



National Probation Service

GUIDANCE ON THE FREEDOM OF INFORMATION ACT 2000



Information Reader Box	
Title	Guidance on the Freedom of Information Act 2000 Edition 1 (October 2004)
Description	Advice to probation areas to enable them to deal correctly with information requests after the full implementation of the Freedom of Information Act.
Primary audience	Staff and managers involved in processing information requests that fall within the terms of the Act.
Action required	To note
Timescales	From 01/01/2005, when the Act will be in full force
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CHAPTER 1 – INTRODUCTION

1.1. Purpose

The purpose of this document is to provide NPS regions and Boards with the information required to become compliant with the Freedom of Information Act 2000. It contains information on the Act and guidance on how to handle requests for information (RFIs) under its provisions.

This guidance is not an exhaustive breakdown of the Act however and should be read in conjunction with it.

1.2. The Freedom of Information Act 2000

The Freedom of Information Act 2000 (FoIA) confers on any person a general right of access to information held by “public authorities”, including the Home Office, the Prison Service and Local Probation Boards. It comes fully into force on the 1st January 2005.

The purpose of the Act is to inform the public better of how decisions affecting them have been made. It is also intended to improve decision making in public authorities by opening the process up to public scrutiny.

It changes the default position of public authorities from one of “need to know” to “right to know.”

This right, and the obligations conferred on public authorities by the FoIA are covered in Chapter 2. The exemptions to the various rights and obligations created by the Act are covered in Chapter 3.

1.3. The Open Government Unit

The Open Government Unit (OGU) has responsibility for ensuring compliance with the Freedom of Information Act and the Data Protection Act (DPA) within the National Offender Management Service (NOMS).

The OGU provides guidance and advice on matters relating to the FoIA and DPA to units within NOMS. Within NOMS, except NPS, all complex or sensitive RFIs will be forwarded to the OGU who will deal with them. Local Probation Boards are in law individually responsible for compliance with the Act. They therefore may wish to handle all, or nearly all, requests under the Act themselves.

Alternatively, Local Probation Boards may choose to have all their RFIs, other than those constituting current day-to-day business, handled by the OGU at no charge. Should local Boards wish to make use of this service the OGU will:

- Handle all requests which require the terms of the Act to be applied, e.g. those to which an exemption may apply, are sensitive, large, costly, require information from multiple sources or are otherwise difficult;
- Provide monitoring of such requests, as required by NOMS senior managers and ministers;
- Handle any complaints by requesters arising from disclosures or refusals made by the OGU on behalf of Boards;

- Should a local Board be challenged under the Act as a result of a decision taken by the OGU, with the Information Commissioner or the courts, the OGU will defend the challenge and cover any associated costs.

In any case, the OGU will provide the following services to local Boards:

- Advice and assistance in relation to any information access issues, including seeking legal advice when necessary;
- Training to Freedom of Information practitioners;

Any Boards, which wish to use the OGU as an agent for handling requests, should contact the OGU by November 30th and must accept the following conditions:

- That they will accept the OGU's interpretation of the Act in respect of any requests for information handled by it;
- That they will handle themselves any requests which constitute normal business processes (see Chapter 6).

Boards making use of the service should consult Chapter 6 for details of which requests should be forwarded to the OGU and which should be handled locally – there is no intention by the OGU to interfere with the day-to-day processes and exchanges of information carried out by Boards.

The OGU will be inviting any Boards which do not choose to make use of this service to do so in a second phase in Q1 2005.

Please note that the OGU may need to contact *any* local Board for assistance in answering requests, e.g. should the OGU receive a cross-service request which covers information held by the Board in question.

The Open Government Unit can be contacted as follows:

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1.4. The Information Commissioner

Public authorities' compliance with the FoIA (and DPA) is regulated by the Information Commissioner's Office.

The roles of the Information Commissioner and other bodies associated with enforcement of the Act are covered in Chapter 4.

CHAPTER 2 - RIGHTS AND OBLIGATIONS

2.1. Which bodies are covered by the FoIA?

The FoIA applies to all “public authorities.” Public authorities (PAs) are designated in Schedule 1 of the Act. It covers, for example, any Government Department, the NHS, local councils and NPS Boards.

Other bodies which meet certain criteria, such as being wholly owned by the Crown, can be designated as PAs by the Department for Constitutional Affairs at a later date.

Additionally, private firms or other types of organisation (including voluntary) which carry out the function(s) of a PA by contract can be designated as PAs by the Department for Constitutional Affairs. An example of such a firm would be one running a contracted-out prison.

As of August 2004 no firms or organisations have been designated in this way.

2.2. Publication Schemes

Each PA must adopt a publication scheme, a list of types or classes of information which the PA does, or intends to, publish. It must specify any charges which will be made for the information and how it is made available.

Each PA’s publication scheme must be approved by the Information Commissioner. Probation Boards were required to have an approved publication scheme by February 2004. The NPD produced a model publication scheme for Boards, approved by the Commissioner, which most Boards adopted. Those which have produced their own schemes, or amended the model, are obliged under the Act to have their scheme approved individually by the Information Commissioner.

If a PA receives an RFI for information which is available on the publication scheme, it may simply refer the requester to the scheme. Therefore, information which is likely to be in frequent demand should be placed on the scheme in order to reduce the cost of complying with repeated requests for it.

Where possible, the contents of the publication scheme and the scheme itself should be made available on the Internet.

2.3. Who can make a request?

Any person may make an RFI under the Freedom of Information Act, regardless of whether they are in or from the UK or whether they are acting as an individual or as part of any organisation.

PAs may not determine what they do or do not disclose on the basis of the requester’s identity. Nor may PAs demand that a requester provide information on themselves as a condition of meeting an RFI. A person need only supply a name and a correspondence address (including e-mail) in order to make a request.

2.4. The Right of Access

The FoIA centres around two main duties conferred on PAs: the “duty to confirm or deny” and the “duty to communicate.” Both are described in section 1 of the Act.

The “duty to confirm or deny” requires that upon request by any person, PAs must either confirm or deny whether they hold any given piece of information

The “duty to communicate” requires that upon request by any person, PAs must provide any given piece of information held by them.

These duties are separated because in some cases a PA may legitimately comply with the first though not comply with the second in relation to the same information.

There are limited exemptions to these duties which are explained in chapter 3.

FOIA is purpose blind. A requester is not required to provide any reason or justification for requesting any given information. A PA must not refuse, or part-refuse, a request based on either the identity or intentions of the requester. Both, in law, are irrelevant.

Once a request has been received for a piece of information, and until the application has been dealt with, only amendments or deletions *which would have been made regardless of the receipt of the request* may be made to the information in question. Altering or deleting information with the deliberate intention of frustrating an RFI is a criminal offence. See Chapter 4.

2.5. Timescales

The FoIA requires that all PAs comply with the duties above as soon as possible, but in any case within a maximum of 20 working days from the day the PA receives the request. This is not necessarily the day the request is received by the person responsible for dealing with it.

This period, under certain circumstances, can be extended. For example:

- When the public authority requires a fee (see below) to process the request;
- When the public authority requires more information from the requester in order to process the request;
- When the “public interest test” is being considered (see Chapter 3, Exemptions)

See Chapter 6 on handling RFI for more information.

A working day is any day other than a Saturday, Sunday or bank holiday, including Christmas Day and Good Friday, in *any part* of the UK (under the Banking and Financial Dealings Act 1971)

2.6. What information is covered?

All recorded information held by a PA is covered by the FoIA. The definition is wide-ranging and covers everything from electronic information such as computer files or e-mails, to images, and including “manual” information such as paper files, documents, handwritten notes or even “Post-Its.” The Act is fully retrospective therefore all information, regardless of age (or format) is covered by the Act.

This does not mean however that all recorded information held by a PA is disclosable under the FoIA, as some information will be covered by the exemptions (Chapter 3). It does however mean that any RFI made for recorded information must be at least considered and reasons given for refusing, or part-refusing to comply with either the “duty to confirm or deny” or the “duty to communicate.”

2.7. What constitutes an RFI?

The definition of an RFI under the Freedom of Information Act is very inclusive. For an RFI to be covered by the provisions of the FoIA it must meet the following criteria. It must:

- Be in writing. This includes electronic transmission such as fax or e-mail in which case the request must be legible and usable for subsequent reference;
- State the name of the requester and a correspondence address (this can be an e-mail address);
- Describe the information requested.

An RFI does not have to mention the FoIA in order to be covered by its provisions. Therefore, any written RFI can be termed a “Freedom of Information Act request.”

If the requester does not provide a description of the information requested which can be used to process the request, the PA may contact the requester seeking such information. If this is the case then the request must be complied with within 20 working days of receipt of such information, rather than from when the request was originally received.

Other than a name and a correspondence address, a requester is not required to provide any information about himself to a PA. Nor is a requester required to provide any reason or justification for requesting any given piece of information – the FoIA is “purpose blind.”

2.8. Repeated and Vexatious Requests

PAs are not required to answer “repeated” RFIs. This means that PAs are not obliged to answer identical requests made by the same requester within an unreasonably short space of time.

The term “vexatious” has not been defined although the Information Commissioner intends to issue guidance on it. In general, a vexatious request is one which was designed solely for the purpose of hindering the work of the PA. The term does not cover requests which are simply difficult or time-consuming.

2.9. Fees and costs

Public authorities may in some cases charge a fee for complying with an RFI. Fees must be determined in accordance with regulations to be issued by the Department for Constitutional Affairs. As of August 2004, these regulations are yet to be made.

If a PA wishes to charge a fee for handling an RFI it must issue a fees notice to the requester within the 20 working days allowed for answering a request. The PA is not required to comply with the RFI until the fee has been paid.

The time between a requester being issued a fees notice and the fee being paid does not count towards the 20 working day limit for complying with a request.

The fees regulations will stipulate an “appropriate limit”. If a PA reasonably estimates that the cost of complying with an RFI would exceed this limit then is not bound to comply with it. This is however subject to the duty to assist requesters (see below).

Further guidance will be issued when the fees regulations are made.

2.10. The duty to assist requesters

Under section 16 of the FoIA and the section 45 Code of Practice (see below) PAs are required to assist requesters or potential requesters as far as is reasonable.

For example, assistance may be required in properly framing an RFI. Alternatively, a requester may need to be advised as to another PA better suited to dealing with their request.

If a requester does not provide a suitable description of the information required, they should be offered suggestions of which information might meet their needs.

If a requester makes an RFI, the cost of complying with which would exceed the appropriate limit, the PA should help the requester to refine their request to cover information whose disclosure would not exceed the limit.

The PA is not under any duty to manipulate information, e.g. compile statistics to meet a request.

2.11. The codes of practice

Sections 45 and 46 of the FoIA provide for the issuing of two codes of practice by the Department for Constitutional Affairs. The first, the section 45 code, gives guidance on how PAs should discharge their duties in relation to the publication scheme and the handling of requests.

The section 45 code gives guidance on how requesters should, when necessary, be helped to make their requests (see above).

The section 45 code also gives guidance on how PAs should deal with complaints against the handling of requests (see below).

The section 46 code provides guidance on records management for bodies covered by the FoIA.

Although neither of the codes are statutory in practice, the Information Commissioner will expect PAs to follow them. In some cases, when it is asserted that a PA has failed in its duties under the Act, it will be a defence to demonstrate that the section 45 code was followed in relation to the actions which prompted the complaint.

Both codes of practice are available from the DCA website or from the OGU.

2.12. Complaints

It is not required by the FoIA that PAs have a system in place for handling complaints regarding their application of the Act. However, it is recommended in the section 45 code of practice.

When a PA does have a system for handling complaints in place, a requester who is not satisfied with the result of their request must exhaust the PA's internal complaints procedure before he can seek redress from the Information Commissioner (see Chapter 4).

The section 45 code recommends that when a complaint is received by a PA it, when practicable, should be handled by a person other than the person who processed the original request.

Those handling complaints will require a detailed knowledge of the Act and it may therefore be necessary to create a complaints handling process outside of the normal complaints process used by Boards. It will often be necessary to seek advice from either the OGU or legal representation.

The OGU will handle complaints made under the Act on behalf of those Boards for whom it handles requests in respect of such requests. Boards will be expected to handle complaints arising from any RFIs handled locally.

CHAPTER 3 – EXEMPTIONS

3.1. What are the exemptions?

The exemptions provide for circumstances when a PA is not obliged to disclose information covered by an RFI and occasionally, not obliged to confirm or deny whether they hold a given piece of information either (see Chapter 2 “The Right of Access”).

There are 23 exemptions contained within the FoIA, found in sections 21-44.

Initially, the determination as to whether a piece of requested information is exempt is made by the PA handling the request. The applicant may challenge such decisions with the Information Commissioner however.

The FoIA does not oblige PAs to withhold exempt information, it merely allows it, although in many cases where information is exempt there will be business reasons for withholding it.

Further guidance on the application of exemptions will be issued by the Information Commissioner’s Office. Although aimed at Central Government, the forthcoming guidance from the Department for Constitutional Affairs may also be useful. Both will be available from their respective websites or the OGU.

3.2. Absolute and qualified exemptions

The exemptions in the FoIA are divided into two types, the absolute and the qualified.

When an absolute exemption applies to a requested piece of information, no further considerations have to be taken into account. Subject to the fact that such a decision can be challenged with the Information Commissioner, the information is exempt from disclosure.

Qualified exemptions however are subject to what is known as the “public interest test”, the mechanism for which is set out in section 2 of the Act.

To determine whether a qualified exemption allows the PA to withhold information covered by it, the PA must make the following determination: in all the circumstances of the case, is the public interest in withholding the information greater than the public interest in disclosing it? If the answer is no, then the information must be disclosed despite the fact that is covered by the exemption.

3.3. Class and effect exemptions

Some exemptions, particularly absolute exemptions, apply to a type or “class” of information. That is, they apply to all information sharing particular characteristics, e.g. section 32, which exempts court records from disclosure, or section 23 which exempts information relating to the security services.

The remaining exemptions, which are mainly qualified, apply to information not based on its content, provenance, etc. but rather on the likely effects of its disclosure, e.g. section 31(1)f, “information which if disclosed would, or would be likely to, prejudice the maintenance of security and good order in prisons.”

Such information would not necessarily be about security or good order in prisons, but rather if disclosed would put those considerations at risk.

Likewise, information would not be exempt under section 31 simply by virtue of being about security or good order in prisons.

When applying the prejudice test, account must be taken of the prejudice that would occur to the relevant consideration(s) at the time the request is made. While it may be legitimate to withhold a piece of information at a given point in time, it may not be so weeks or months in the future.

For example, information relating to a tender might be exempt under section 43 (see below) while bidding is underway but may not be exempt six months after the contract has been awarded. Any assessment of the information against the exemptions must take into account that the sensitivity and value of information often diminish over time.

3.4. The exemptions individually

Below is a brief outline of the exemptions. Please note that this listing is intended to provide an idea of what sort of information is exempt under the Act – it is not a definitive reference. If in doubt, refer to the Act or the more comprehensive guidance issued by the Information Commissioner. The OGU will provide advice on the application of exemptions.

Of those listed below, it is thought that the following will be of most relevance to NOMS units including Boards:

- Section 21 – Information already available;
- Section 22 – Information intended to be made available in the future;
- Section 31 – Law Enforcement;
- Section 38 – Health and Safety;
- Section 40 – Personal Data;
- Section 43 – Commercial Interests.

The absolute exemptions:

- Section 21: Information is exempt if it is already reasonably accessible to the requester by other means. For example, if it is contained on a PA's publication scheme. This exemption applies even if the other means involves payment of a fee;
- Section 23: Information supplied by, or relating to, any of the security services is exempt from disclosure;
- Section 32: Information held *only* by virtue of being contained in a document filed with or created by a court, post-mortem, inquest or statutory enquiry. This exemption applies equally to information contained in documents filed with an inquest or statutory inquiry for the purpose of those proceedings;
- Section 34: Information whose disclosure would constitute a breach of Parliamentary privilege;
- Section 36: Information which, if disclosed, would prejudice the effective conduct of public affairs. The detail of this exemption is beyond the scope of this document. *This exemption is absolute only when applied to information held by either House of Parliament;*

- Section 40:
 1. Information which constitutes personal data as defined in the Data Protection Act is exempt from disclosure under FOIA to the subject of that data.
 2. Personal data is exempt from disclosure to third parties if to do so would contravene any of the Data Protection Principles.
 3. This exemption allows information to be withheld in other circumstances as well, but in such cases is *not* absolute (please see the Act or DCA guidance for details).
 4. Personal data is/are defined in the Data Protection Act as “data which relate to a *living* individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller.” In the case of Probation Boards, the data controller is either the Board itself or Chief Officer. The term, in this context, also covers agents of the data controller (i.e. employees). Please see section 1 of the Data Protection Act for more details.
- Section 41: Information whose disclosure would constitute an actionable breach of confidence. *Although this is an absolute exemption it is subject to the public interest component of the common law on confidence;*
- Section 44: Information whose disclosure is prohibited by enactment, would be “incompatible with any community obligation” or would constitute a contempt of court.

The qualified exemptions:

- Section 22: Information which is intended for future publication. In the event of a request however, a PA would be expected to demonstrate why future publication would be more reasonable than releasing immediately;
- Section 24: Information which is held for the purpose of safeguarding national security;
- Section 26: Information which if disclosed would prejudice the effectiveness of the armed forces or the defence of the UK;
- Section 27: Information which if disclosed would prejudice the relationship between the UK and any other state;
- Section 28: Information which if disclosed would prejudice the relationship between any of the administrations within the UK (e.g. national Parliament, Scottish Parliament, Welsh Assembly);
- Section 29: Information which if disclosed would prejudice the economic interests of the UK;
- Section 30: Information which *at any time has been held* by the PA in question for the purpose of investigating criminal matters or, information which *was recorded* by the PA in question for the purpose of investigating various matters such as improper conduct and health and safety.
- Section 31: Information which if disclosed would prejudice various considerations relating to law and order. For example:
 - The prevention and detection of crime,
 - The apprehension or prosecution of offenders,
 - The administration of justice, or
 - The maintenance of security and good order in prisons or other institutions where persons are lawfully detained;
- Section 33: Information which if disclosed would prejudice the ability of PAs with audit functions from carrying out those functions;

- Section 35: Information which relates to the formulation of Government policy. For example, Ministerial communications and information relating to Ministers' private offices. *Note, this exemption provides a specific duty to consider the particular public interest in disclosing factual information which has, or may be, used to provide an informed background to decision-taking;*
- Section 37: Information which constitutes a communication between a member of the Royal Family or Household and any other person. Additionally, information relating to the "conferring by the crown of any honour or dignity" is exempt under this section;
- Section 38: Information whose disclosure would *endanger* the physical/mental health or safety of any person;
- Section 39: Information which is disclosable under the Environmental Information Regulations (EIR). The EIR is beyond the scope of this document.
- Section 42: Information which, if part of legal proceedings, would be protected by legal privilege.
- Section 43: Information which either constitutes a trade secret or which if disclosed would harm the commercial interests of any person (including the PA). *Please note that a real and significant "harm" has to be demonstrated in order to claim this exemption. The fact that a document is marked "Commercial in Confidence" is not sufficient.*

3.5. Protective and other markings

The FoIA is "blind" to protective markings, e.g. "restricted" or "confidential." Protectively marked material covered by an RFI may only be withheld if it is exempt under the provisions of the FoIA. A protective marking itself does not denote exemption of any sort.

Likewise, the FoIA is blind to markings such as "Commercial in Confidence" or "Not to be disclosed without permission of author."

The reasons for which documents were given such markings in the first place ought to be taken into account when considering which if any material may be exempt.

CHAPTER 4 – ENFORCEMENT

4.1. The role of the Information Commissioner

The Information Commissioner's duties in respect of the Freedom of Information Act are to:

- Promote good practice and offer advice to public authorities;
- Publicise people's rights under the Act;
- To arbitrate on disputes between requesters and PAs. In some cases this will involve the Commissioner directing a public authority to a certain course of action in respect of an RFI;
- To, if necessary, enforce compliance with the Act by PAs.

The Information Commissioner has a number of powers available to him in order to carry out these functions:

- He can issue "practice recommendations" to PAs. A practice recommendation is a list of the steps which, in the opinion of the Commissioner, a PA ought to take in order to become compliant with either of the codes of practice issued under section 45 or section 46;
- Upon receipt of a complaint by a requester regarding a PA's handling of an RFI, the Commissioner may issue an information notice to the PA demanding information relating to the handling of the complaint;
- When the Commissioner comes to a decision regarding a complaint against a PA, he can issue a decision notice. Such a notice states whether or not, in the opinion of the Commissioner, the PA has complied with the law. If the decision goes against the PA, the decision notice can stipulate steps the PA must take to become compliant in respect of the complaint.
- The Commissioner can issue an enforcement notice, with or without a complaint against the public authority. An enforcement notice states that, in the opinion of the Commissioner, the PA is not compliant with the FoIA. It stipulates steps which must be taken in order to become compliant. *There is no cost limit for complying with an enforcement notice, it could for example stipulate a large expenditure on staff or IT. Every effort must therefore be made to ensure that compliance failures are dealt with swiftly and an enforcement notice is not received.*
- With a warrant, the Information Commissioner may enter and search the premises of a PA and may seize any materials he wishes.

Failure to comply with a decision, information or enforcement notice can be referred to the High Court. Subject to hearing the arguments from either side, such a failure may be treated as a contempt of court.

4.2. The Information Tribunal

The Information Tribunal exists as a final stage of appeal for decisions made by the Commissioner.

If, in the event of the Commissioner issuing a decision notice, either the PA or the requester are not satisfied with the outcome they can refer the decision to the Information Tribunal.

The Tribunal may overturn the decision made by the Commissioner if either it believes it to be unlawful or believes that the Commissioner ought to have reached a different conclusion.

Public authorities may also refer information or enforcement notices to the Tribunal who have the option to overturn them

The decision of the Tribunal may be referred to the courts if it is believed that it is wrong in a point of law. In any other circumstances, the decision of the Tribunal stands.

4.3. The “Shredding” Offence

Section 77 provides for the “shredding offence.” While responsibility for compliance with the FoIA rests with the PA in most cases, individuals (as well as the PA) may be prosecuted by the Commissioner for deliberately frustrating an FoIA request. E.g. by deliberately changing or destroying information to prevent disclosure of it once a request for it has been received. It is important to note that individuals, rather than PAs, can be prosecuted under this section.

Once an RFI is received by a PA, and until the RFI has been resolved, the information to which it relates may only be amended or deleted if such changes were already in hand prior to receipt of the application, and would have been made regardless of the receipt of the RFI.

CHAPTER 5 – RECOMMENDED PREPARATIONS FOR IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

The OGU recommends that Local Probation Boards take the following actions in order to prepare for operation of the FoIA from January 2005:

- Boards must decide whether they wish to engage OGU to handle complex and sensitive RFIs on their behalf. Please see Chapter 1 and Chapter 6 for more details.
- To appoint a person or persons at the Board HQ with responsibility for compliance with the FoIA. The OGU will be offering training for this role in the Autumn.
- To set up a physical system for referring requests to HQ and for collating information from the various sites in the Board. This will typically involve the nomination of a representative at each premises where information is held. Should the OGU require information from a particular Board, it will request it via the HQ lead who will in turn contact the relevant local representatives.
- To devise a system, manual or electronic, for tracking FoIA requests. In the event of a complaint, either to the Board or the Commissioner, it will be important to hold a log which demonstrates what action was taken in respect of the RFI in question. The system will also have to be interrogated to produce statistics on how each Board is performing against its duties under the Act.
- Begin an awareness campaign, directed at staff, informing them of the basic provisions of the FoIA. In particular, this should focus on the right of access and the need to comply with requests promptly. The OGU will be running training for relevant staff in October and November. It will also be running two awareness raisings events, open to all Prison and Probation staff, to introduce the basics of the Act to those who are interested. Details will be provided nearer the time.
- Establish a procedure to handle complaints made against the Board's handling of a request for information. The OGU will perform this function for those Boards for whom it handles requests, in respect of those requests (i.e. not for requests handled locally).

CHAPTER 6 – HANDLING REQUESTS: FOR PROBATION BOARDS USING THE OGU AS AN AGENT

6.1. Initial action upon receipt of a request

When an RFI is received it should be processed immediately. Firstly, it should be determined whether or not it is a FoIA request.

If it is, and the Board in question has its requests handled by the OGU, it should check the RFI against the criteria below and decide whether to forward it. If a Board decides to handle the request locally it must not:

- Charge a fee;
- Apply any exemptions/refuse or part-refuse the request.

6.2. Referring RFIs to the OGU

Any Local Probation Board which chooses to have most of its RFIs handled by the OGU should forward an RFI to the OGU in the following circumstances:

- If the RFI is complex;
- If it is likely attract a fee;
- If the amount of information requested is likely to voluminous;
- If the information requested is sensitive or an exemption may apply to it;
- The RFI, or part of it, refers to information not held by the Board in question.

Such Boards should handle any RFIs locally which:

- Are small enough not to attract a fee;
- Would be quick to deal with;
- Are entirely for information held locally which is readily available;
- Constitutes “day-to-day” business and would have been dealt with regardless of the FoIA.

All Boards should note the final section of Chapter 7, regardless of whether they use the OGU as an agent for handling requests.

6.3. Monitoring of Requests

There is no requirement for Boards to monitor/track requests which fall under the second paragraph of the above section (i.e. those which they handle themselves). Such requests are considered to be part of normal business processes. This is not to say that Boards should not track such correspondence for their own management information if they so wish.

The OGU will conduct all monitoring and tracking of those requests it handles to meet the requirements set down by NOMS senior management and ministers. Local Boards who use the OGU to handle requests will therefore not be required to perform any monitoring as a result of the FoIA.

CHAPTER 7 – HANDLING REQUESTS: FOR PROBATION BOARDS NOT USING THE OGU AS AN AGENT

7.1. General Points

If most requests are handled at Board level, the flowcharts should be followed to comply with the request (see below).

If appropriate, the RFI should be allocated to a member of staff who will process the request ensuring that all necessary steps are completed.

The request should be logged in a system (manual or electronic) as described in Chapter 5.

Once the request is logged, it must be determined whether or not the requester has supplied sufficient information for the request to be processed. If this is not the case, the requester should be contacted to gain this information. The section 45 code states that this should, ideally, be done by e-mail or fax. The 20 day limit begins once this information is provided by the requester.

If the requester does not respond within three months of being contacted the request can be terminated.

Once sufficient information has been made available to take the request forward, the publication scheme should be checked for the requested information. If it is on the publication scheme the requester should be sent a reply directing them to the scheme. The request can then be terminated.

7.2. Determining a fee

If the requested information is not already available on the publication scheme, it must be determined whether to charge a fee at all. It would be appropriate to waive the fee (subject to forthcoming regulations) if the RFI covers a very small amount of information which will require little effort to find or if the RFI constitutes day-to-day business.

If it is determined that a fee ought to be charged, this should be calculated in line with the fees regulations. The cost of complying with the request should also be estimated at this point. If it appears that it is likely to be over the appropriate limit, the requester should be contacted with suggestions for how they might refine their request.

If the requester does not refine the request, the Local Probation Board dealing with it is not obliged to comply with it. However, it may do so at its discretion and may charge the higher rate prescribed under the regulations.

If the estimated cost does not exceed the appropriate limit, a fees notice should be issued to the requester. If no response is received within three months the request may be terminated.

If a fee is provided by the requester, the 20 working days for dealing with the request does not include the time between the requester being issued with the fees notice and providing the fee.

7.3. Collating the information

The member of staff handling the request should contact representatives nominated in any sites likely to hold information covered by the request (see Chapter 5). The information required should be specified and a deadline set. Any relevant information should then be copied and sent to the request's "owner."

7.4. Application of exemptions

Once all relevant information has been collated, it should be determined whether or not there are business reasons for withholding any of the information. If there are no sound business reasons for withholding information then, regardless of whether it is covered by an exemption, it should be released.

If there are reasons for not disclosing some of the information covered by the request, it should then be determined whether or not an appropriate exemption applies to it. If an exemption does apply, the material can be redacted (removed/hidden from the disclosure).

If it is deemed that an absolute exemption applies to any of the information, it should be highlighted in either YELLOW or ORANGE (as this does not show on a photocopy).

If it is deemed that a qualified exemption applies, the prejudice test should be performed if necessary. The public interest test should then be applied. Any information which remains exempt as a result should be highlighted in YELLOW or ORANGE.

If the information is stored electronically, the exempt material can simply be erased. The full, unamended copy should remain in tact however.

If consideration of the public interest test cause the deadline to expire, the requester should be written to and informed of a date by when it is expected a decision will be made. Such a reply should state the exemptions which are being considered.

Note that only consideration of the public interest test may delay a full response in this way. Considering the prejudice/harm test or an absolute exemption does not permit final response to be delayed in this way.

If consideration of the public interest test causes the 20 working days to nearly expire, a fee should be determined immediately to ensure that if necessary, a fees notice can be issued before the deadline expires.

In some cases when an exemption applies to requested information the Board will also be exempt from the duty to confirm or deny whether or not it holds the information. When such information is redacted, the Board may conceal the fact that the redaction has taken place. This might be done by summarising the information rather than simply removing the material as described above.

7.5. Despatch

Once any exempt material has been highlighted, it should be covered with white tape. Information which is exempt from the duty to confirm or deny should be redacted – and the redaction concealed.

The OGU can recommend suppliers of appropriate tape and other equipment.

Once the disclosure has been taped it should be copied again. The new copy should then be sent to the requester with a reply and a schema of any exemptions relied upon.

The taped copy should then be filed for future reference and the case terminated.

7.6. The flowcharts

The flowcharts in Annex A show the processes which will usually have to be carried out in order to comply with the FoIA in respect of an RFI.

They have been designed with flexibility in mind, to cover most eventualities and actions which may occur in relation to a request. They have also been designed to accommodate any possible fees regulations. When such regulations are issued, and once Local Probation Boards have made decisions on how they intend to handle requests, they may wish to adapt the flowcharts to suit their needs.

The OGU can offer assistance in developing the workflow in annex A to suit individual Boards.

7.7. Requests which should be forwarded to the OGU

Local Probation Boards which do not choose to have most of their RFIs dealt with by the OGU should still forward to the OGU any RFIs which:

- Seek information not held locally (even if *some* of the information requested is held locally);
- The RFI is particularly complex or sensitive, e.g. might have national or NOMS-wide implications.

Please note that the OGU may need to contact *any* local Board for assistance in answering requests, e.g. should the OGU receive a cross-service request which covers information held by the Board in question.

7.8. Monitoring of Requests

Boards will need to monitor their handling of RFIs for the following reasons:

- For their own management information;
- To allow NOMS senior management and ministers to assess the impact of the Act on the NPS;
- In order to ensure that challenges from requesters, the courts and the Information Commissioner can be effectively defended.

There is no requirement to monitor or track those RFIs constitute normal business processes or the day-to-day exchange of information with offenders, the public or other agencies/organisations.

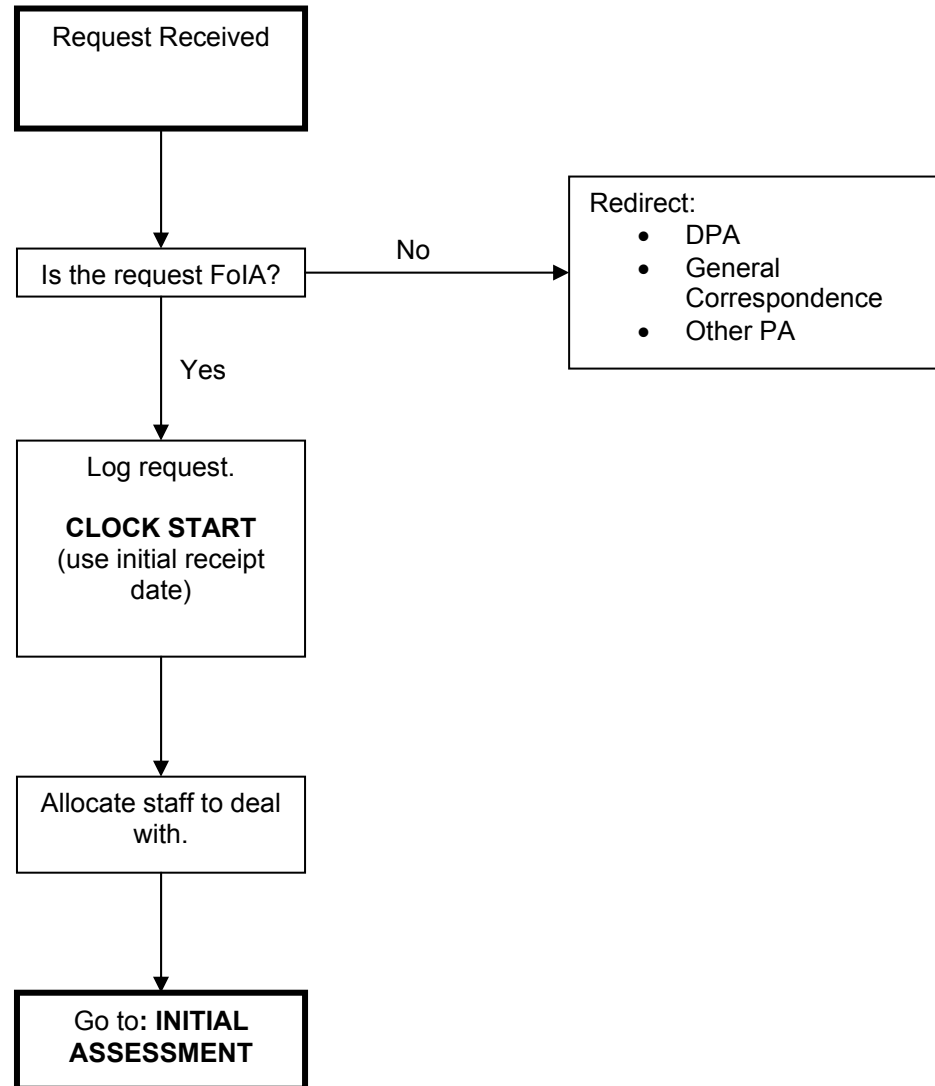
The following information should be recorded in respect of RFIs which do not fall under the above description:

- The number of requests received;
- The amount of staff time taken to answer each request;
- The total number of days required to answer the request, in particular whether it was greater or fewer than 20 working days;

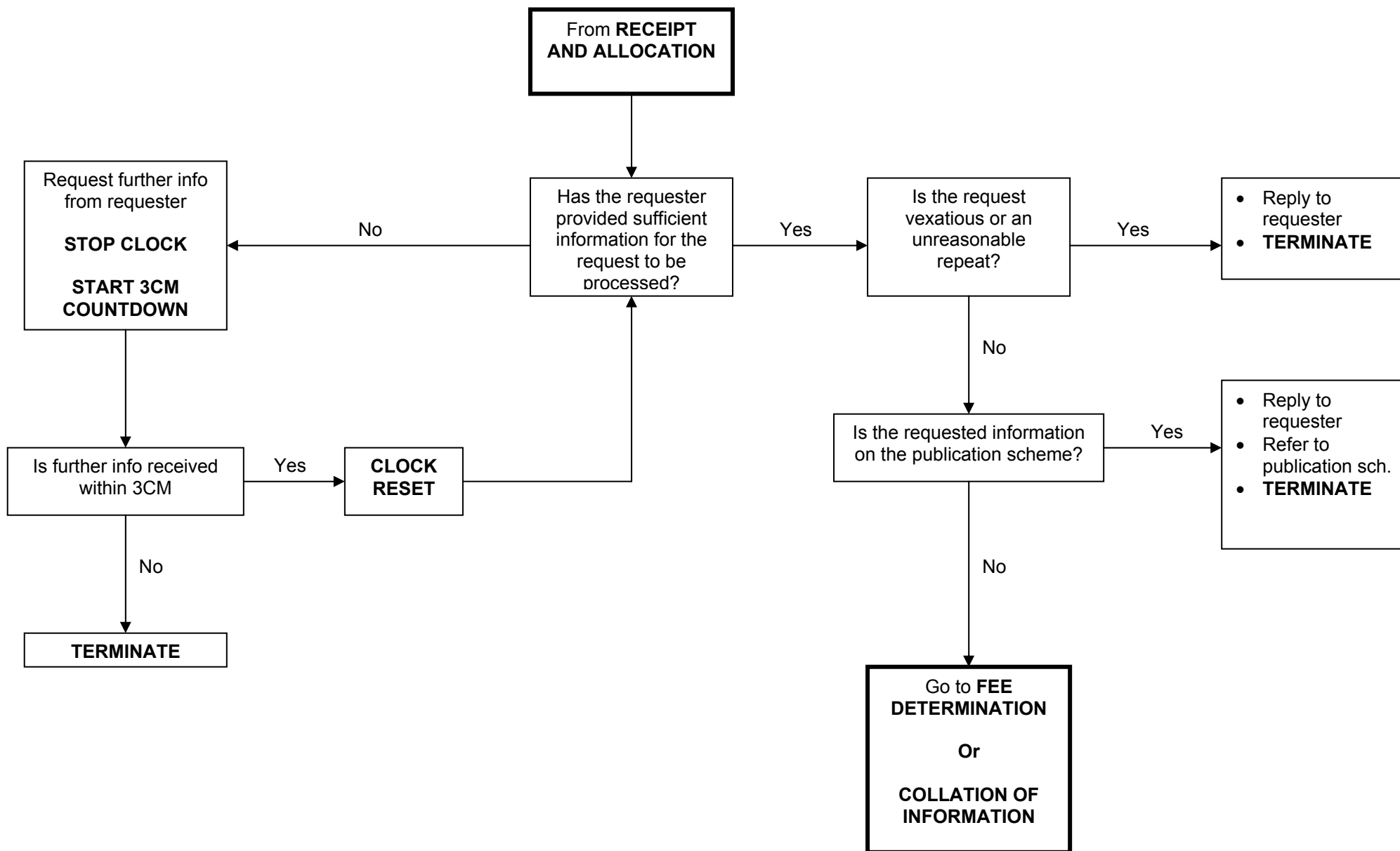
- Each time a request is refused, or part refused, and the exemption(s) used;
- The total cost of handling RFIs over a given period, e.g. each quarter.

Additionally, for each RFI and any complaints arising from an RFI, a clear audit trail should be recorded. It must give details of what action was taken by whom in respect of each request. This will be essential should it become necessary to defend a challenge.

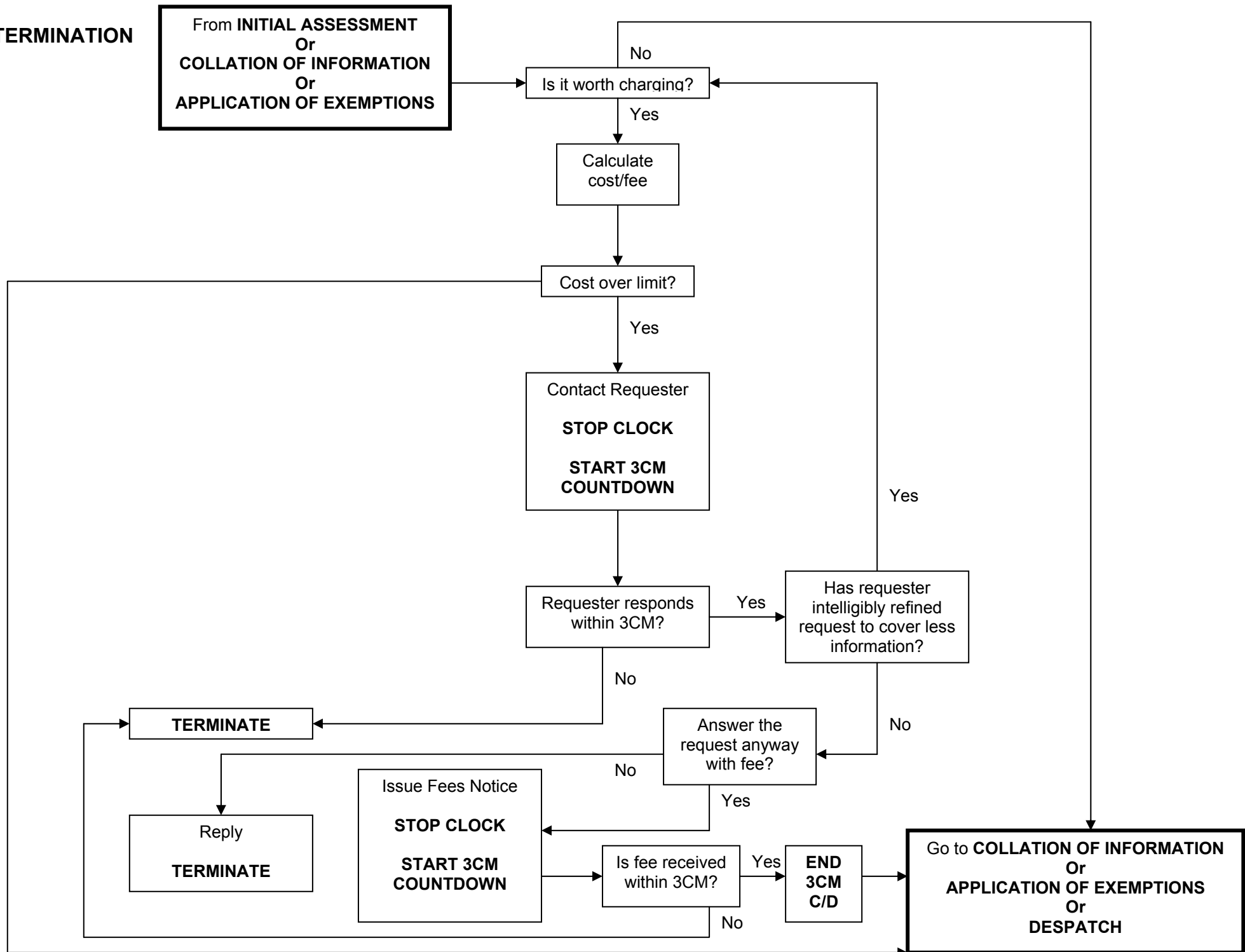
1. RECEIPT AND ALLOCATION



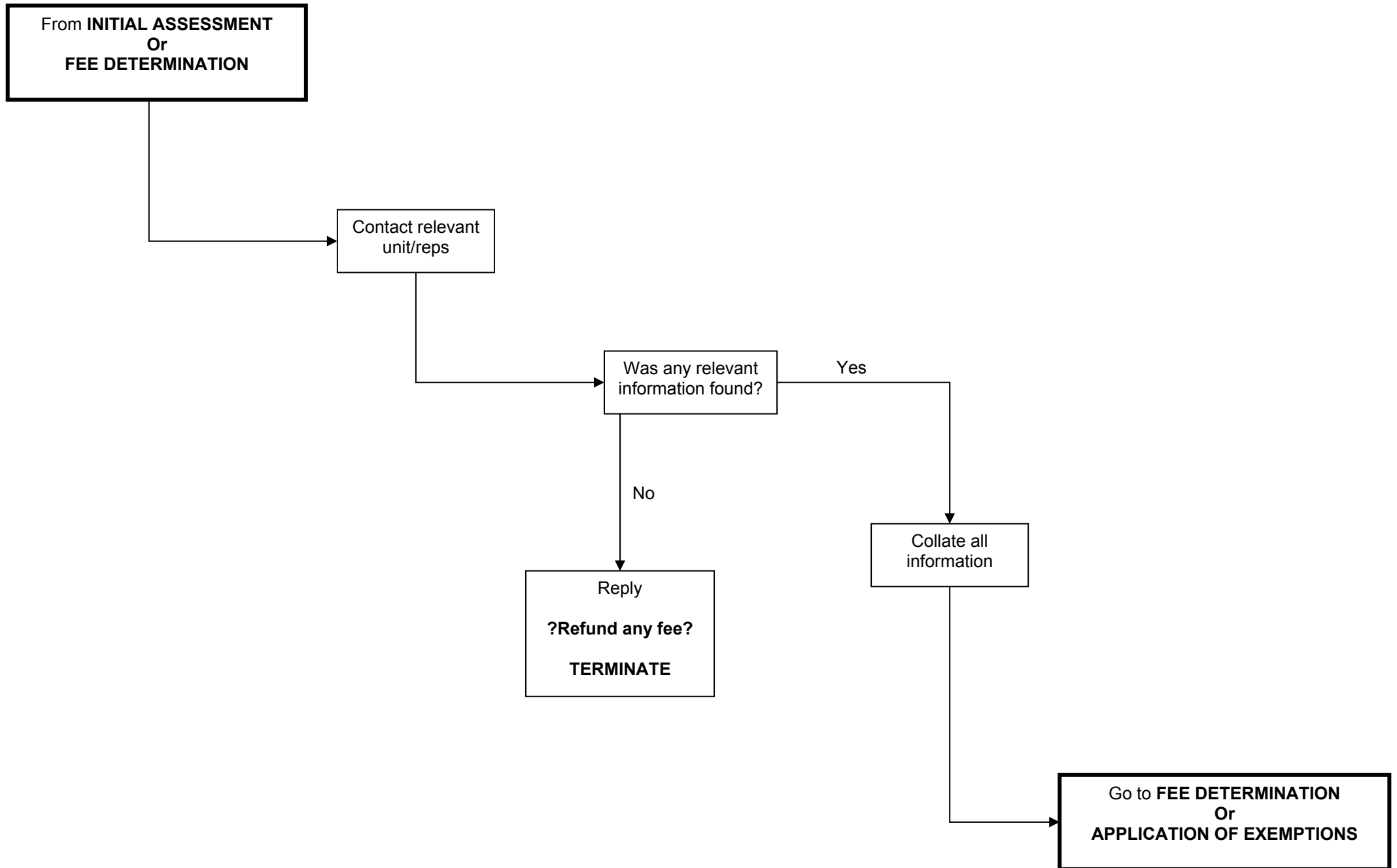
2. INITIAL ASSESSMENT



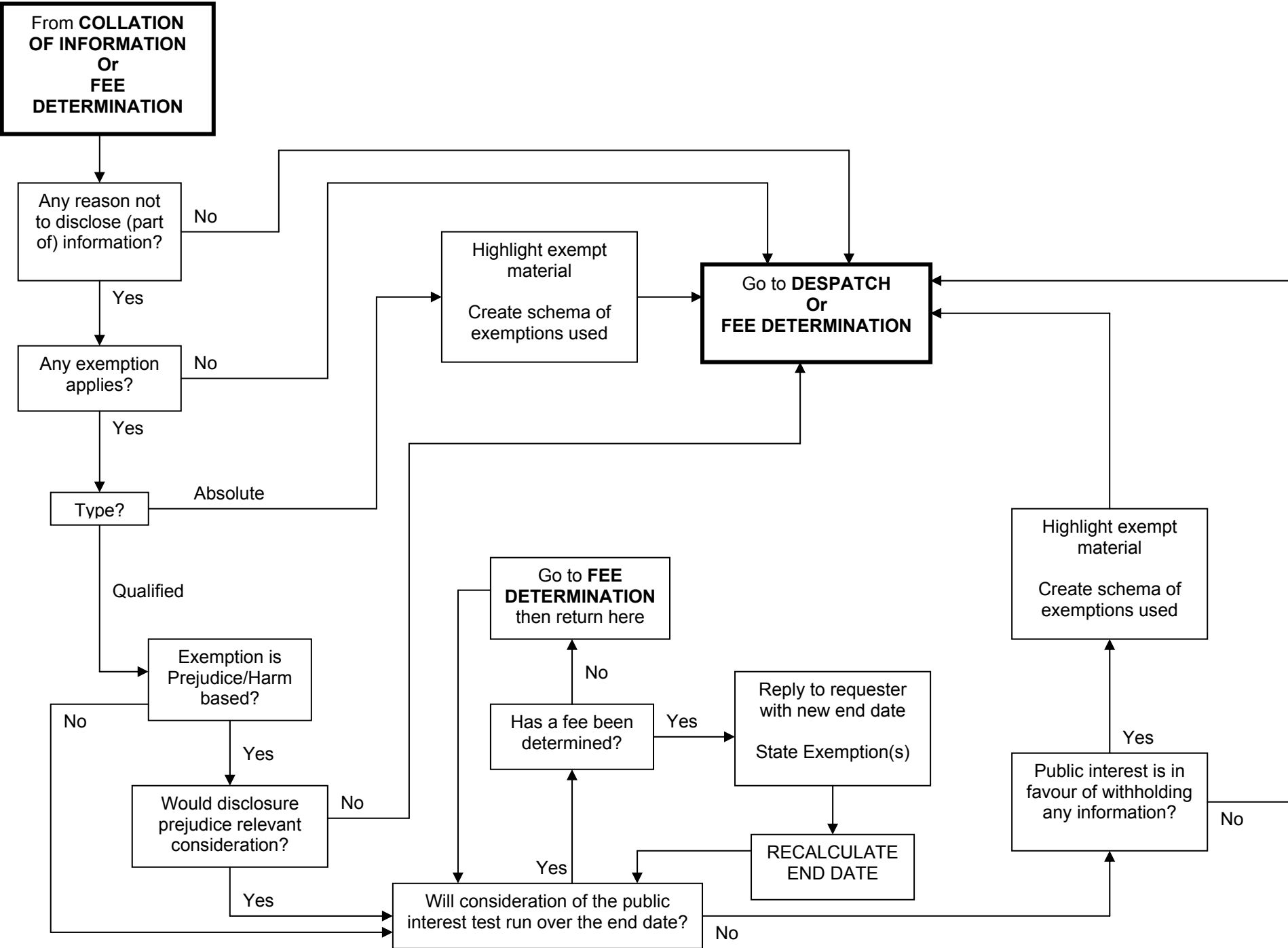
3. FEE DETERMINATION



4. COLLATION OF INFORMATION



5. APPLICATION OF EXEMPTIONS



From **COLLATION OF INFORMATION**
Or
FEE DETERMINATION

Any reason not to disclose (part of) information?

No

Yes

Any exemption applies?

No

Yes

Type?

Absolute

Qualified

Exemption is Prejudice/Harm based?

No

Yes

Would disclosure prejudice relevant consideration?

No

Yes

Will consideration of the public interest test run over the end date?

No

Go to **FEE DETERMINATION** then return here

No

Has a fee been determined?

Yes

Reply to requester with new end date
State Exemption(s)

RECALCULATE END DATE

Yes

Highlight exempt material
Create schema of exemptions used

Yes

Public interest is in favour of withholding any information?

No

Go to **DESPATCH** Or
FEE DETERMINATION

Highlight exempt material
Create schema of exemptions used

6. DESPATCH

