

Viability and FOI

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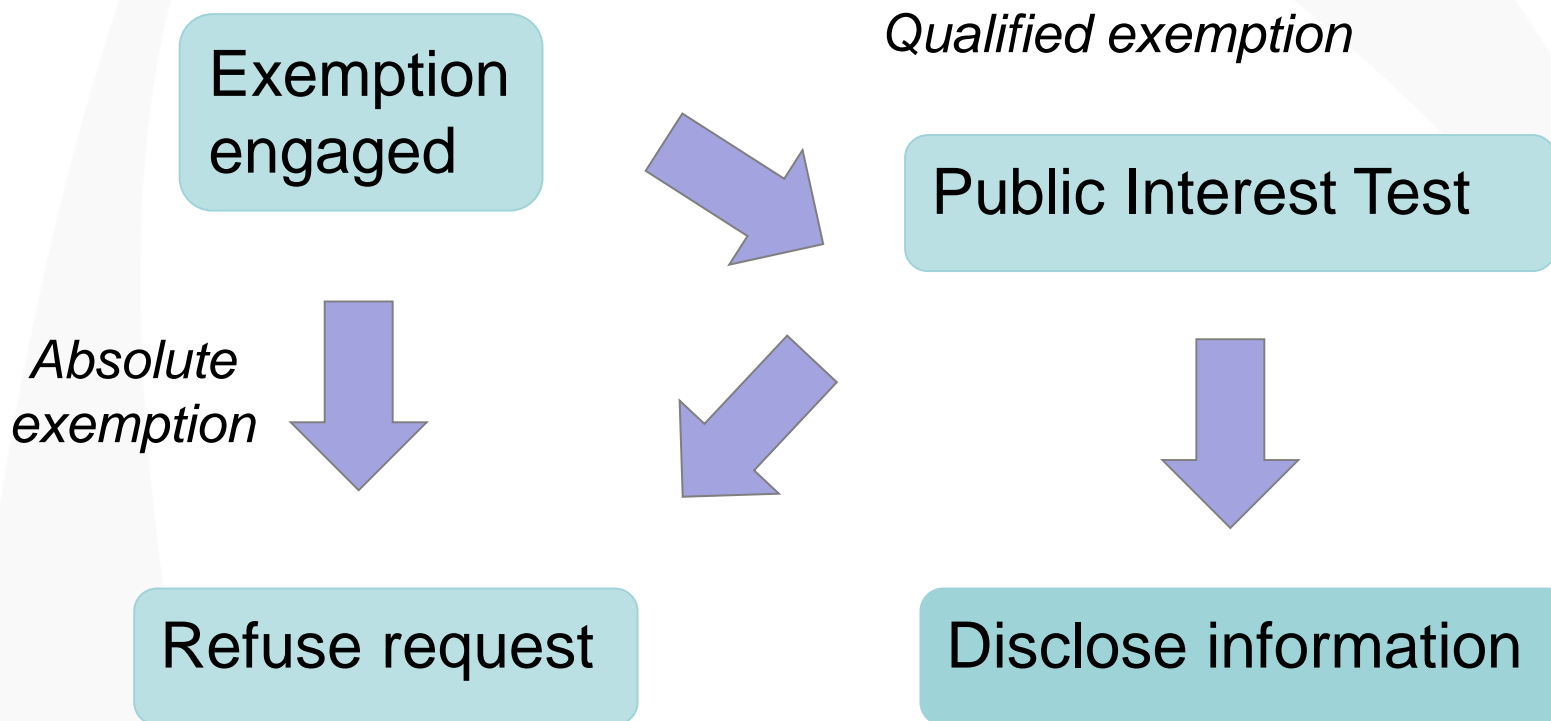
- What is Freedom of Information?
- FOI myth busting!
- Relevance to planning and viability
- The solution
- Challenges

What is Freedom of Information?

- Public access to information held by public authorities
- Any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland



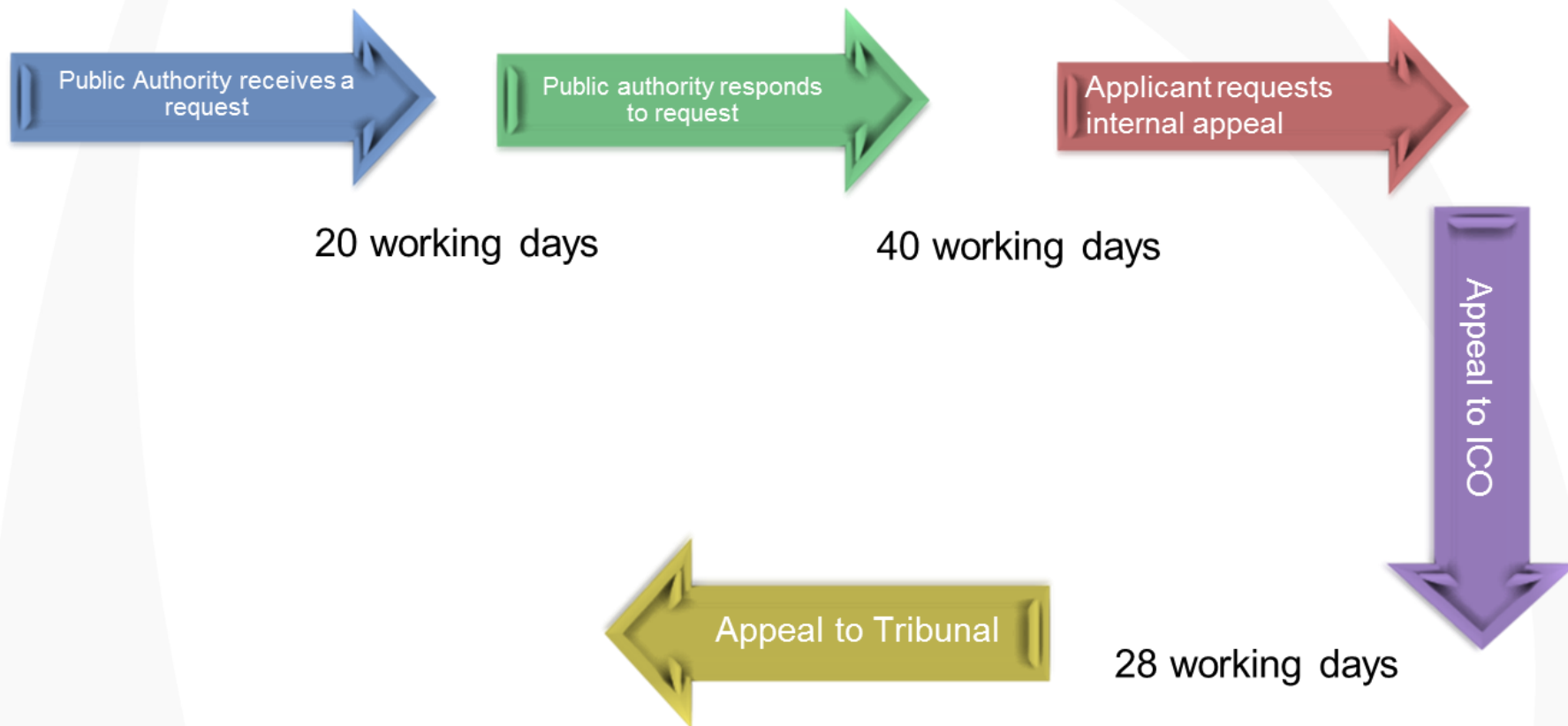
BUT it's not a free-for-all!



So what is exempt?




FOI Process



FOI Myth Busting!


MYTH: the use of protective markers, such as 'intellectual property', 'commercially sensitive', 'internal communications' means that information will not be disclosable under FOI/EIR



MYTH: contractual clauses such as confidentiality clauses will prevent or restrict disclosure



MYTH: documents which are in draft form or intended for future publication are not disclosable



MYTH: temporary or restricted access to information means the public authority won't 'hold' it for the purpose of FOI/EIR



Relevance to planning and viability?

- Documents submitted to support planning application
- Risk of disclosure to competitors
- Risk of challenge
- Environmental Information Regulations (EIR)



The Solution- For Viability Reviews

- 3rd party review and analysis of viability report
- No commercially sensitive information included
- Committee



Challenges

“You’re
mad to
approve a
scheme
blind”

“It’s not
fair; I
didn’t see
it!”

“It’s not fair; I didn’t see it!”

- *R (English) v East Staffordshire Borough Council and National Football Centre Ltd* [2010] (National Football Academy)
 - Not procedurally unfair
 - Gist of report was sufficient
- *Equiom (Isle of Man) Ltd v Croydon LBC* [2014] EWHC 3660 (Admin)
- *Royal Borough of Greenwich v IC and Shane Brownie* EA/2014/0122



“You’re mad to approve a scheme blind”

- *R (Perry) v Hackney LBC [2014] EWHC 3499 (Admin)*
- Members had discharged duty
- No right for members to see report



Key Points for TP Reports

- **Legal tests**
 - “The gist of the appraisal”
 - “Sufficient information to enable an intelligent response”
- **Officer’s reports**
 - Must not omit important and relevant information on viability
- **Member briefings**
 - Beware the *Equiom* procedural complaint from parties who don’t see/hear the full viability information



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