

FOI Policy Advice

The impact of PA disclosures on the PIT, after a FOI request has been received

The issue as outlined:

“In summary we need to review and determine our position on whether a disclosure of information *in response* to an FOIA request *can itself* reduce the PIT in favour of disclosure of the remaining information, and whether this position depends on the timing of the “final refusal”, which could be months after a request is received.

This issue has cropped up in two appeals, one at UT level, and another at FTT level. I have summarised the UT matter below:

UT matter

15 Nov 2017 - Request for information received

8 Feb 2018 - DiT responds to request disclosing some information but withholding more.

6 Mar 2018 - DiT upholds decision in internal review

14 Dec 2018 - DiT further internal review in light of Information Notice. Discloses further information, together with a revised refusal notice, accepting that more information should have been disclosed originally.”

FOI Policy view:

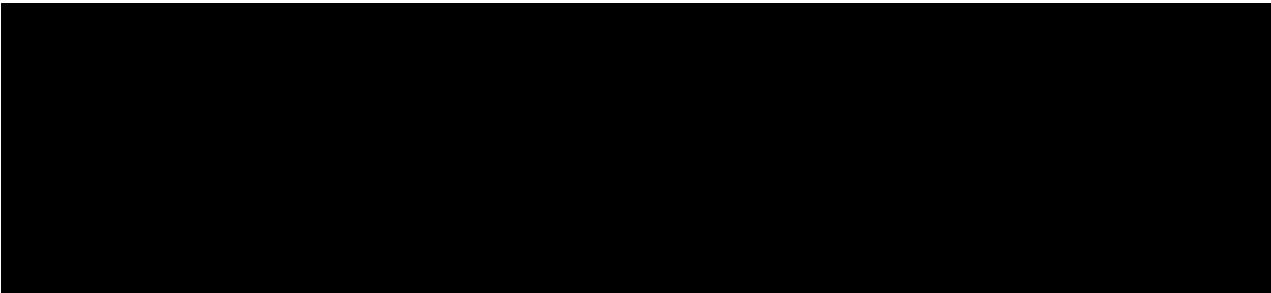
Summary:

It is possible for the PA to disclose information in response to an FOIA request which then can itself reduce the PIT in favour of disclosure of the remaining information, as long as the disclosure is made by the time the authority provides its response within the timeframe of the internal review or when this should have happened. On this latter point, our guidance says that the target date for response at the internal review stage is 20 working days. The 2018 s45 Code of Practice allows for further 20 working days for complex requests.

In this specific case, this date should have been 6 March 2018 [REDACTED]

a) PIT timing point:

The UT in *APPGER* and, more recently, *Maurizi* confirmed that the public interest balance should be assessed according to the circumstances as they stood at the time when the authority finally refuses a request. At the latest, this time is the date of the refusal notice following the authority's internal review (if they are offering one).




In the DiT case above, this date should have been **6 March 2018** – ie when the authority upheld its decision following the internal review.

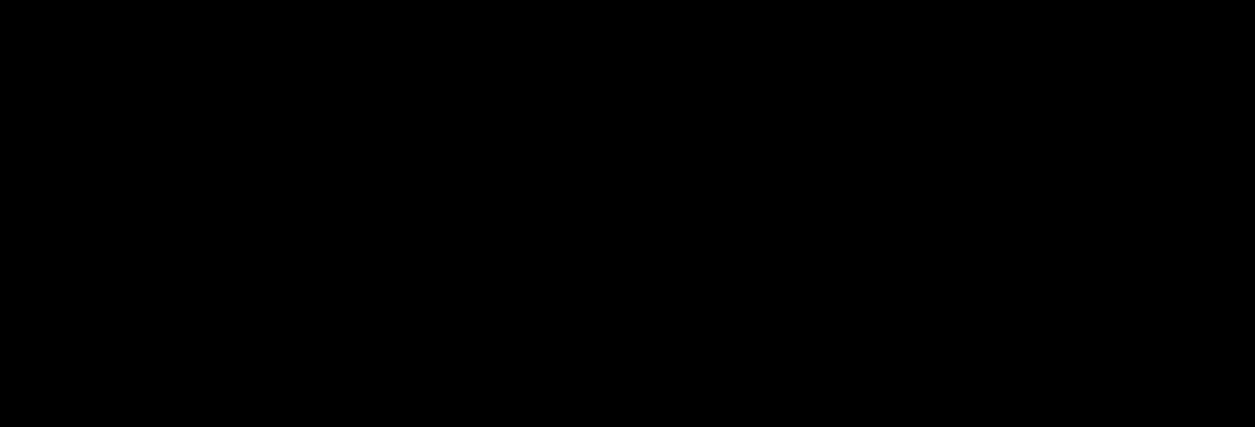
b) Late disclosure into the public domain:

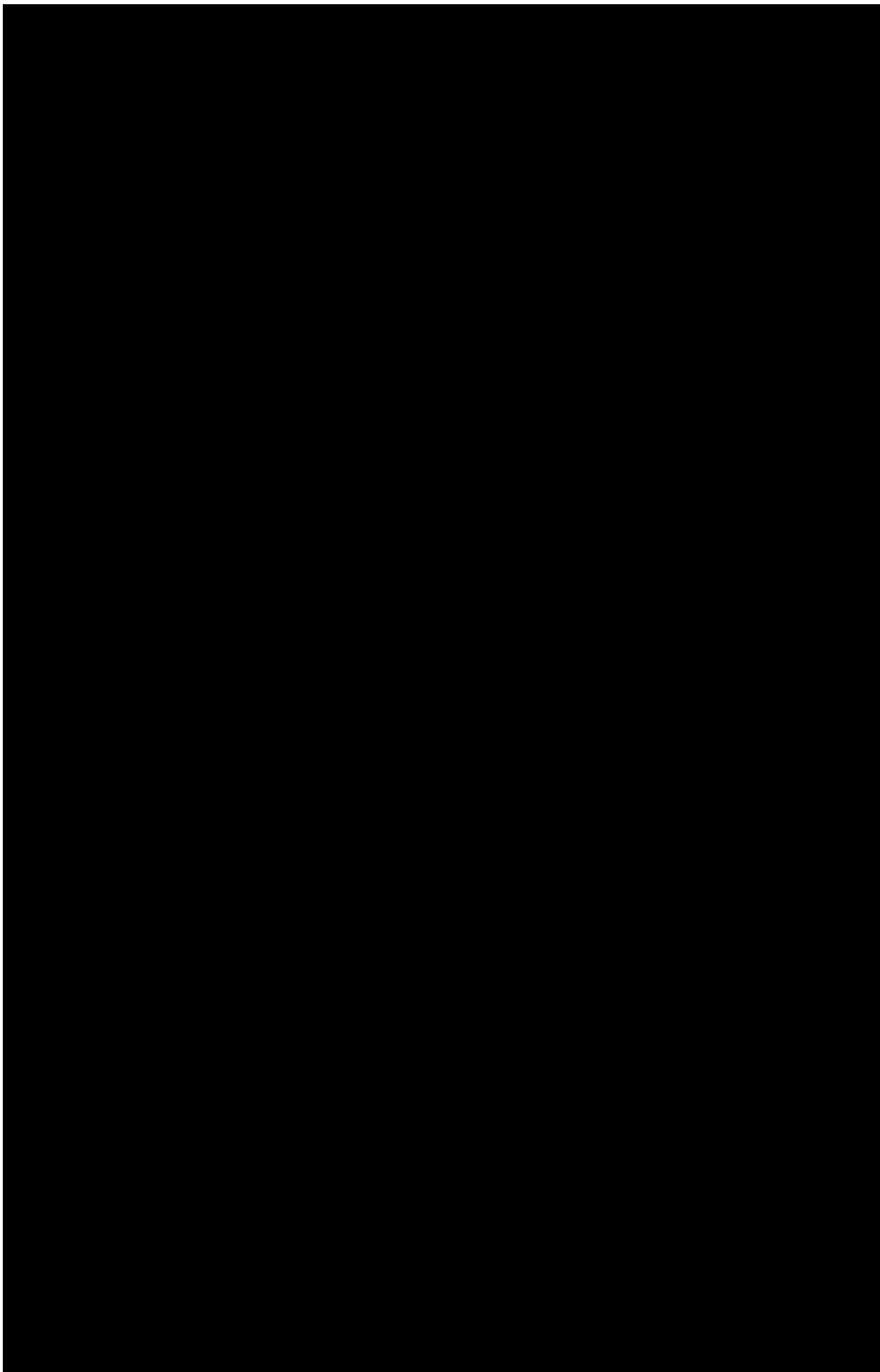


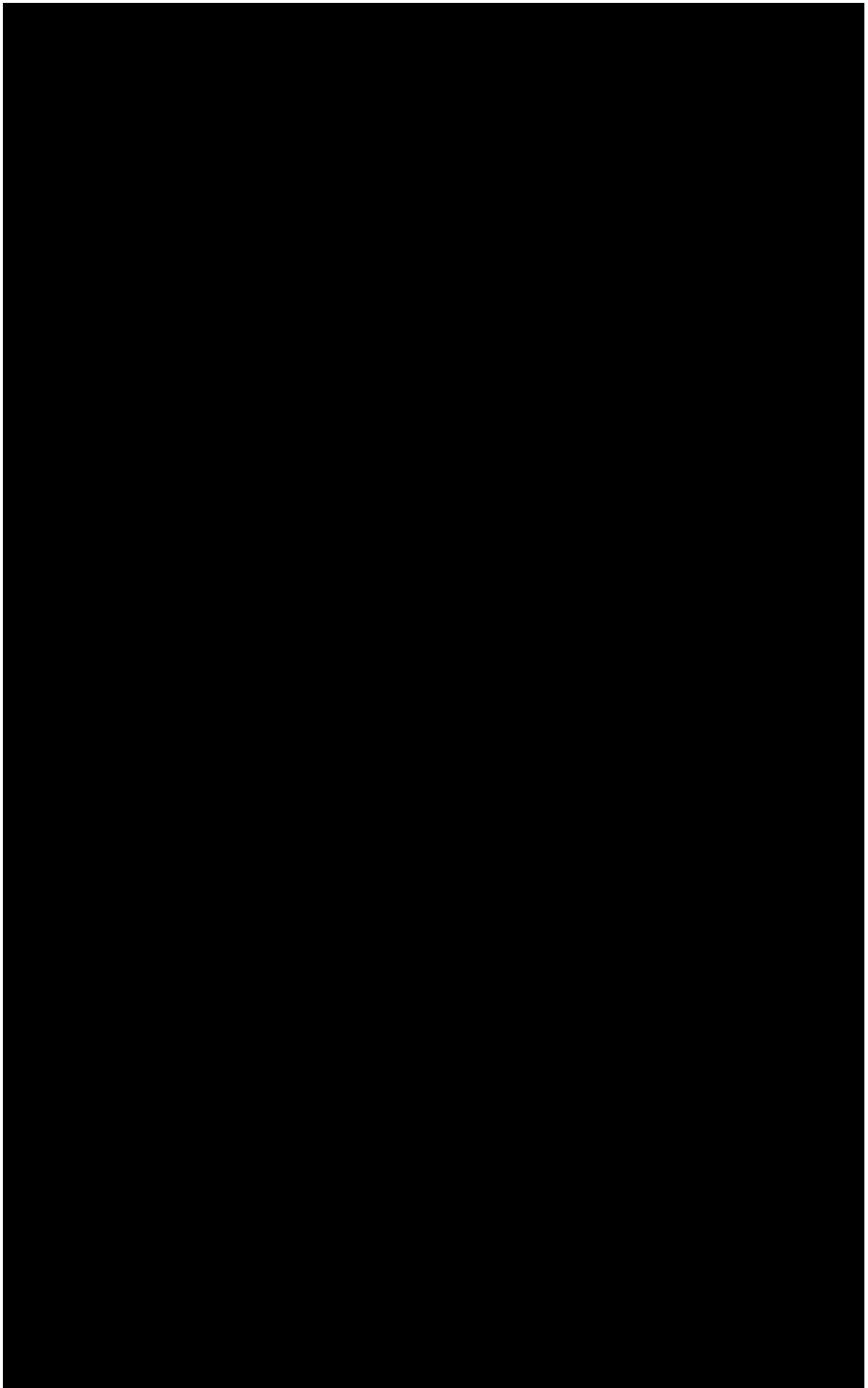
Detail and rationale:

a) PIT timing point

The public interest balance is to be assessed on the basis of the circumstances as they stood when the authority refused the request (including the time of the internal review). 









b) Late disclosure into the public domain:

In this case, the authority (DiT) is seeking to argue that the final refusal date – and, therefore, the time at which the public interest should be assessed – should be 14 Dec 2018, ie the date when the authority issued its final decision after a further internal review in light of the IC’s Information Notice.

