

# How long do I have to carry out an internal review?

## **Freedom of Information Act 2000**

### **Good Practice Guidance No. 5**

#### **Time limits on carrying out internal reviews following requests for information under the Freedom of Information Act 2000**

The Information Commissioner's Office (ICO) has produced this guidance as part of a series of good practice guidance designed to help understand and apply the Freedom of Information Act 2000 (FOIA).

FOIA makes reference to complaints procedures at section 45 (concerning the Code of Practice) and at section 50; both relate to circumstances where an applicant wishes to complain about the response of a public authority to a request for information. The reference at section 50 concerns the discretion that the Commissioner is allowed to exercise not to make a decision in cases where a complainant has not exhausted a public authority's complaints procedure (also referred to as internal review). The Commissioner considers it important that internal reviews are completed as promptly as possible and so is introducing this guidance setting out what he considers to be a reasonable timescale for public authorities to undertake an internal review following a request by an applicant.

Section VI of the Section 45 Code of Practice states that "each public authority should have a procedure in place for dealing with complaints .... In relation to its handling of requests for information." This comprises desirable practice for the purposes of FOIA, but it should be noted that under the Environmental Information Regulations it is a requirement for public authorities to consider representations made by applicants for information. Consequently, most public authorities under FOIA should already have the procedures in place to allow them to perform an internal review. It is also important to note that Refusal Notices must include either details of the public authority's complaints procedure or a statement that it does not have one.

This will assist the Commissioner in determining whether or not an applicant, on making a complaint under section 50, has exhausted the complaints procedure of the public authority.

## Time limits on carrying out internal reviews

The spirit of the Code is that internal reviews should be completed as soon as possible. For example:

- a complaints procedure should be designed to allow prompt determination of complaints (para 39)
- target times should be set for dealing with complaints (para 42).
- the code also recommends that the target times are reviewed regularly and that each authority should publish them together with information on its success in meeting those targets.
- there is also an implied recommendation, supported by guidance issued by the Department for Constitutional Affairs, that the complainant should be kept fully informed throughout the review process.

The Commissioner supports these recommendations and intends, from time to time, to monitor conformity with them.

Some other factors to be noted are as follows:

- FOIA requires a request to be complied with "promptly and in any event not later than the twentieth working day following the date of receipt" which suggests that internal reviews should also be completed promptly.
- Internal review is an important second opportunity for the public authority to engage with an applicant and there are clear benefits to both parties if the review is concluded within a reasonable timeframe.
- The Freedom of Information Act (Scotland) 2002 stipulates an internal review should be completed within 20 working days following receipt of the request for review.

In view of all the above the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer. In those circumstances, the public authority should, as a matter of good practice, notify the requester and explain why more time is needed.

In our view, in no case should the total time taken exceed 40 working days. In such cases we would expect a public authority to be able to demonstrate that it had commenced the review procedure promptly following receipt of the request for review and had actively worked on the review throughout that period.

## Time limits on carrying out internal reviews

Some public authorities have complaints procedures which have a number of stages or levels. The Commissioner does not expect an internal review of a response to an FOI request to have more than one stage. Given that this is a review of a statutory process with clear rights for requesters and obligations on public authorities, a degree of formality is expected.

### Enforcement

The Commissioner wants to ensure that a complainant has exhausted a public authority's internal review procedure, but at the same time the complainant should not be unreasonably delayed in having his complaint considered under section 50. Equally, it will be beneficial to both complainant and public authority if an internal review leads to a prompt and satisfactory outcome such that a subsequent complaint to the Commissioner is not required. The Commissioner has therefore set out above what he regards as "reasonable" in terms of the timescale for completing an internal review. He is keen to ensure that the time limit is adhered to and that there are no unreasonable delays in carrying out reviews.

Internal reviews are referred to in the Code of Practice, and significant or repeated unreasonable delays in dealing with internal reviews may lead to monitoring by the Enforcement team and, in some instances, structured intervention, for example, the issuing of a Practice Recommendation. The Commissioner's [Enforcement Strategy](#) provides more detail about practice recommendations and structured intervention.

### More information

If you need any more information about this or any other aspect of freedom of information, please contact us.

Phone: 0303 123 1113

Website: [www.ico.gov.uk](http://www.ico.gov.uk)