

FOI Circular #5

Clarifying Freedom of Information Requests

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Clarify



When to Clarify Requests

Section 7 of the Freedom of Information Law 2007 details how people can exercise their right to gain access to government records under the FOI Law. An application needs to be made in writing, must give a name and contact details for the applicant, and should describe the information being sought with enough detail to ensure that the Information Manager can identify the appropriate records. The applicant should state the subject matter of the information requested, any relevant dates or locations, and potentially the name of the record or other specific identifiers if they are known.

Further, section 11(1) of the FOI Law states:

“Where the information provided by the applicant in relation to the record is not reasonably necessary to enable the public authority to identify it, the authority shall afford the applicant a reasonable opportunity to consult with the authority with a view to reformulating the application so that the record can be identified.”

You should seek to clarify a request if it can be read in more than one way, if it is so general you cannot determine relevant records, or if it is manifestly unclear. *An FOI request is not considered complete until you know exactly what the applicant wants.* There is, however, no duty to request clarification when you are able to comply with the request without additional information or where you can split the request and deal with the part which is clear without further delay.

Freedom of information is about access to government records. You cannot make a decision on a request without knowing each and every record that the request may include. This clarification process will occur most often after an application had already been made, but you may also be required to help the applicant formulate the request from the beginning.

If the request is not clear, or insufficient particulars have been supplied by the applicant, the request should not be acknowledged. Instead, the applicant should be told why his or her application cannot be accepted as a valid request under the FOI Law. He or she should then be invited to supply to the Information Manager any and all information that is outstanding in order to complete the application.

In sum, if the initial request that is sent to your public authority does not adequately identify the records sought your first task is to contact the applicant, explain your uncertainties, and clarify the terms of the request so that it can be processed.

Why You Should Clarify Requests

You are required by section 7(3)(a) of the FOI Law to assist applicants in identifying records sought. As part of your duties, all Information Managers shall also “conduct interviews with applicants to ensure that the appropriate records are located” as mandated by section 21(b) of the Freedom of Information (General) Regulations 2008.

Experience in other countries suggests that good communication between the person seeking information and the person dealing with the request is very important. A simple e-mail or phone call can remove misunderstandings, clarify what the applicant is seeking and expedite the process.

Additionally, *your thirty calendar day response time does not begin until the request is complete.* If necessary, be sure to clarify the exact terms of a request with the applicant before sending a formal acknowledgement letter that states the timeline within which you will respond to his or her request.

How to Clarify Requests

When a request comes into your office you should look over the description as soon as possible. If you know right away that you cannot ascertain which records the applicant is seeking, or if your preliminary research shows that you may need clarification, you should endeavour to clarify the request as soon as possible. In any event, you should contact the applicant before your ten calendar day deadline to send a formal acknowledgement letter expires.

When clarifying a request with an applicant you should *describe the records that your public authority holds and offer suggestions for which records might be appropriate based on the original application*. Do not simply tell the applicant that you have no idea what records they want; use your expertise and knowledge of the records that your public authority holds that may be of interest to the applicant.

Though an applicant does not have to provide a reason for seeking information from Government, in some instances this may assist you in refining the request and/or identifying the appropriate records. If this is the case, you can inform the applicant that they are not required to provide a reason for their request but explain that it may help you to find the all of the information that he or she is seeking. If the applicant declines to provide a reason you must resolve the issue in another manner.

If you read a request description and assume that the applicant may want information in addition to what he or she has stated therein, or if you believe that they may really want something different, you should contact the applicant and ask. Information Managers should always offer assistance where it may be needed, even if the applicant has not specifically requested it.

Splitting Requests

If a request will become clearer by splitting it into more than one part you can simply treat the application as multiple separate requests. This separation can also be useful if the initial request consists of many records and you will be making multiple decisions on these various records. Multiple decisions will lead to multiple outcomes, which distorts reporting and may complicate your records.

As an example, if a request has five distinct parts and you will be granting full access to two parts, refusing one part and deferring the last, the outcomes will be very confusing if you attempt to record this as one request. Splitting the request into four separate sections will make statistical analysis and record keeping easier and clearer.

In order to split a request in JADE you should simply treat it as if it came in as multiple separate requests. You should attempt to consolidate the correspondence that will be generated by multiple requests for the convenience of the applicant. However, if this is not possible then sending one acknowledgement letter and multiple decision letters is fine.

To keep the applicant fully informed, you should explain within the acknowledgement letter that as their initial application covers a certain volume of diverse records which require different treatment under the FOI Law, you will be splitting their request into multiple parts to deal with it effectively. You should also state that you will be responding to the portions separately, citing which sections from the “parent” request will constitute each “daughter” request.

Please also note that while each newly separated section will have the same deadline for a response as the original parent request, you do not have to respond to each part on the same day if certain sections are processed more quickly.

Potential Unreasonable Diversions of Resources

If the request is so broad that it may be considered a diversion of resources to respond, *you must first attempt to narrow the scope of the request before denying it* under section 9(c) of the FOI Law. As section 10 of the FOI Regulations states:

10. (1) Before a public authority makes a decision to refuse access under section 9 (c) of the Law (on the basis that the request would unreasonably divert its resources) the information manager shall send written communication to the applicant-
 - (a) explaining how the request is likely to unreasonably divert its resources; and
 - (b) inviting consultation with a view to narrowing the request.
- (2) Written communication sent under paragraph (1) automatically suspends the thirty-day period referred to in section 7 (4) of the Law (for responding to the application) until the date when the applicant agrees to narrow the request to such extent as may be agreed by the public authority.

In these circumstances, you should follow similar procedures to clarifying a request that is not fully understood, but with the aim of narrowing the scope of the request so that it is manageable.

Do Not Abuse the Clarification Process to Extend Timelines!

Your timeline to respond to an FOI request freezes when you are seeking clarification from an applicant. However, *this provision should not be abused for trivial matters with the intention of giving yourself more time to make a decision*. If you legitimately need more than the thirty days to respond to a request you may take an extension of an additional thirty days under section 7 (4) of the FOI Law.

The purpose of clarification is to allow you as the Information Manager to understand requests clearly in order to make informed decisions on all applications. Extending timelines superfluously will frustrate the applicant and may create unnecessary appeals and/or complaints. If you find yourself having trouble meeting deadlines and carrying out your Information Manager duties in full accordance with both the spirit and letter of the FOI legislation you should discuss your work load and any potential remedies with your supervisor.