

MOD FOI/EIR Compliance Notes

Other FOI Issues and Considerations

CN16: FOI/EIRs Complaints Procedure

Document history

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What this is about:

This note provides an overview of the FOI/EIRs complaints procedure if an applicant is dissatisfied with the way their request for information was handled and outlines the four stages of appeal and the MOD compliance points involved at each stage.

Detail:

Anyone making an information request is entitled to appeal the way their request was handled.

The following text **must** be included at the end of the response to the applicant:

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Deputy Chief Information Officer, 2nd Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.gov.uk>.

There are four main stages of appeal:

Stage 1: Appeals to FOI Focal Points (informal resolutions)

Requesters are encouraged to seek 'informal resolution' with the same official who provided the response on behalf of the Department as an alternative to a formal internal review. However, a period of resolution is not possible in every case and is not an appeal stage stipulated in the Act. Informal resolution tends to be most effective in situations where a requester writes a follow-up letter or email immediately after receiving the Department's response and is seeking a simple clarification or an additional piece of advice. In all other cases a complaint about the official response should be forwarded to CIO-FOI-IR@mod.uk for the CIO-Internal Review Team to conduct an independent internal review.

MOD compliance point:

- There is an important difference between seeking clarification or an additional piece of advice and making a new information request.

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- Requests for new information should be assigned a new AIT reference number and processed separately.

Stage 2: Appeals to MOD Centre (internal reviews)

Internal Reviews involve a reconsideration of the handling of the request from first principles as well as commenting on the previous handling. It provides an opportunity for the MOD to put its own house in order prior to potential intervention by the Information Commissioner. The CIO-SPP Compliance team will test whether information has been released wherever possible and that the arguments for withholding information stand up to scrutiny. CIO-SPP Head may conclude that more information should be disclosed, but we proceed with this course only when we have reached agreement with the lead branch, and the 1 star official who signed off the original response, should it be necessary. The scope of the review is defined by Part VI of the Code of Practice under section 45 of the FOIA.

Stage 3: Appeals to the Information Commissioner

The Information Commissioner has his own team of casework officers who will contact MOD on behalf of complainants who write to the Commissioner expressing dissatisfaction with the way a public authority has handled an internal review. The Information Commissioner's Office (ICO) will require sight of all the information in scope of the request, the PITs for any qualified exemptions applied to withhold information, together with copies of the Department's past correspondence with the complainant. In some cases the Commissioner will reach an informal decision with the cooperation of the complainant and the MOD. In other cases he will issue a decision notice (DN).

MOD compliance points:

- **All communications with ICO on behalf of MOD are carried out by the CIO Internal Review team. CIO will contact FOI Focal Points for additional advice should it become necessary following their contact with the ICO.**
- All DNs are carefully scrutinised by the Hd of the CIO-SPP Compliance Team on behalf of MOD.
- In situations where the Commissioner has not found in the Department's favour, MOD may wish to seek to appeal a decision at an Information Tribunal.

Stage 4: Appeals to the Information Tribunal

All parties involved in the previous stage of appeal (MOD or the complainant) can appeal to the Information Tribunal (IT). MOD may not automatically be a party to the appeal as the appeal is between whoever brings the appeal and the Commissioner. However, even where the public authority is not a party to the appeal, the Tribunal will very often require information from the public authority in order to determine a case. In other cases it may be in MOD's best interests to volunteer to join with the Commissioner in defending an appeal against a decision made in our favour. The IT also has the power to direct that a public authority is joined to an appeal or receive evidence from persons who are not parties.

MOD compliance points:

- **All communications with the IT on behalf of MOD are carried out by the CIO Internal Review team. CIO will contact FOI Focal Points for additional advice should it become necessary following their contact with the IT.**

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- The IT can only sit in judgement on decisions previously made by the Commissioner and cannot address any wider complaints about MOD or any other party.
- Should the case progress to Tribunal the lead branch may be required to provide a 1* witness for the hearing.

Subsequent stages of Appeal

The IT is a two-tier structure: points arising from the handling of the case by the lower tribunal can be referred to an upper tribunal and after that to the High Court, Supreme Court and beyond.

Further information

Code of Practice under section 45 of the FOIA

<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

MOJ FOI guidance on appeals

<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners>

ICO guidance on appeals to the Commissioner at <http://www.ico.gov.uk/>

IT guidance on appeals

<http://www.justice.gov.uk/tribunals/information-rights>