

## **Freedom of Information Procedure and Data Protection Procedures**

### **Background**

At its meeting in August 2013, the Parish Council agreed two policies for Freedom of Information and Data Protection. These are reproduced as Appendix A

In April 2016, nine questions from a resident to the Parish Council were deemed by the Clerk to be a request under the Freedom of Information Act 2000. These were dealt with by email correspondence between the Clerk and the Chairman, as the date of the next Parish Council meeting was beyond the statutory deadline for reply.

Two of the outcomes of the email correspondence were:-

1. The Clerk was named as the lead officer for BOTH FOI and DP issues. However, if there was a conflict in these two roles, the Clerk would refer the matter to the Chairman for a decision as to how to proceed.
2. The Clerk would produce procedures for both these policies.

### **Purpose of report**

To provide the Parish Council with draft procedures and guidance on Freedom of Information and Data protection, that are to be followed as and when required.

### **Freedom of Information Procedure**

It is proposed that Hannington Parish Council adopts the procedures and guidance issued by the Information Commissioner's Office's. The full procedures and guidance can be accessed by

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

For ease of reference a copy of the step-by-step flowchart issued by the ICO is attached at Appendix B together with a summary of the further pages of guidance.

### **Recommendation:**

**Hannington Parish Council adopts the ICO's procedures and guidance that apply at the time of the FOI request.**

### **Data Protection Procedure**

Guidance on data protection procedures is less well scripted by the ICO. However, the Clerk/Data Protection Officer for the Council has identified the following guidance which provides a sound base from which any data protection issues can be addressed. This should be taken in conjunction with the previously agreed policy on Data Protection attached as Appendix A.

### Sharing Personal Data:

Personal data should only be shared internally and disclosed to external third parties (other than the individual who is the subject of the data) where the sharing is compatible with the Data Protection Act, the Data Protection Principles and the Parish Council's Data Protection Policy.

In considering whether to share personal data (either systematically or in response to a one-off request) the DPO must consider whether he has a legal basis for sharing; a power or statutory function which allows the sharing or whether the sharing is justified (in cases where he does not have a legal basis or power to share).

It is essential the DPO checks why the data is required and to whom the person intends to disclose it. When information is being shared the DPO must ensure that the recipient is properly identified and authorised to receive the data.

Individuals should generally be allowed to decide whether or not their personal data is disclosed to another party. There are, however, a number of exemptions set out in the Data Protection Act which permit the disclosure of personal data in the absence of consent.

When deciding whether to share personal data the first thing the DPO should consider is the issue of consent and whether it is appropriate to seek the consent of the individual(s) in question to the disclosure / sharing of their personal data.

Consent is likely to be needed in the following circumstances:

1. Where the information is of a confidential or sensitive nature;
2. If the individual is likely to object to the data being shared without his / her consent or;
3. If the sharing is likely to have a significant impact (for example, if disclosure could cause harm / detriment) on an individual(s).

In such cases the DPO should seek the consent of the individual prior to sharing their information.

There will however be cases where it will not be possible / viable to obtain the consent of the data subject. In such cases the DPO should consider whether the sharing is **necessary** in accordance with the **legitimate interests** of the Parish Council or the legitimate interests of the third party to whom the information is to be disclosed. The DPO should also consider whether the sharing is **fair** to the data subject.

In deciding if data sharing is necessary to meet the legitimate interests of the Parish Council or a third party the DPO must determine whether there is a clear objective for sharing the information. The DPO should consider whether this objective can be

achieved without sharing personal data. The legitimate interest condition cannot be fulfilled if the sharing is unwarranted because it prejudices the rights and freedoms of the individual whose data is being shared.

**Recommendation:**

**Hannington Parish Council adopts the guidance as stated within paragraph headed 'Sharing Personal Data'.**

Chris Pottinger,

Clerk, Hannington Parish Council

APPENDIX A

Freedom of Information and Data Protection Policies (approved by HPC 13<sup>th</sup> August 2013).

### **Introduction**

The Data Protection Act 1998 regulates the processing of information relating to individuals. This includes the obtaining, holding, using or disclosing of such information, and covers computerised records as well as manual filing systems and card indexes. The Parish Council will hold the minimum personal information necessary to enable it to perform its functions. All such information is confidential and needs to be treated with care, to comply with the law.

The Freedom of Information Act 2000 gives people the right to request, in writing, information from public authorities. It is intended to promote a culture of openness and accountability amongst public sector bodies, and therefore facilitate better public understanding of how public authorities carry out their duties, why they make the decisions they do, and how they spend public money.

### **Summary of Data Protection Principles**

The Parish Council holds and processes information about its staff (past and present), Councillors, and, where appropriate, members of the public. The Data Protection Act 1998 covers both computerised and manual records which contain personal data, and sets out a number of rights and principles which those who use personal information must follow.

Data users must comply with the Data Protection principles of good practice which underpin the DP Act. These state that personal data shall:

- Be obtained and processed fairly and lawfully (that the subject of the data has consented to its collection and use),
- Be held only for specified purposes,
- Be adequate, relevant but not excessive,
- Be accurate and kept up to date,
- Be held for no longer than necessary,
- Be accessible to data subjects,
- Be subject to the appropriate security measures,

### **Summary of Freedom of Information Principles**

The Freedom of Information Act 2000 applies to all data and records of the Parish Council, both computerised and paper. A positive response to a written request must be provided within 20 working days in accordance with the Act. There are circumstances where absolute exemptions apply, such as personal information, and qualifying exemptions that could have wider implications.

### **The Council's responsibilities under both Acts**

The Parish Council and all staff who process, have access to or use personal data must ensure that they familiarise themselves with this policy and abide by the principles set out above at all times. This policy has been developed to ensure this

happens. It is a criminal offence if you knowingly or recklessly operate outside the scope of this policy.

**All staff and Councillors are responsible for ensuring that:-**

- They comply with this policy and internal procedures for handling access requests.
- Any personal data held, electronic or paper format, is kept securely. \*
- All files should be routinely backed-up, and access to Council files should be password accessonly.
- Personal information is not disclosed deliberately or accidentally either orally or in writing to any unauthorised third party.
- They promptly forward all initial requests for personal data to the Clerk who shall, when asked to do so, provide responses promptly to requests and reviews.

**Right to Access Personal Data**

Councillors and staff ( past and present), members of the public and individuals who have dealings with the Parish Council have a right to access personal data that is being held about them in so far as it falls within the scope of the FOI Act and to request the correction of such data where it is incorrect.

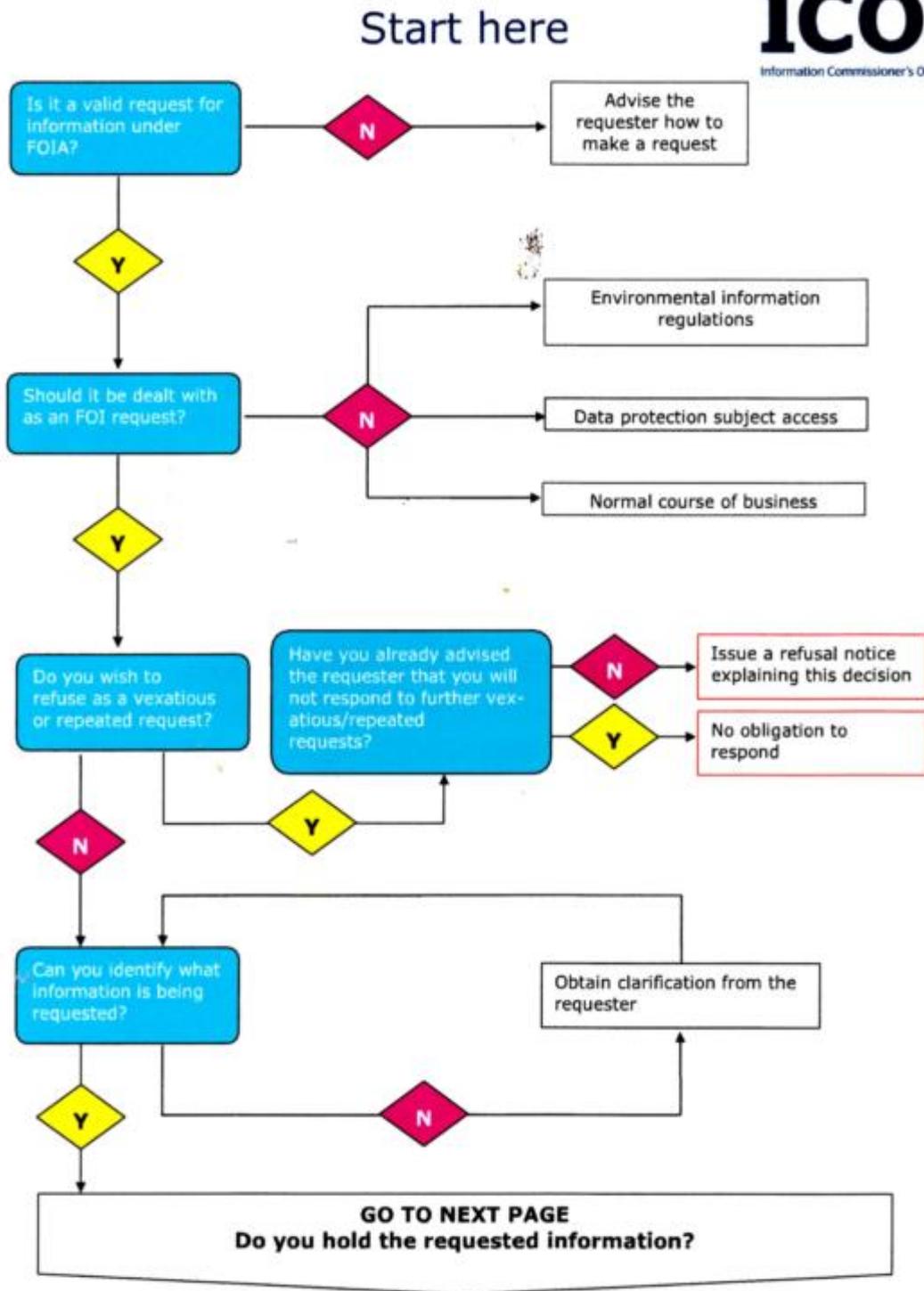
The FOI Act gives rights to individuals in respect of personal data held about them by others. The rights are:-

- a) Right to subject access;
- b) Right to prevent processing likely to cause damage or distress;
- c) Right to prevent processing for the purpose of direct marketing;
- d) Right in relation to automated decision making;
- e) Right to take action for compensation if the individual suffers damage or distress in contravention of the Act by the Council;
- f) Right to take action to rectify, block, erase or destroy inaccurate data.

**How to make a Data Access Request or a Freedom of Information Request**

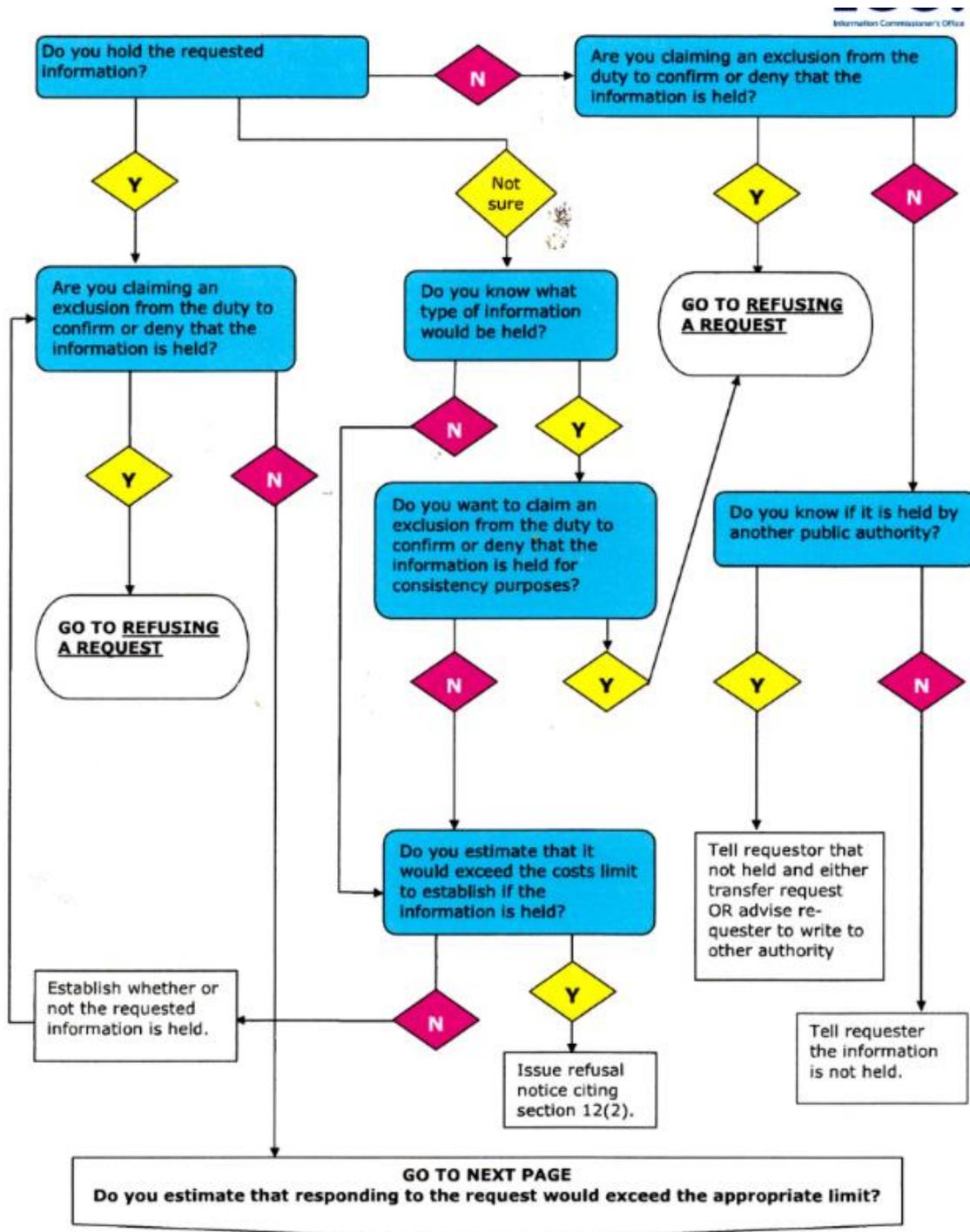
All requests for access to data held by the Parish Council should be formally requested in writing to the Clerk to the Council. A written response to either request will be provided within 20 working days. In relation to Freedom of Information requests, reference to the full guidance in the Act will be sought where it may be necessary to apply an exemption.

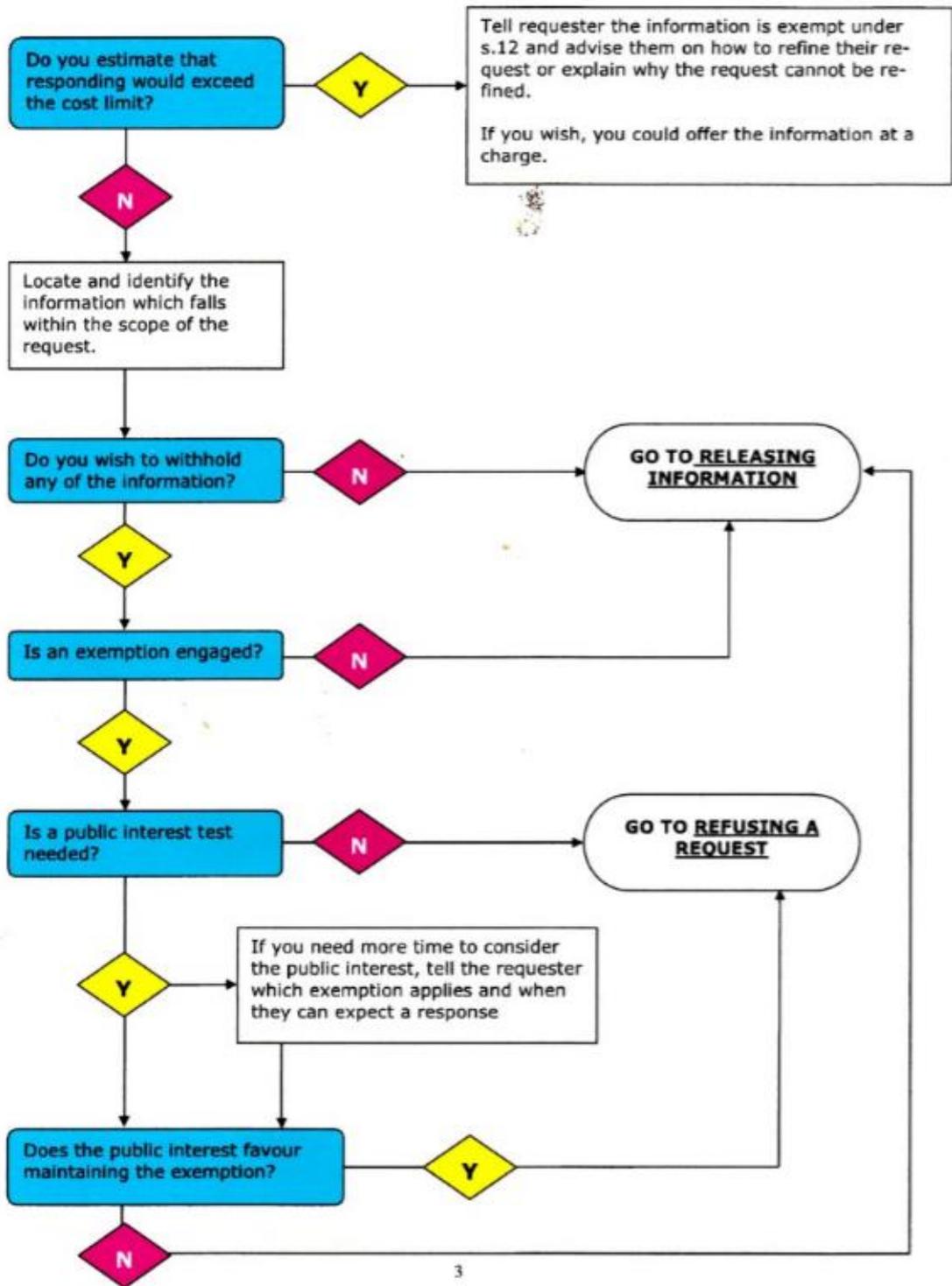
APPENDIX B



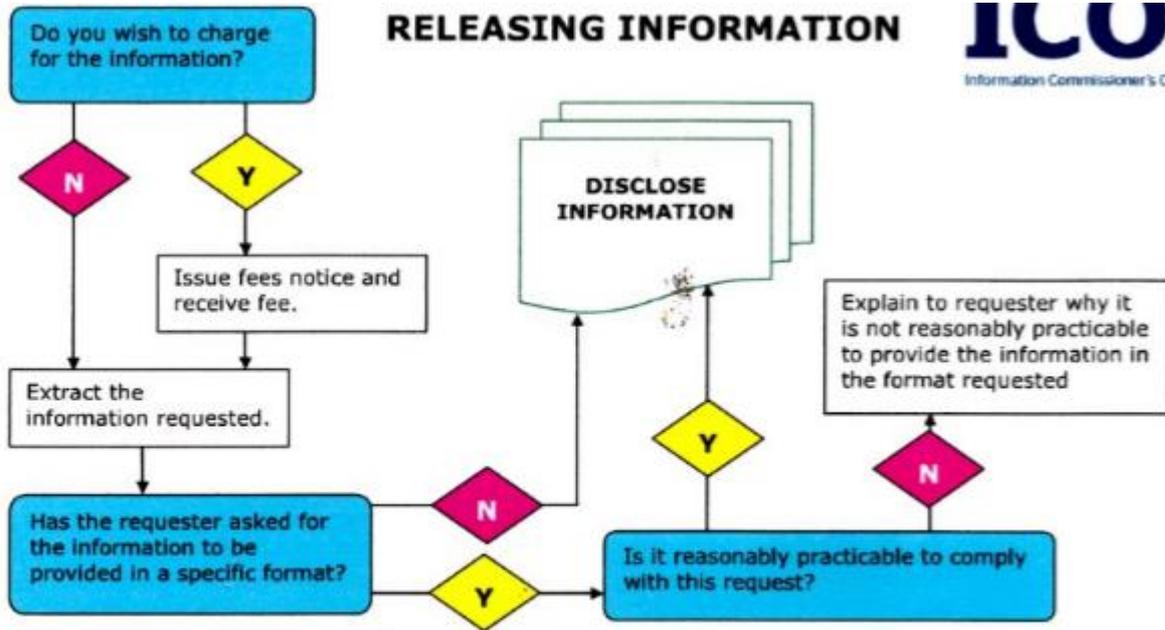
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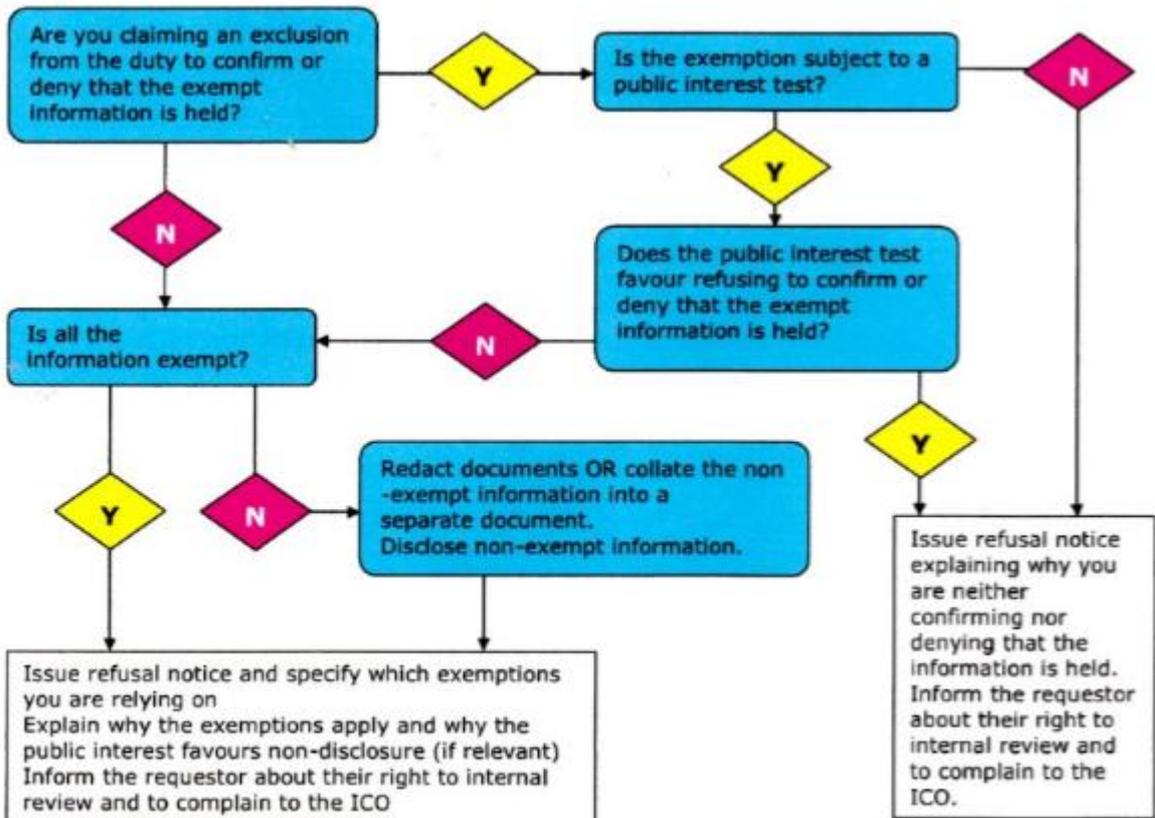




## RELEASING INFORMATION



## REFUSING A REQUEST



Further links to questions processes and procedures extracted from the ICO's webpage are reproduced below:

### In more detail

- [What makes a request valid?](#)
- [Can a question be a valid request?](#)
- [Should Parliamentary Questions be treated as FOI requests?](#)
- [When should we deal with a request as an FOI request?](#)
- [What are the timescales for responding?](#)
- [What should we do when we receive a request?](#)
- [What if we are unsure what's being asked for?](#)
- [What happens if we don't have the information?](#)
- [Can we have extra time?](#)
- [Do we have to tell them what information we have?](#)
- [Do we have to release the information?](#)
- [What if the information is inaccurate?](#)
- [Can we change or delete requested information?](#)
- [In what format should we give the requester the information?](#)
- [Can we charge for the information?](#)
- [Does the Act allow us to disclose information to a specific person or group alone?](#)
- [Is there anything else we should consider?](#)