

<b>Police and Crime Commissioner for Gwent Decision</b>	
PCCG-2019-037	Police and Crime Commissioner for Gwent Decision
Subject	Amendment to the OPCC Freedom of Information Procedure
Summary	To record the decision of the Police and Crime Commissioner regarding the amendment to the Freedom of Information Procedure to comply with the update Code of Practice.


## DECISION

1. Section 45 of the Freedom of Information Act 2000 (the Act) places a requirement on the government to provide guidance to public authorities on the discharge of their functions and responsibilities under Part 1 (access to information held by public authorities) of the Act
2. In response to the Independent Commissioner on Freedom of Information's report, the government agreed to update the Code of Practice issued under Section 45 of the Act to ensure the guidance was sufficient and up to date.
3. The Cabinet Office published the revised Code of Practice in July 2018.
4. I can confirm that I am satisfied that my office has amended our procedure on dealing with requests received under the Act to comply with the revised Code of Practice.

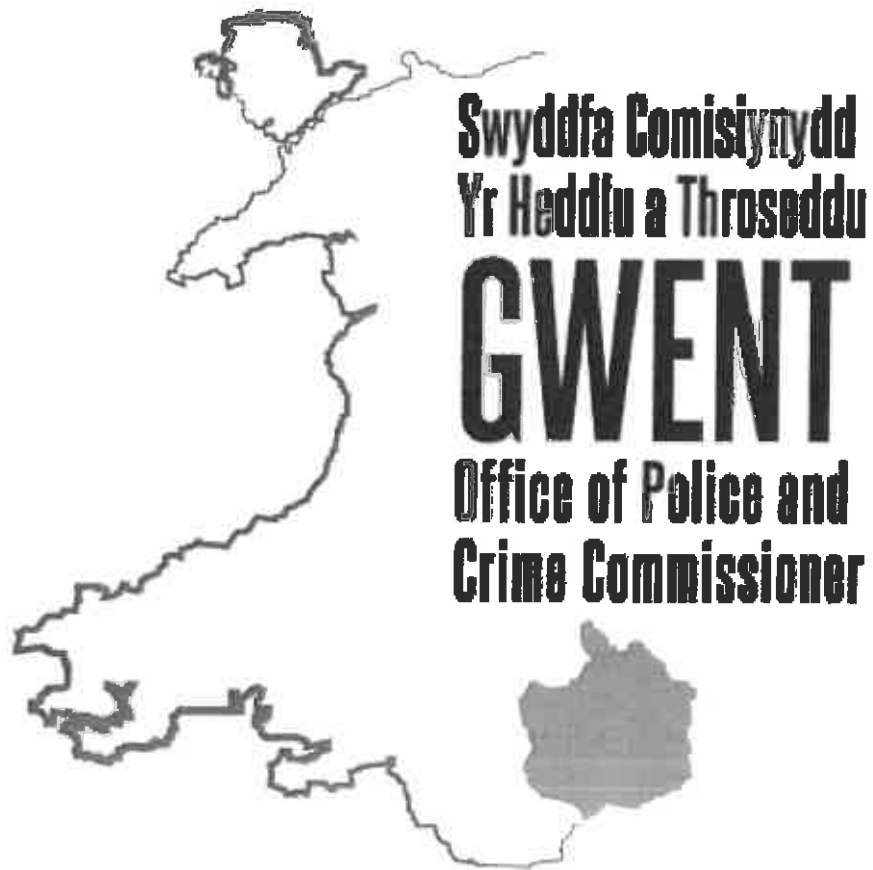
**Jeff Cuthbert B.SC., MDIPD, Police and Crime Commissioner for Gwent**

I confirm I have considered whether or not I have any personal or prejudicial interest in this matter and take the proposed decision in compliance with my code of conduct. Any such interests are recorded below.

The above request has my approval.

Signed 	Date : 15/7/19
<b>Contact Officer</b>	
Name	Joanne Regan
Position	Head of Assurance and Compliance
Telephone	01633 642015
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<b>Background papers</b>	Revised Section 45 Code of Practice





## **FREEDOM OF INFORMATION PROCEDURE**

<b><u>Document Control</u></b>	
<b>Version Number</b>	<b>2.0</b>
<b>Author (Name, Job Title)</b>	<b>Joanne Regan, Head of Assurance and Compliance</b>
<b>Date Approved</b>	<b>July 2019</b>
<b>Approved By</b>	<b>Sian Curley, Chief Executive</b>
<b>Superseded Version</b>	<b>1.5</b>
<b>Date of Next Review</b>	<b>June 2023</b>

### Version Control

<b>Version</b>	<b>Date</b>	<b>Amended By</b>	<b>Reason for Issue/Amendment</b>
1.1	19/07/18	James Iles, Governance Officer	General update due to change in OPCC structure.
1.2	23/07/18	Joanne Regan, Head of Assurance and Compliance	General update and comments made on changes in 1.1
1.3	24/07/18	James Iles, Governance Officer	General update and acceptance of changes.
1.4	27/09/18	Joanne Regan, Head of Assurance and Compliance	Inclusion of 'Absence of Required Staff' section within Appendix A.
1.5	01/10/18	Joanne Regan, Head of Assurance and Compliance	Updated to reflect amended Cabinet Office Freedom of Information Section 45 Code of Practice document released in July 2018.
2.0	17/06/19	Joanne Regan, Head of Assurance and Compliance	Final version of procedure approved by Chief Executive.

# **OFFICE OF THE POLICE AND CRIME COMMISSIONER** **FREEDOM OF INFORMATION PROCEDURE**

## **Procedure**

This procedure supports the Office of the Police and Crime Commissioner (OPCC) in respect to Freedom of Information (FOI), in making provision for FOI requests and reviews/appeals. FOI affects all staff.

FOI gives a general right of access to all recorded information held by a public authority, unless the information can be made exempt under the legislation.

### **1. Recognising an FOI Request**

Requests for information under the Freedom of Information Act 2000 (the Act) have to be in written format (including electronic) and can be submitted to any representative of the OPCC. It must be remembered that a request does not have to specify that it is made under the Act nor does the applicant have to state the reason for the request, so vigilance is needed in identifying potential requests.

Staff should refer to the document "**Staff Guide – Dealing with Information Requests at Appendix A**" which acts as a supplement to this procedure for staff to be aware of their duties in dealing with requests for information.

### **2. Identification of an FOI Request**

Not all enquiries need to be treated formally as a request under the Act. It will often provide better customer service to deal with certain requests as a normal day to day enquiry. The provisions of the Act need to come into force only if:

- you cannot provide the requested information straight away; or
- the requester makes it clear they expect a response under the Act.

The request handling flowchart produced by the Information Commissioner's Office at Appendix B, provides an overview of the steps to follow when handling a request for information.

When treating a request under the Act, each request should be acknowledged as soon as possible and dealt with within 20 working days.

Any request for information that specifically states the Freedom of Information Act, Environmental Information Regulations or which requests information that it is felt should not be disclosed are to be directed to the Governance Officer.

Any request for personal details about individuals should also be directed to the Governance Officer in order for the Subject Access Request procedure to be commenced.

### **3. Duty to Provide Advice and Assistance**

Under Section 16 of the Act, the OPCC has a duty to “provide advice and assistance” to individuals who are trying to find information in the following circumstances:

- To clarify unclear requests;
- To help provide the information requested in an acceptable format;
- To narrow responses which exceed the cost limit (section 12);
- When the information has not been provided because it is accessible by other means (Section 21) or there is an intention to publish it in the future (Section 22); and
- When the request is transferred to another public authority because the information is held by it and not by the public authority it was addressed to.

Advice and assistance does not need to be provided if the request is vexatious.

### **4. Receipt of request**

The Governance Officer will record all recognised FOI requests and will provide a unique reference number for each request.

If upon receipt, a request is illegible or does not describe in enough detail the information sought, the Governance Officer will seek to clarify the request with the applicant and help as much as possible in identifying the information required.

Upon receipt, or once clarified, an acknowledgement will be sent to the applicant advising them of the date received and the date by which a response should be received. A request for Information must be responded to within 20 working days (non-working days include weekends and public holidays). The first day of the 20 working day response period starts the next working day after receipt of the request. The applicant will be advised if the request needs to be transferred or resubmitted either partially or in whole to another authority for response.

### **5. Vexatious Requests**

If the Governance Officer judges that a request is vexatious or repeated, then a request for information can be refused in line with Section 14 of the Act. In all cases it will be the request which is judged to be vexatious and not the individual seeking information. Any request refused on these grounds has to be done so with clear evidence to support the refusal.

If a request is deemed vexatious or repeated, the applicant will be informed and will also be sent details of how to request a review or appeal.

### **6. Cost exceeding Appropriate Limit**

If to fully answer a request would cost in excess of £450 (which equates to 18 hours work, charged at £25 per hour) then a Section 12 Refusal Notice will be applied.

If a request is refused under Section 12 of the Act, the Governance Officer has a duty under Section 16 of the Act to assist the applicant. If it would significantly decrease the cost, a summary of the information requested or arranging a viewing of the information could be discussed with the applicant.

Only certain activities can be considered when estimating whether responding to a request would breach the cost limit. These are:

- Establishing whether information is held;
- Locating and retrieving information; and
- Extracting relevant information from the document containing it.

Other factors such as redaction time cannot be included when estimating whether the response would exceed the cost limit.

If responding to one part of the request would exceed the cost limit, then the OPCC is not required to provide a response to that or any other part of the request.

## **7. Fees**

The Act makes provision for the charging of fees for information. Fees will be calculated in accordance with the statutory guidelines set down by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004.

If a decision is taken to charge for the cost of providing information, we will send a fees notice stating the amount that should be paid, including how we have calculated this, as soon as possible within the 20 working day response period. The response will include:

- An explanation that the 20 working day period for responding to the request will be paused until payment is received (payment is expected within three months of the date of the notice or we will assume that the request no longer needs to be answered. The 20 working day response period will recommence when the payment has been cleared);
- How to pay the fee; and
- Right to complain via internal review and to the Information Commissioner about the fee levied.

Fees may be charged for:

- Production expenses (such as redacting exempt information, printing or photocopying);
- Postage;
- Complying with the applicant's preferences about the format in which they would like to receive the information (such as scanning to a CD).

## **8. Transferring/re-submitting a request to another public authority**

If the requested information is believed to be fully held or partly held by another public authority then the Governance Officer will advise them to contact the relevant public authority in relation to that element of the request. The Governance Officer will continue to gather the information that the OPCC holds to satisfy the rest of the request.

If it is established that the alternative authority holds all information, the applicant will be contacted by the Governance Officer and informed that another FOI request will need to be submitted directly to the relevant authority.

## **9. Requests for Personal Information**

Where a request for information asks for personal details pertaining to the applicant, this will be dealt with under the Subject Access Request provisions of the Data Protection Act 2018 (DPA).

## **10. Processing a request**

The Governance Officer in processing a request will establish who to contact within the OPCC for the relevant information to be provided to them.

The appropriate person/s will supply the information to the Governance Officer for review and to quality assure it.

Information should be provided in electronic format as standard and should be emailed to the Governance Officer.

Where the information is available in hard copy only, the Governance Officer should be notified.

The person providing the information should highlight to the Governance Officer areas which they consider would not be suitable for public disclosure.

## **11. Offences**

All staff are reminded of Section 77 of the Freedom of Information Act which states:

*"Where a request for information has been made to a public authority any person is guilty of an offence if he/she alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing disclosure of all or any part of the information of which the applicant would have been entitled".*

## **12. Evaluating Information for Disclosure**

Once all information has been received by the Governance Officer, it will be assessed for disclosure. The Governance Officer will consult with information owners in order to further inform any decision on release if required. This includes consultation with outside third parties whose information we may be under an



obligation to release. Any information to which exemptions have been applied will be withheld. The exemption will be clearly stated and, in the case of Non Absolute exemptions, the Public Interest Test arguments will also be documented and provided to the requester.

### **13. Time Limit**

If throughout any part of the process it is estimated that the time limit of 20 working days will be exceeded, the Governance Officer will inform the applicant at the earliest opportunity and will give a revised time-scale for completion of the request. (This will only be used if information that falls within the scope of a qualified exemption and additional time is required to consider the public interest test – also known as the public interest test extension).

### **14. Public Interest Test Extensions**

An extension under the public interest test is permitted "until such time as is reasonable in the circumstances", taking into account for example of where the information is especially complex or voluminous or where third parties need to be consulted.

The OPCC aims to ensure any extension required due to public interest test considerations does not exceed a further 20 working days in addition to the original request, although in certain circumstances a longer extension will be required.

If an extension under the public interest test is required, the Governance Officer will inform the applicant and also state which exemption(s) are being relied upon and why and a new deadline by which the applicant should receive a response.

### **15. Response to Applicants**

Once the process of gathering information and applying the exemptions is complete, it will be forwarded to the applicant, following approval by the Head of Assurance and Compliance.

Details will also be sent to the applicant to advise them as to how they can initiate the FOI Review/Appeals Procedure and also how to contact the Information Commissioner's Office.

### **16. Environmental Information Regulations (EIR)**

Any request made under EIR will be dealt with under the same principles as an FOI request as both access to information regimes are similar in nature. However, there are a number of differences between the two pieces of legislation the most pertinent of which are summarised below.

#### **➤ An EIR request need not be in writing**

Anyone seeking environmental information whether in person, by telephone or in writing should be referred to the Governance Officer.

- There is no “appropriate limit” in terms of cost with which to refuse a request.

Although there is no upper limit cost fees will be calculated in the same way as FOI requests.

- There are limited exemptions.

There are fewer exemptions under EIR’s and each requires a Public Interest Test. This Public Interest Test will be applied in the same way as non-absolute exemptions under the FOIA.

## **17. Re-Use of Datasets**

The Information Commissioner defines a dataset as “a collection of factual information in electronic form to do with the services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered”.

It is likely that licensing and charging for the re-use of information, including datasets, will be dealt with under the Re-use of Public Sector Information Regulations (RoPSI), a guide to which has been produced by the National Archives. In the few cases where RoPSI does not apply to a dataset, licensing and charging will be dealt with under the FOIA dataset provisions. RoPSI regulations do not apply, for example, to datasets held by the OPCC for purposes unrelated to our public task.

Consideration will be given to proactively publishing any datasets that would be released on request as part of the OPCC Publication Scheme (subject to any relevant exemptions). If the dataset is a relevant copyright work owned solely by the OPCC, then we will endeavour to make it available for re-use in accordance with the terms of one of the licences that forms part of the UK Government Licensing Framework. It is expected that the majority of requests would fall within the Open Government Licence which enables the re-use of datasets free of charge.

## **18. Publication Scheme Reviews**

The Governance Officer will monitor compliance with the Publication Scheme as a minimum on an annual basis and report to the Head of Assurance and Compliance. However, the Scheme will be under constant review on an informal basis in order to ensure accuracy and transparency.

## **19. Welsh Language Act 1993**

If an FOI request is received in Welsh, the response will be supplied in Welsh. However, as the business language of the OPCC is English, any information requested will be supplied in the business language unless the particular document has already been translated.

## **20. Equality Act 2010**

Where possible, "reasonable adjustment" will be made to accommodate individuals with a disability that impedes their right to information under the FOI Act, or from interpreting that information.

## **21. Assistance with FOI and DPA**

The Gwent Police Freedom of Information Officer and Data Protection Officer may be asked to act as consultants on FOI and Data Protection matters should any clarification be required.

## **FREEDOM OF INFORMATION REVIEWS/APPEALS**

### **22. Initiation of Reviews/Appeals**

Any written correspondence expressing dissatisfaction with the way a request for information was handled through the FOI Request Handling Procedure will be treated as an FOI Review/Appeal.

If the individual has not been through the FOI Request Handling procedure in the first instance, any written dissatisfaction will not be treated as an FOI Review/Appeal, but serve to initiate the FOI Request Handling Procedure.

Any verbal contact whereby an individual expresses dissatisfaction with the way a valid request for information has been handled, should be directed to the Governance Officer, but must be received in writing before it can be processed.

Requests for an internal review to take place must be received within 40 working days from the date the initial response was issued or they will not be considered.

Reviews/Appeals will be directed to the Governance Officer in order to be logged and will then be forwarded to the Chief Executive.

The Chief Executive will review the process and provide a final decision in writing giving reasons for the decision.

Once a review has been received it will be acknowledged within 7 days by the Governance Officer, and the appellant will be given an estimated time-scale for the completion of the review. This will be based on the complexity of the case, all responses will aim to be provided within 20 working days of receipt of the request although in a small number of circumstance there may be a need for an extension to this response period.

If it is likely that the original estimated time will be overrun, the appellant will be informed by the Governance Officer of the delay and given a revised time-scale.

### **23. Carrying out a review**

The review process will look at all the aspects in which the original FOI request was handled. This will include whether procedures were correctly followed, exemptions and redactions were applied correctly and whether all of the information relating to the request was gathered.

### **24. Conclusion of a review**

The Governance Officer will take a copy of the final report and any further documentation and will forward the original report to the appellant.

In all cases, whatever the outcome of the review, details of how the appellant can appeal to the Information Commissioner will be included with the final report.

If, at the outcome of the information review process, it is decided that information that was previously withheld should be disclosed, this information will be forwarded to the appellant at the earliest opportunity by the Governance Officer.

If the outcome of the review is that proper procedures were not followed in the handling of the original request, the appellant will receive an explanation signed by the Chief Executive which will outline what will be done to rectify any error occurring in the future.

Any procedural defect recognised in the handling of the original FOI request will be highlighted to the Governance Officer and Head of Assurance and Compliance in order to activate a review of that procedure and make any necessary changes. This will serve to prevent further occurrences.

### **25. Documenting and Publishing Reviews/Appeals**

The Governance Officer may make available via the Publication Scheme yearly statistics indicating the results of reviews/appeals. This will include the number of reviews/appeals, whether they were upheld, partly withheld or denied and the success rate of completing reviews/appeals in an appropriate time. It may also include a brief summary of individual reviews/appeals but will not include any details of the appellant.

### **26. The Legal Basis and Legitimate Aims**

Freedom of Information Act 2000.

### **27. Compliance with the Welsh Language Scheme**

This procedure will comply with the OPCC's Welsh Language Scheme in terms of dealing with the Welsh speaking public, impact upon the public image of the OPCC and the implementation of the Welsh Language Scheme and Action Plan.

## APPENDIX A

### OPCC STAFF

#### Dealing with public requests for Information

#### 1. The Freedom of Information Act 2000

The Freedom of Information Act is intended to allow anyone in the world to obtain information they require from public authorities. The legislation places three basic requirements on us:

- that we routinely put in the public domain through the Publication Scheme as much information about ourselves as is reasonably possible;
- that we ensure where an individual requires information we hold, but have not already published, we provide the applicant with the relevant information (subject to exemptions); and
- that we have in place a properly structured approach to managing records to ensure that essential records of our activities are maintained in appropriate detail (and hence relevant information is readily available to the public).

This guide is specifically designed to help you deal with requests for information and understand the FOI process.

#### 2. OPCC Publication Scheme

The OPCC already places a large amount of information in the public domain. This is usually published via the web site at [www.qwent.pcc.police.uk](http://www.qwent.pcc.police.uk) though some materials may be published on paper and then made generally available.

As required by the Act, some of the information that the OPCC places in the public domain is listed in our Publication Scheme, which describes both the types of information available and where it can be located.

#### 3. The right to request information

The right to request information under the Act extends to anyone who wishes to make an enquiry. There is no limitation on who may make an enquiry – the law gives the right to minors and adults alike, and anyone in the world is equally entitled to request information.

Applicants do not have to disclose why they require the information they seek. Applicants need not quote (or even be aware of) their rights under the Act to make a request for information. The only requirement the law places on an applicant is that they must **describe the information required in writing, provide a name and address for correspondence**, for it to have the authority of a request made under the terms of the Act.

In all cases, the information (or ways the individual can find that information) must be provided within **20 working days** (i.e. not including Saturday, Sunday and Bank

Holidays) of receiving a written enquiry. This is a very short response time so, if you are in any doubt as to whether an enquiry may be a FOI enquiry, or you cannot respond from the records available to you, you must contact the Governance Officer for clarification.

#### **4. Data Protection vs. Freedom of Information**

It is important to distinguish requests made under the terms of the Data Protection Act 2018 and those made under the terms of the Freedom of Information Act 2000.

If an individual wishes to have a copy of any personal data held about them by the OPCC then this is a Subject Access Request and such enquiries should be referred to the Governance Officer.

If an individual is asking for general information about the OPCC, its activities, or any other material held in our records, then this is a Freedom of Information request. If it is not possible to tell exactly what sort of request is being made, or a request appears to cover elements of both Acts, such enquiries should **always** be referred in the first instance to the Governance Officer.

#### **5. Business as Usual**

There is no intention to stop staff providing information directly in response to a written request where this has always been the case: staff involved in distributing routine information should continue to deal with these requests as normal as should individuals with responsibility for corresponding with the public on general issues. In any case business as usual requests should be dealt with expeditiously.

Verbal enquiries (e.g. those made over the telephone) do not have the force of law. However, if you receive such an enquiry and you are unable to satisfy the query verbally through normal business as usual routes, you should advise the applicant that they can make the request official by writing to the Governance Officer. If necessary you can direct their call to the Governance Officer.

If the individual is requesting information already in the public domain we have a duty to "provide advice and assistance" and inform the individual as to where that information can be found.

#### **6. Recognising an FOI Request**

You should contact the Governance Officer if the request fits the following criteria:-

- The request states that it is made under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 (EIR's);
- The request asks for information that you feel should not be disclosed (for example the information may contain personal information about an individual); and/or
- The request asks for information and you do not know where the information can be found.

Please remember that we owe applicants a general duty of confidentiality – when considering a request and/or passing it to any other member of staff, you should only provide the personal details of the individual on a need-to-know basis.

## **7. Consultation with Third Parties**

There will be circumstances when we should consult third parties about information we hold as to whether or not it is suitable for disclosure. This may be when:

- Requests for information relate to persons or bodies who are not the applicant and/or the OPCC; or
- Disclosure of information is likely to affect the interests of persons or bodies who are not the applicant of the OPCC.

Consultation with the third party whose information we hold and falls within the FOI request may be necessary as the organisation who has created/provided the information may have a better understanding of its sensitivity than the OPCC. The views of the third party will be helpful where it is necessary to consider the prejudice and public interest test as part of certain exemptions.

Although a third party may provide a view as to whether or not the information should be released, it is ultimately for the OPCC to take the final decision on release of information.

It is your responsibility to inform the third party of the final decision taken, especially if the information you have consulted with them about is to be released.

## **8. Other relevant Issues**

**Exemptions.** The law does permit the application of certain exemptions. These relate typically to information that may have a bearing on the type of work we do.

If you receive an information request that covers information that is not in our Publication Scheme and that includes information about individuals or is commercially sensitive information, then please consult the Head of Assurance and Compliance immediately.

**Complaints Reviews and Appeals.** In any case where the OPCC declines to respond (or fails to respond *fully*) to an information request, the applicant does have the right of appeal. Should an applicant lodge a complaint about the nature and/or content of any response please forward this complaint to the Governance Officer, who will follow up the complaint and will inform the applicant of the right to the review/appeal process.

**Clarification.** The OPCC has the right to ask an applicant for more details to clarify their request in cases where it may not be immediately clear what information they require. If you decide to deal with an enquiry as business as usual, you must be sure that you are clear as to what information you have been asked to provide: if not, then you may approach the applicant for clarification. If in doubt, please contact the Governance Officer.

**Costs and fees.** In the main, FOI Requests are dealt with free of charge. However if the cost of complying with a request would exceed the “appropriate limit” as laid down by the fees regulations in the Act we can refuse the request. This currently stands at £450 worth of work based on a flat rate of £25 per hour; this translates as 18 hours worth of work. You should note that this will not change current charging regimes where we levy a cost for information and these queries should be dealt with as normal.

**Statistics.** The Act does *not* require us to provide applicants with specialist statistical information that the OPCC does not normally produce. All other statistical requests (unless business as usual) should be forwarded to the Governance Officer for consideration.

**Organised campaigns.** The law allows us to refuse multiple information requests made as part of a campaign. If you receive multiple enquiries of a similar nature you should *not* refuse to co-operate but you must always inform the Governance Officer, who will be able to take a view on whether a campaign is being instigated and, if not, may make arrangements to add the frequently-requested information to the OPCC’s Publication Scheme.

**Re-Use of Public Sector Information.** Please ensure any datasets considered for release under FOIA have been checked to ensure that we do not need to apply RoPSI regulations.

**Resilience Arrangements.** Due to the size of the OPCC, there are only a limited number of staff who have undertaken the required FOI training. The following procedure will be enforced if the required staff are unavailable:

Absence of Governance Officer – the Head of Assurance and Compliance will take responsibility for collating and responding to requests with approval provided by the Chief Executive. If an appeal is received in relation to any of these requests, the OPCC will ask Gwent Police or another OPCC/Police force to deal with the appeal on our behalf.

Absence of the Head of Assurance and Compliance – the Governance Officer will collate and respond to requests with approval provided by the Chief Executive. If an appeal is received in relation to any of these requests, the OPCC will ask Gwent Police or another OPCC/Police force to deal with the appeal on our behalf.

Absence of the Chief Executive – the collation, response and approval process will continue as normal. If an appeal is received in relation to any of these requests, the OPCC will ask Gwent Police or another OPCC/Police force to deal with the appeal on our behalf.

## **9. In summary**

Please be aware of the implications of the Act, and make sure that colleagues are also aware that:



- Individuals may now ask for us to provide them with much of the information held by the OPCC, where ever it is held in the OPCC.
- Any request in writing is legitimate whoever it is addressed to within force, as long as it is legible and describes the information required.
- Anything you write or record can potentially be viewed by a member of the public. Therefore ensure that the records you keep are accurate and professional. A high proportion of FOI request enter the media, and you should be conscious that this could affect you and the information you hold.
- If in doubt consult the Governance Officer; we have as little as **20 working days to respond.**
- You should respond to the Governance Officer as soon as possible if asked for information.

## **APPENDIX B**



ICO Flow Chart for  
Handling Requests u

