

How we deal with complaints

A guide for complainants

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

Complaints made to the ICO

If you have asked for official information from a public authority and think they have wrongly withheld information or incorrectly handled your request, you can complain to us by filling in a complaint form.

For your complaint to be eligible for further consideration it must relate to matters that are covered by the FOIA or EIR. We can consider:

- If staff at the public authority have handled your request for information correctly.
- If the information existed within the public authority at the time of your request.
- If the public authority holds the information but not whether it is factually accurate, nor whether they should have recorded certain information but failed to do so.
- If you have a right to receive the recorded information held by a public authority but not whether staff in the public authority should have given you their thoughts and opinions.

We usually need you to provide us with supporting information or evidence including copies of your original request, and any refusal notice and any internal review decision you have received from the public authority.

If your complaint is eligible, we will acknowledge that we have your case. We will then assign a case officer to your case, who will be your point of contact throughout our investigation. The case officer will send you a complaint reference number and their direct contact telephone number.

The case officer is responsible for looking into the issues raised by your case, and to work with all parties to try and resolve it in a way that is proportionate and effective. Outcomes can range from an informal resolution to a formal decision notice.

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

If your case is complex, perhaps involving a large number of documents or raising new issues, it may take longer. The case officer will keep you updated about progress, but feel free to ask at any time how things are moving on.

What we expect you to do

The case officer may ask for your views and background information on the case, or to clarify your complaint.

It is important that you reply to any letters or emails we send you. If you don't reply, we may have to conclude that you have abandoned your application and we may close your case.

There is nothing to prevent you discussing your case with the public authority even once the ICO is involved and we will often encourage this, especially where this could lead to the case being resolved informally.

However you must let your case officer know about any developments which could affect the case. For instance, if the public authority sends you some or all of the information you asked for during the investigation.

If you are unsure about what is required from you, or have any concerns about what's happening in your case, you can call your case officer.

Informal resolution

It may be possible for the public authority to informally resolve your complaint with you. This will usually involve a compromise, for example the public authority may guarantee that the information will be provided at a later date, or it may offer you access to some or all of the information but still refuse to make it all publicly available.

Sometimes this can mean that you will be satisfied faster than if you waited for a formal decision – but you don't have to agree informally if you don't want to.

If you accept the offer of informal resolution, we will ask you to withdraw your application for a decision from the Commissioner.

Our investigation

In most cases the case officer will contact the public authority to explain that we have received a complaint and to ask them to revisit the case. We give a public authority 20 working days to provide its submission to us.

The public authority's submission will generally cover the following, depending on the case:

- a detailed explanation about why it has withheld information from you, or why it believes it does not hold the information you asked for.
- a detailed breakdown of any fee so that we can check whether its charge was justified.
- an explanation of why it did not provide advice and assistance or treated your request as vexatious or repeated.

It is possible that the public authority could decide, in the course of our investigation, that it should change the exemption or exception it used to withhold the information. If that happens, the case officer will let you know and may give you an opportunity to comment on the change and ask the public authority to discuss it with 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 our staff to approve. The decision notice will set out the Commissioner's final decision about your complaint under the FOIA or EIR. It will explain whether the public authority has complied with the law and its obligations in dealing with your request. We will send the decision notice to you by first class post.

If the Commissioner finds that the public authority was wrong to withhold information from you, they will order it to provide the information to you, usually within 28 days of the date of the decision notice.

Because the Commissioner's decision looks at how the public authority dealt with your request from a legal perspective, it may be a complex document which focuses on legal arguments. We will try to keep legal jargon to a minimum, and we will try and make the decision easy to follow. If you have questions about the meaning of the decision notice, you can ask your case officer to explain it.

Please remember that the case officer cannot discuss with you whether the Commissioner's decision is correct or not. Once the decision notice is issued, it cannot be changed. The Commissioner's decision is legally binding, and the public authority must take any steps that the Commissioner has ordered.

Appeals against the Commissioner's decision

If you or the public authority are unhappy with the Commissioner's decision, you can appeal to the Information Rights Tribunal. If you want to appeal, you must do so within 28 calendar days. The ICO cannot help you make an appeal and you should consider taking legal advice about the process.

Information requests about the case

If we receive any information requests about the case, we have a duty under the FOIA to respond. However, you will not be able to use an information request to obtain any information we have ordered should not be disclosed in a case.

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