1)	Information already published by the CMA on Contracts Finder or website etc	Requests for information on contracts that the CMA has with various suppliers Requests for information about published CMA mergers and markets investigations	
S22(1)	Information that the CMA will be publishing in the near future	CMA infringement decision	
S31(1)(g)	Information that could prejudice the exercise of the CMA's functions if it were disclosed	Names of external legal firms contracted to assist the CMA in an investigation	
S32(1)	Information that the CMA holds as a result of court proceedings	Address of a company not in the public domain but which the CMA had obtained as part of court proceedings it was issuing against that company	
S32(2)	Information that has been created for a CMA inquiry or investigation	Request for information redacted from a CMA published cost determination about a code modification appeal	

s42(1)	Information that the CMA has received professional legal advice on	Requests regarding the appointment of monitoring trustees	
s44(1)	Information that the CMA is legally prohibited from disclosing	Requests for unredacted versions of documents which have been published in redacted format on CMA's webpages	
s40(2)	Information that contains personal details of CMA staff below SCS grade.	Request for name of person that manages a CMA contract	
s31(3)	Information about CMA investigations where the CMA does not want the outside world to know whether it is conducting a particular investigation or not	Whether CMA has investigated a merger where it has not published details of doing so	
s32(3)	Information created for a CMA inquiry or investigation that the CMA does not want the outside world to know whether it exists or not	Whether CMA is investigating a particular business	
S44(2)	Information that the CMA does not want the outside world to know whether it holds it or not	Requests for number of complaints about a business	

Exemptions upheld at internal review – Past Examples

This table shows applied exemptions that were upheld at internal review stage

FOI Exemption	Description	Past Examples of Internal Review decisions that upheld original FOI decision
S21(1)	Information already published by the CMA on gov.uk website	Request for occasions when CMA publicised undertakings from Sykes Cottages
S31(1)(g)	Information that could prejudice the exercise of the CMA's functions if it were disclosed	Details of CMA investigation into Rangers FC
s42(1)	Information that the CMA has received professional legal advice on	COVID cancellations and travel insurance
s44(1)	Information that the CMA is legally prohibited from disclosing	Request for number of complaints about individual companies during COVID
s31(3)	Information about CMA investigations where the CMA does not want the outside world to know whether it is conducting a particular investigation or not	Information on financial rewards for cartel informants
S44(2)	Information that the CMA does not want the outside world to know whether it holds it or not	Complaints made against Costco

How to manage procedure to ensure FOI requests are responded to within the 20 day limit

When allocating a request to a section or asking them to supply information, set them a 15 day deadline to respond. Ask them to advise IAT as soon as possible if they anticipate they will have difficulties meeting this deadline

Appendix 3: CMA Cases information

FoI requests asking for information about CMA cases and investigations eg numbers of merger investigations, number of cases resulting in consumer undertakings, can generally be referred to [the CMA cases page](#) on gov.uk, with advice on how to search it

Appendix 4: PIT extensions to consult third parties

IAT or a case team may apply a Public Interest Test (PIT) extension to an FoI request to enable them to consult with a third party on whether they object to certain information being disclosed.

Examples

A Public Interest Test (PIT) extension was applied to an FoI request which included a request for the booking fees paid by the CMA for its staff to attend a course. This course was run by a private sector provider contracted by the Cabinet Office through Government Campus. The course fee was paid by the CMA to Government Campus, and it was therefore not necessarily the amount of money that the private sector provider would receive. It was therefore judged that disclosure of the amount would not infringe the commercial confidentiality of the private sector provider. However, there were concerns that disclosure might damage the bargaining power of the Cabinet Office team which awards these contracts. Evidence was found that the Cabinet Office has previously refused certain costs information relating to Civil Service Learning. It was therefore decided to apply a PIT extension to enable the CMA to consult with the Cabinet Office on the possible application of the s43 exemption.