



# **The Freedom of Information Act 2000**

## **Policy & Procedures**

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## 1 Introduction

- 1.1 The Freedom of Information Act 2000 (the Act) was passed on 30 November 2000 and came into force on 1<sup>st</sup> January 2005. The Act provides public access to recorded information held by public authorities, but also sets out exemptions to that right of access. Recorded information includes printed documents, computer files, letters, e-mails, photographs and sound or video recordings.
- 1.2 The purpose of the Act is to make the work of public authorities in the UK more open and transparent to the general public, and to ensure greater accountability. The Act's definition of 'public authority' includes all public bodies and Government departments in the United Kingdom (UK).
- 1.3 Individuals already have the right of access to information about themselves under the Data Protection Act 1998. The Freedom of Information Act 2000 extends this right to provide public access to recorded information held by public authorities.
- 1.4 The main features of the Act and the duties placed on NILGOSC are:
- A general right of public access to recorded information held by NILGOSC, subject to certain conditions and exemptions.
  - A duty to inform an applicant whether NILGOSC holds the information requested, and to communicate that information, except in the case of applied exemptions.
  - A duty to provide advice and assistance to a requester, even in cases where NILGOSC does not hold the information requested.
  - A statutory duty to maintain a Publication Scheme, approved by the Information Commissioner's Office (ICO), which sets out the kinds of information NILGOSC should make readily available to the public, without the need for specific written requests.
- 1.5 NILGOSC is fully committed to the implementation of the provisions of the Act. This policy document provides a framework in line with the principles of freedom of information in order to promote greater openness and transparency, and to build public trust and confidence. These aims will be balanced against the need to maintain the confidentiality of certain information, where exemptions apply, or where disclosure is not in the public interest.
- 1.6 The policy and procedures set out in this document conform to best practice recommended by the ICO, and to the Lord Chancellor's Code of Practice under section 45 of the Act, which provides guidance on handling requests for information.

## 2 Roles and Responsibilities

2.1 The Information & Compliance Manager has responsibility for:

- Processing and co-ordinating responses to all Freedom of Information (FOI) requests received by NILGOSC, in accordance with the requirements of the Act and this policy.
- Providing guidance and assistance to the general public with regard to this policy and procedure document, and to the Act in general.
- Promoting policy compliance and providing advice, guidance and training to staff and Committee members with regard to the Act, Codes of Practice and NILGOSC policy and procedures.
- Ensuring that the Publication Scheme is kept relevant and up to date.

2.2 Senior managers have responsibility for ensuring that freedom of information issues are managed in compliance with this policy and procedure document, and for ensuring that their staff adhere to the provisions herein.

2.3 All staff have responsibility for making themselves aware of, and for complying with, the provisions of the Act and this policy and procedure document. In particular, all staff should recognise an FOI request when one is received, pass it on promptly for processing, and assist with the collation of information to provide a response, where appropriate.

2.4 The Deputy Secretary has overall responsibility for the Publication Scheme.

## 3 Publication Scheme

3.1 All public authorities are required to adopt the model scheme produced and approved by the ICO. NILGOSC has adopted the model scheme and applied the guidance set out for all Northern Ireland Non-Departmental Public Bodies and other public authorities.

3.2 The Publication Scheme sets out the information that NILGOSC will routinely publish. It also states where this information is available, and if a charge will be applied for providing the information.

3.3 In accordance with ICO requirements, NILGOSC has produced a 'Guide to Information' for information routinely published via the Publication Scheme.

3.4 The Publication Scheme and Guide to Information are available on the NILGOSC website at <http://www.nilgosc.org.uk/freedom-of-information>. A hard copy is also available on request from the Information & Compliance Manager, whose contact details are set out at 12.2 below.

#### **4 Non-Routine Requests for Information**

- 4.1 Information that is not already available to the public via the Publication Scheme can be requested from NILGOSC by submitting a written request.
- 4.2 Any person who submits a written request (known as an 'applicant') has the right to:
- Be informed of whether or not the information is held;
  - Receive the information, unless an exemption applies; and
  - Request an internal and external review in the event of any decision to withhold information.
- 4.3 NILGOSC is not entitled to know why the applicant wants the information, nor, unlike with data protection, to check the identity of the applicant.
- 4.4 A written request may be received by any member of staff in NILGOSC, but all FOI requests should be forwarded to, and dealt with by, the Information & Compliance Manager.
- 4.5 NILGOSC should answer a non-routine request for information within 20 working days of receipt, where possible. If further clarification is required to determine what information the applicant is actually seeking, the time period for compliance does not start until NILGOSC has received all the information it requires to process the request.
- 4.6 If a fee is required, the 20 working day clock is paused on the day the fee notice is issued. The clock will restart again the day after the fee is received. The 20 working day response period can be extended by up to three months following issuance of the fee notice until the fee is paid. If the fee is not paid by that stage, the request will be deemed to have lapsed. See Section 11 for details regarding charges and fees.
- 4.7 NILGOSC will provide the information in the requested format, where possible. Information will be disclosed in a permanent form, and particular consideration will be given to format requests from anyone with a disability. If the information requested is only available in English, there is no requirement to provide it in another language.
- 4.8 The procedure for processing FOI requests is set out at Appendix A, and the process is summarised at Appendix B.

## 5 Valid Requests

5.1 The applicant does not need to specify that the request is being made under the Act or refer to 'Freedom of Information'. To be valid, a request must:

- Be made in writing (this includes e-mail and fax)
- Be legible
- State the name of the applicant
- Include an address for correspondence (this includes e-mail)
- Describe the information that is being sought
- Be capable of being used for future reference (i.e. recorded)

## 6 Exemptions

6.1 There are 24 exemptions under the Act. There are some exemptions where the public interest test applies (qualified exemptions) and others which are absolute exemptions, where the information should not be disclosed, without the need to apply the public interest test. A full list of exemptions is provided at Appendix C.

6.2 The 'public interest test' requires NILGOSC to consider the circumstances of each particular case and the exemption that covers the information, in order to determine whether the public interest in withholding the exempt information outweighs the public interest in releasing it. The balance will lie in favour of disclosure, because information may only be withheld if the public interest in withholding it is greater than the public interest in releasing it, for example where disclosure of institutional information would harm a police investigation.

6.3 All cases in which the public interest test needs to be applied will be handled in accordance with NILGOSC procedure, and in line with guidance issued by the ICO and/or the Ministry of Justice.

## 7 Vexatious and Repeated Requests

7.1 NILGOSC is not required to comply with vexatious requests under the Act. In determining whether a request should be refused because it is vexatious, NILGOSC will consider the circumstances of the request, including:

- The context and history of requests submitted by the applicant;
- Repeat requests submitted by the applicant;
- Whether the request is likely to cause a disproportionate or unjustified level of distress, disruption or irritation;
- Whether the request could fairly be seen as obsessive;
- Whether complying with the request imposes significant burden;
- Whether an applicant is habitually and persistently submitting requests where there appear to be no reasonable grounds for them to do so;

- Whether there is a strong likelihood that such requests are being made to intentionally cause harassment, distress to staff, diversion of resources or disruption to the proper workings of NILGOSC.

7.2 If a request is received that is identical or substantially similar to a previous request from the same person, NILGOSC will consider this as a repeated request. Under the Act, NILGOSC is not obliged to comply with repeat requests for information unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request. In determining whether a request can be categorised as a repeat request, NILGOSC will consider:

- The time that has elapsed since the previous request. A 'reasonable interval' will be deemed to be 40 working days;
- Whether the request is identical or substantially similar to the previous request;
- Whether any relevant, new information has been generated since the previous request.

7.3 If a request is refused on the grounds that it is repeated or vexatious, a written notice from NILGOSC will be issued within 20 working days of receipt of the request. This will include information about NILGOSC's Internal Review Process and details of the right to appeal to the ICO.

7.4 If a notice has previously been issued to the applicant to advise that the request is repeated, NILGOSC will not issue a further notice.

7.5 If a notice has previously been issued to the applicant to advise that the request is vexatious, NILGOSC will neither acknowledge nor answer subsequent requests that are made on a similar subject.

## **8 Transferring Requests for Information to another Public Authority**

8.1 If NILGOSC receives a request for information that it does not hold, but which it knows is held by another public authority, it will provide as much assistance as possible to the applicant in transferring their request to that authority. This may be by simply directing them to the appropriate organisation.

8.2 If NILGOSC holds any of the information that has been requested, it will treat that part of the request as an FOI Act request and process it accordingly. At the earliest opportunity NILGOSC will inform the applicant of the information it does not hold, and will provide reasonable assistance to enable them to locate it elsewhere.

8.3 If the applicant indicates that they do not object to the transfer of the request to the other public authority, NILGOSC may transfer the request directly to the other authority. A request, or part of a request, should not be transferred without confirmation by the other authority that it holds the information and that

it will confirm as much to the applicant on receipt of a request. NILGOSC will notify the applicant if the request is to be transferred.

- 8.4 All transfers of requests and contact with applicants who have requested information held by another public authority will be undertaken as soon as possible, to prevent undue delay. The time period for compliance with a request for information not held by NILGOSC does not start until the public authority that does hold it receives that request.

## **9 Consultation with Third Parties**

- 9.1 NILGOSC recognises that disclosure of information may affect the legal rights of a third party, and this policy is written in accordance with the Data Protection Act 1998 and the Human Rights Act 1998. NILGOSC also recognises that, unless an exemption is provided for in the Act, there will be a requirement to disclose that information in response to a request.

- 9.2 If the consent of a third party is required for disclosure of information, NILGOSC will seek to consult with the third party to obtain their consent. The consultation may assist NILGOSC in determining whether an exemption under the FOI Act applies to the information requested, or the views of the third party may assist NILGOSC in determining where the public interest lies under section 2 of the Act.

- 9.3 A third party's refusal to consent to disclosure of information does not necessarily mean that information will not be disclosed. If the cost of consultation with the third party is disproportionate, consultation may not be undertaken. NILGOSC will not undertake consultation if it does not intend to disclose the information because of another exemption, or where the views of the third party would have no effect on NILGOSC's decision, as no exemption applies.

## **10 Environmental Information Regulations 2004 (EIR)**

- 10.1 Under the EIR, an applicant can request environmental information from NILGOSC. The definition of environmental information is broad, as it includes information relating to any decisions, activities or policy formulation that may have an impact on the environment.

- 10.2 A request can be made by anyone, at any time and from anywhere. NILGOSC is required to respond to such requests within 20 working days. A request under the EIR does not have to be in writing, but can be submitted orally.

- 10.3 NILGOSC recognises that there are important differences between the EIR and the Act, and will comply fully with the requirements of the EIR. However, in order to ensure consistency, NILGOSC will manage EIR requests in accordance with the same policy and procedures used for requests made under the Act.

## 11 Charges and Fees

- 11.1 Information made available through the NILGOSC Publication Scheme will be free of charge, unless otherwise specified.
- 11.2 Fees Regulations made under the Act require that requests should be processed without any charge, other than recovery of costs incurred in informing the requestor of whether the information is held and communicating that information to them<sup>1</sup>.
- 11.3 A request will be refused where the costs involved exceed the appropriate limit, which is £450 for NILGOSC as a Non-Departmental Public Body. In determining whether the cost of a request would exceed the appropriate limit, NILGOSC can only take into account the costs it reasonably expects to incur in:
- Determining whether it holds the information;
  - Locating the information or a document containing it;
  - Retrieving the information or a document containing it; and
  - Extracting the information from a document containing it.
- 11.4 'Extracting' the information means separating out all the information that is relevant to the request from other information that is not within scope. It does not include the process of redacting any of the requested information that falls under the exemptions in the Act. (This is a result of the ruling of the High Court in the case of the ICO v The Chief Constable of South Yorkshire Police in 2011).
- 11.5 NILGOSC can take into account the cost of the time which NILGOSC staff or external contractors spend on the activities outlined at 11.3 above. Costs are calculated at £25 per hour per person for all authorities, regardless of the actual cost or rate of pay, so the limit will be exceeded if these activities exceed 18 hours for NILGOSC.
- 11.6 NILGOSC does not have to make a precise calculation of the costs – only an estimate is required. Where a reasonable estimate has been made that the 18 hour limit would be exceeded, there is no requirement for NILGOSC to undertake work up to that limit.
- 11.7 Full details of the NILGOSC Charging Schedule and Copyright Policy are available on request from the Information & Compliance Manager, whose contact details are provided at 12.2 below.
- 11.8 If a request is refused on the grounds that it would exceed the appropriate limit, a written notice from NILGOSC will be issued within 20 working days of receipt of the request. This will include information about NILGOSC's Internal Review Process and details of the right to appeal to the ICO.

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<sup>1</sup> This generally means that a public authority can only charge for expenses actually incurred such as photocopying or postage.

## 12 Complaints

12.1 If an applicant is dissatisfied with any aspect of NILGOSC's response to their request, they have a right to request a review. An internal review is available, and an external appeal can also be made to the Information Commissioner.

12.2 If an applicant is dissatisfied with how NILGOSC has handled their request for information, they should contact the Information & Compliance Manager in the first instance, to try to resolve the problem. This can be done in writing, by telephone, by e-mail or by personal visit to our office (no appointment necessary). The relevant contact details are as follows:

NILGOSC  
 Templeton House  
 411 Hollywood Road  
 Belfast, BT4 2LP.  
 Tel: 0845 308 7345 Fax: 0845 308 7344  
 E-mail: [info@nilgosc.org.uk](mailto:info@nilgosc.org.uk)

12.3 The Information & Compliance Manager will aim to respond to the complaint as soon as possible, and within 20 working days of receipt at the latest. If the complaint is complicated and takes longer to investigate, the applicant will be informed of this, and will be advised when they can expect a response.

12.4 If an applicant is dissatisfied with the Information & Compliance Manager's response, they can invoke Stage 1 of the formal complaints procedure by writing to the Secretary at the address shown at 12.2 above. The complaint or request for a review must be made within six months of the event or decision giving rise to it. The Secretary will acknowledge receipt of the letter within five working days, and will inform the applicant of his decision within two months.

12.5 If the applicant is dissatisfied with the Secretary's response, they can invoke Stage 2 of the formal complaints procedure by sending a written appeal to the Committee at the address shown at 12.2 above. The request must be made within six months of receiving the Secretary's decision. The Committee will review the case and inform the applicant of its decision within two months of receiving the request.

12.6 If an applicant remains dissatisfied with the response from NILGOSC, either because of a delay in providing, or a decision not to provide, the requested information, he/she can seek an independent review by the Information Commissioner. Such requests should be made in writing to:

The Information Commissioner  
 Wycliffe House  
 Water Lane  
 Wilmslow  
 Cheshire, SK9 5AF.  
 Tel: 01625 545 745 Fax: 01625 524 510

### 13 Links with Other Policies

13.1 This policy and procedure document has been formulated within the context of the following NILGOSC documents:

- Freedom of Information Publication Scheme
- Data Protection Policy and Procedures
- Document Management Policy
- Charging and Copyright Policy
- Complaints Procedure

13.2 A copy of these documents is available on request from the Information & Compliance Manager, whose contact details are provided at 12.2 above.

### 14 Training

14.1 NILGOSC will provide appropriate training in freedom of information for all relevant staff, including awareness training and mandatory completion of an e-learning FOI course on induction.

### 15 Monitoring and Review

15.1 The Information & Compliance Manager is responsible for monitoring compliance with this policy and procedure document.

15.2 This policy and procedure document was approved by the Deputy Secretary on 13 October 2011. This policy will be reviewed at least every three years, and may also be revised in response to changing circumstances, operational or legislative requirements.

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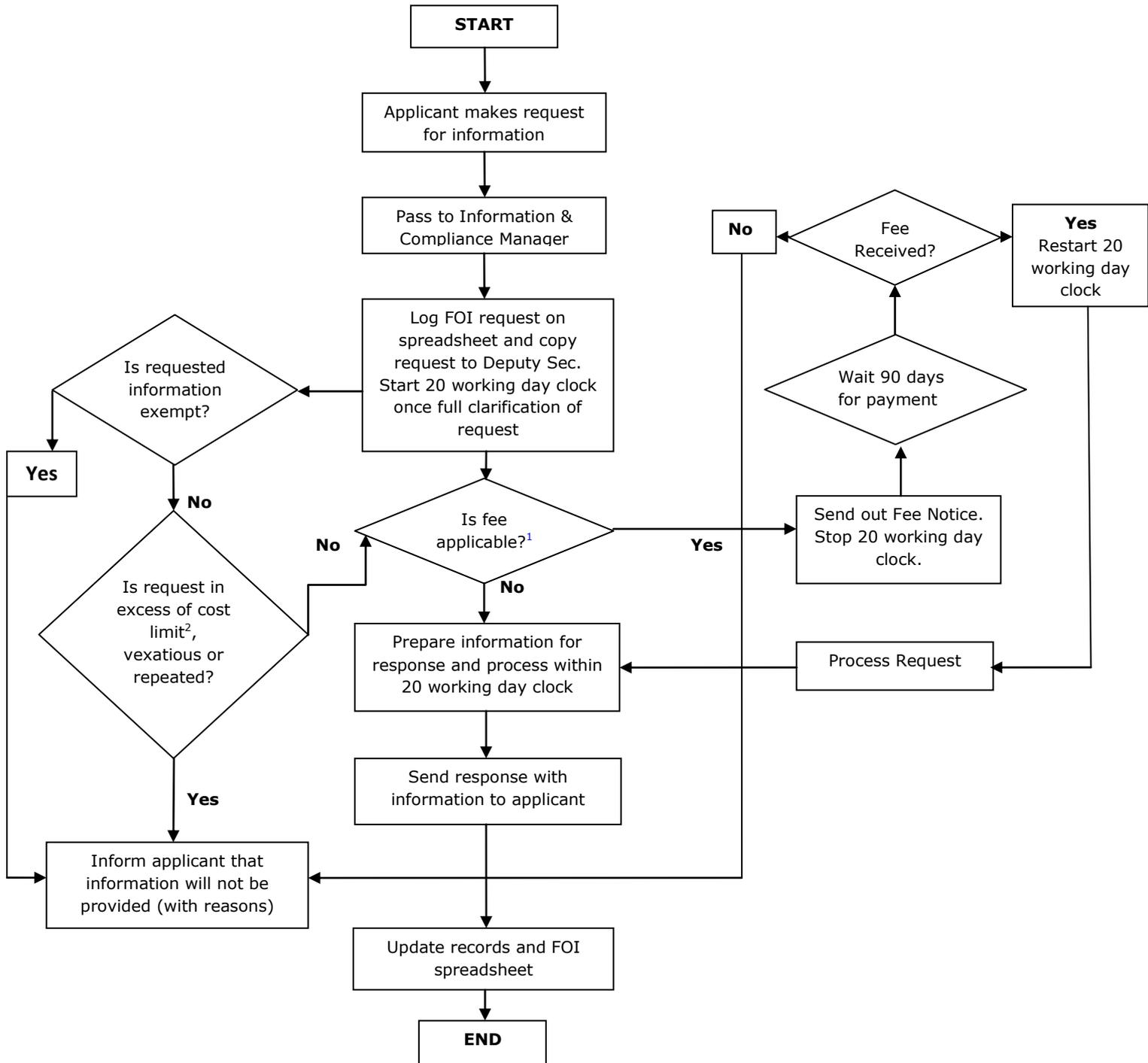
## Appendix A

### **Procedure for Processing FOI Requests**

1. The FOI request is received.
2. The member of staff date stamps the request and forwards it to the FOI Officer (the Information & Compliance Manager).
3. The FOI Officer checks the validity of the request. If the request is not valid, the applicant will be informed and advised why it is not valid. If the request is valid, the following steps will apply.
4. The FOI Officer allocates the request a reference number (mmyy/xxxx format) and updates the FOI request tracking form/spreadsheet with relevant details of the request (ref no., contact details, if further information is required, if a fee is required, dates when such instructions are sent to the applicant, deadline for reply, to whom and when the request is forwarded, date reply is sent, along with any other relevant notes/comments).
5. The FOI Officer makes the Deputy Secretary aware of the request and forwards it to the appropriate person to prepare the information requested. A date for the return of the information will be specified.
6. The appointed member of staff passes the relevant information to the FOI Officer.
7. The FOI Officer responds to the applicant with the information requested.
8. The FOI Officer updates the tracking spreadsheet and files copies of the associated correspondence in the FOI request file. The Committee will be kept informed of FOI requests on a monthly basis through the Secretary's Report.
9. If any/all of the information cannot be released, the applicant will be provided with the reasons for withholding the information.
10. If a fee is payable before information can be released, the FOI Officer will advise the applicant of this (in writing), will explain why a charge has to be applied and will specify the amount to be paid. When the fee is paid, the request can be processed. If a fee is not received within three months, the request will be deemed invalid (see section 4.6 of the policy).
11. The FOI Officer will forward e-mails during any periods of leave/absence to the Investment and Governance Manager, to ensure that FOI requests are identified at the earliest opportunity. The FOI Officer's post will also be dealt with by the Investment and Governance Manager during such periods, for the same reason.

**Appendix B**

**FOI Process for dealing with written requests for information**



Note 1: Fee to recover costs of informing requestor of whether information is held and communicating that information to them, i.e. generally photocopying, postage etc.

Note 2: Request can be refused if the estimated cost of compliance for NILGOSC exceeds £450. Cost of compliance includes: determining whether the information is held; finding the requested information or records containing the information; retrieving the information or records; and extracting the requested information from records (staff time is estimated at £25 per person per hour).

**Appendix C**

**Freedom of Information Act 2000 – Exemptions**

The Freedom of Information Act 2000 sets out 24 exemptions to the general right of access to information. Apart from vexatious or repeated requests, to which NILGOSC need not respond, there are two general categories of exemption: (a) absolute exemptions and (b) qualified exemptions. These exemptions are summarised below.

**a) Absolute exemptions**

Absolute exemptions are the exemptions for which there is no duty to consider disclosure in the public interest. They are set out in Part II of the Act.

| Section   |  |
|-----------|--|
| <b>21</b> | Information accessible to the applicant by other means.  |
| <b>23</b> | Information supplied by / relating to bodies dealing with security matters.  |
| <b>32</b> | Court records, etc.  |
| <b>34</b> | Parliamentary privilege.   |
| <b>36</b> | Prejudice to effective conduct of public affairs (information held by the Houses of Lords and Commons only).   |
| <b>40</b> | Personal Information. An absolute exemption applies if the applicant is the subject of the information requested, as they have right of access to that information under the Subject Access Right of the Data Protection Act 1998. There is also an FOIA exemption if the information requested concerns a third party, and disclosure would breach one of the Data Protection Principles. |
| <b>41</b> | Information provided in confidence.  |
| <b>44</b> | Prohibitions on disclosure where a disclosure is prohibited by an enactment, or would constitute contempt of court.  |

**b) Qualified exemptions**

Even though an exemption exists, NILGOSC will have a duty to consider whether disclosure is required in the public interest.

| Section    |  |
|------------|--|
| <b>22</b>  | Information intended for future publication.   |
| <b>22a</b> | Information obtained in the course of, or derived from, a program of research.   |
| <b>24</b>  | National security (other than information supplied by / relating to named security organisations, where the duty to consider disclosure in the public interest does not arise).                                |
| <b>26</b>  | Defence.   |
| <b>27</b>  | International relations.   |
| <b>28</b>  | Relations within the United Kingdom.   |
| <b>29</b>  | The economy.   |
| <b>30</b>  | Investigations and proceedings conducted by public authorities.  |
| <b>31</b>  | Law enforcement.   |
| <b>33</b>  | Audit functions.   |
| <b>35</b>  | Formulation of government policy etc.  |
| <b>36</b>  | Prejudice to effective conduct of public affairs (except information held by the Houses of Lords and Commons, where the exemption is absolute (see table above)).  |
| <b>37</b>  | Communications with Her Majesty and the awarding of honours (exemption is absolute in relation to communications with the Monarch, the heir to the throne and the second in line to succession to the throne). |
| <b>38</b>  | Health and safety.   |
| <b>39</b>  | Environmental information.   |

|           |   |
|-----------|---|
| <b>40</b> | Personal information. If NILGOSC believes that disclosure would not breach any Data Protection Principles, but the individual who is the subject of the information has served notice under s.10 of the DPA 1998 that disclosure would cause unwarranted and substantial damage or distress, or the individual who is the subject of the information would not have a right to know about it or to access it under the DPA 1998, there will be no absolute exemption, and NILGOSC will be obliged to consider the public interest in deciding whether to release the information. |
| <b>42</b> | Legal professional privilege.   |
| <b>43</b> | Trade secrets and prejudice to commercial interests.  |