

Freedom of information and environmental information

# How we deal with complaints

A guide for public authorities

**This guidance explains how we deal with complaints made about public authorities under section 50 of the Freedom of Information Act (FOIA) or the Environmental Information Regulations (EIR).**

## Complaints made to the ICO

Under section 50 of the FOIA, any person who is unhappy with the way you have dealt with their request for review has the right to make a complaint to the Information Commissioner's Office (ICO).

We will usually ask the complainant for copies of the original request, any refusal notice and any internal review decision that you have sent to them.

When a valid complaint has been made to us, we will contact you to explain that we have received a complaint and tell you what we expect you to do. However, where you have withheld information from the complainant, we won't usually ask you to send all of it to us immediately.

Our aim is to resolve cases within six months of receiving them.

## What we expect you to do

Before we become involved we expect you will already have considered the issues around withholding the information in detail and shared them with the complainant during your internal review. If you have done so, then our investigation will be quicker and easier.

We will assign a case officer to the case. They will be your point of contact throughout our investigation.

The case officer will ask you to reconsider the case and provide a submission to us in response to the issues raised. They may also ask you to answer specific questions.

Your submission should include details about what information the complainant requested from you, why an exemption applies and, where applicable, how the public interest in maintaining that exemption outweighs the public interest in disclosure.

When you are reconsidering the case, we want you to recheck your reasoning by looking at the following resources:

- our [guidance](#);

- our published lines to take; \_\_\_\_\_
- the common questions relating to particular exemptions or exceptions; and
- any relevant [decision notices](#).

In your submission it will be useful if you include:

- information about the context of the request, and the role of any staff named within the information provided or withheld;
- copies of documents that back up the points you have made in your submission;
- background about the information under consideration that will help us understand its context and sensitivity;
- any legal advice you have received that may help your authority's arguments (although you are not obliged to provide this type of legal advice to the ICO);
- your view on whether it might be possible to release the information in a redacted version; and
- your view on whether the case may be open to informal resolution, for example whether you would be willing to release some or all of the information to the complainant or whether there is some other action you could take which would satisfy them.

It is important to remember that it is your responsibility to satisfy the ICO that information should not be disclosed and that you have complied with the law. This is your opportunity to finalise your position with the ICO.

## If you change your view about the case

When you reconsider the case and review our resources, it is possible that you may change your view about the case.

### **Informal resolution**

Even after we are involved, you can discuss the case with the complainant – particularly if this is likely to lead to you resolving the case informally. If you resolve a case without our involvement, please let us know as soon as possible.

## Releasing the information

If you realise that you could resolve the case by full or partial disclosure of the information then you should do so, informing the case officer at the earliest opportunity.

This will normally mean that the complainant will withdraw their application. However occasionally the complainant will not, because they still want the Commissioner to issue a decision. In these cases the Commissioner must issue a decision, unless the Commissioner thinks that the case is frivolous or vexatious.

## Changing the exemption that you have relied on

During your case review you may decide that you need to substitute one exemption with another – that is, if you decide that an exemption which you originally relied on does not apply but another one does.

We will consider new exemptions which are applied for the first time during the investigation, but it is your responsibility to tell us, and the complainant, why the new exemption applies.

## How long you have to respond

You will have **20 working days** to make your final submission and we will clearly indicate the deadline to you. It is your responsibility to meet this deadline and make sure you have arrangements in place to allow you to fully cooperate with our investigation.

If you think you won't be able to meet the deadline, it is essential that you contact your case officer immediately.

Failure to reply to the ICO's enquiries can result in a formal information notice; it can also result in the case being decided purely on the information we already have.

## Our investigation

After receiving your final submission, the ICO case officer will examine and consider it to help us make an objective assessment of the issues which led to the complaint.

Depending on the complaint, the case officer may consider:

- what searches you did to determine that you did not hold the information;

- the exemptions that you applied and whether you applied them correctly;
- the factors that you considered in gauging the public interest in the information;
- what, if any, potential harm there would be in releasing the information; and
- your basis for refusing the request on the basis that it was not valid, was vexatious or repeated.

The case officer will also take into account case law, legislative requirements, developing precedent, along with any other relevant guidance. Wherever possible the case officer will make a decision based on your submission without seeking further information from you.

## The Commissioner's decision

After concluding the investigation, the case officer will draft a decision notice for the Commissioner or another senior member of staff to approve.

The decision notice will set out the Commissioner's final decision in relation to the application under the FOIA or EIR. If the Commissioner decides you have met your obligations under the legislation we will class the complaint as 'not upheld'; or if you have failed to comply we will class the complaint as 'upheld' and, where relevant, we will tell you what steps you now need to take.

The Commissioner cannot withdraw or amend a decision notice after it is issued.

## Receiving the Commissioner's decision

We will send copies of the decision notice to both the complainant and your Chief Executive or equivalent by first class post. Although we will send the decision notices out at the same time, we can't be held responsible for when they are received.

If you would also like to receive a copy by email, usually on the day the decision is issued, you must give your case officer an email address to send it to.

## If you fail to comply with a decision notice

If we believe that you haven't complied with the steps we specified in a decision notice within 35 days, then the Commissioner can ask the court to look into the case. The court may then deal with your authority as if it has committed a contempt of court.

## Appeals against the Commissioner's decision

If you or the complainant wish to appeal against the Commissioner's decision, you can appeal to the First Tier Tribunal (Information Rights). You must make an appeal within 28 calendar days of the date the decision notice was signed.

## If you want your information sent back

If you would like the information you sent to us returned, you need to ask us to send it to you. If you have not contacted us within six months of the end of the investigation we will usually destroy the information, with the exception of original documents. However, we will keep information beyond this time if there is an appeal to the Tribunal.

Occasionally, we may decide to keep some information to help us with future cases. If so, we will regularly review the need to continue to keep it.

## Information requests about the case

If we receive any information requests about the case, we have a duty under the FOIA to respond. It is in the public interest that we are open, transparent and accountable for the work that we do. It is also important that we do not undermine the trust and confidence of those who write to us. If you do have reasons why information sent to us in the course of an investigation should not be shared with anyone else, you should explain this to your case officer as part of your submission.

## Contacting us

Your case officer is your first point of contact to discuss any issues or outstanding queries. You will find their contact details on the correspondence they have sent to you.

[www.ico.org.uk](http://www.ico.org.uk)

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