

1 April 2010

## **MOD FOI AND EIR COMPLAINTS AND APPEALS PROCEDURES**

1. This document gives an overview of the MOD procedures for the handling of appeals under the Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations 2004 (EIR). The FOI Act and EIR provides requestors with a right to appeal if they consider that MOD is not complying with its publication scheme, that a request for information has not been handled properly, or if they are otherwise dissatisfied with the response to a request. In general, the appeal process for the EIR is the same as for the FOI Act.

### **ADVICE AND INFORMAL RESOLUTION**

2. All responses to requests for information (RFI) should include the MOD standard appeals paragraph which advises requestors that if they are dissatisfied with the response they have received or wish to complain about the handling of their request they should contact the official replying, in the first instance. This period of informal resolution is to be encouraged in an attempt to clarify outstanding points or resolve any misunderstandings at an early stage rather than proceeding direct to a formal review. All MOD officials handling FOI requests have a duty to provide advice and assistance to the requestor as far as is it reasonably practicable to do so.

3. Whilst informal resolution should be attempted where appropriate, a requestor has a right at any stage to apply for an independent internal review by contacting the Chief Information Officer (CIO) Head of Corporate Information, Level 2, MOD Main Building, Whitehall, LONDON, SW1A 2HB. Requests for internal reviews received by branches must be redirected to this address.

### **MOD INDEPENDENT INTERNAL REVIEW**

4. The internal review, which will be undertaken by an experienced reviewing officer, shall examine the handling of the case as well as the substance of the response and reconsider any decisions taken to withhold, either partially or fully, the requested information. The review shall be conducted fairly and impartially, ensuring that the MOD's position in relation to the RFI can be fully justified when assessed against the Department's statutory obligations under the relevant regulations.

5. The internal review process is as follows:

- a. On receipt of a request for an internal review, the CIO Access Review Team acknowledges receipt and informs the complainant of the target date by which the Head of Corporate Information aims to respond. (The target date from 1 April 2010 set by the Department is 20 working days but some reviews, depending on their complexity, will take longer to complete.)
- b. The CIO Review Team shall request all the key documents relating to the case from the lead branch that responded to the original request, including the recorded information in scope of the request. The relevant documents are to arrive with the Review Team within 3 working days.
- c. The CIO Review Team shall advise the complainant of any alteration to the estimated date for completion of the internal review where it becomes apparent that the review will take longer than intended.
- d. The CIO Review Team shall seek advice and assistance from appropriate MOD and external sources in order to provide the Head of Corporate Information with all the advice necessary to complete their formal internal review.
- e. Any proposed disclosure of previously withheld information (or other further action) shall only be undertaken with the agreement of the relevant lead branch with the involvement of the 1-Star official who authorised the original response, should it be

necessary. Any cases which cannot be resolved by mutual agreement will be referred to Permanent Under Secretary (PUS).

f. There are two main outcomes from the review:

- (1) The original decision is upheld, or
- (2) The original decision is overturned (in full or part)

Occasionally, a third type of review is carried out at the request of complainants that involves examination of the Department's handling of the case only (i.e. it does not examine the decisions made about the release of information).

g. At the end of all independent internal reviews CIO Head of Corporate Information will remind the complainant that they have a right to complain further to the Information Commissioner if they remain dissatisfied and provide details of his postal and electronic address.

## **COMPLAINTS TO THE INFORMATION COMMISSIONER**

6. The Information Commissioner's Office (ICO) is an independent statutory regulator which polices the operation of the FOI Act and the EIR with the duty to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of either the Act or the EIR. The ICO recognises that it is important for the complainant to use the MOD's internal complaints procedure in the first instance as many complaints can be satisfactorily resolved without the necessity of referral to the ICO.

7. Where complaints against the MOD are accepted by the ICO for investigation, the process is as follows:

- a. The ICO will write to MOD stating that a complaint has been received and stating the intended course of action. **The CIO Head of Corporate Information is responsible for all liaison with the ICO on behalf of MOD.** All correspondence from the Office of the Commissioner to MOD should therefore be forwarded to the CIO Head of Corporate Information for reply.
- b. If further information is required a member of the CIO Access Review Team will contact the lead branch as and when necessary.
- c. Should the case progress to Tribunal (see below) the lead branch may be required to provide a 1\* witness for the hearing.
- d. In some cases the Commissioner will reach an informal decision with the involvement of the complainant and the MOD. In all other cases he will issue a formal decision notice. Any rulings made by the Commissioner will need to be carefully considered by the CIO-Head of Corporate Information on behalf of MOD.

Where the complainant is dissatisfied because the Department has exceeded the statutory timescale for responding to a request for information and the complainant is still awaiting a reply, the complaint may be referred to the ICO without further delay.

## **APPEALS TO AN INFORMATION TRIBUNAL**

8. The final stage of the process is an appeal to an Information Tribunal. This involves either the appellant or the MOD appealing against the decision of the Information Commissioner. PUS will be consulted about all cases that proceed to this level. Points of law arising from Tribunal decisions can be appealed in the High Court but any High Court judgement would be referred back to the Information Tribunal for reconsideration of the case in the light of the ruling.