

Freedom of Information Act Environmental Information Regulations



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Internal reviews

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance covers both the FOIA and the EIR. It is aimed at practitioners in public authorities and clarifies what an internal review is. It also explains when and how to carry out a review and highlights the benefits of having an internal review procedure in place.

Overview

- Under the FOIA, an authority is not legally required to have an internal review procedure, but in order to conform with the Section 45 code of practice an authority should have a review procedure in place.
- Codes of practice specific to the FOIA and the EIR provide guidance on the conduct of reviews, referred to in the FOIA code as the complaints procedure.
- The EIR require public authorities to have an internal review procedure.
- In a refusal notice, a public authority must inform the applicant about its internal review procedure (if any, in the case of the FOIA) as well as the right of appeal to the Information Commissioner.
- A request for review may involve a request for review of a decision to withhold information or a complaint about the handling of a request for information.
- A review should normally comprise a thorough reconsideration of the decision and handling of the request. In certain circumstances the original request may require consideration depending on the basis and timing of the review.
- A review must be impartial, thorough and swift and the outcome must be notified promptly to the complainant.
- A one-stage review should be completed in 20 working days. In exceptional cases it may be appropriate to take longer but even in those cases it should not exceed 40 working days.

What does the FOIA say?

The FOIA does not require an authority to have a review procedure in place. However both the [Code of Practice](#) made under section 45 of the FOIA and the ICO recommend it is good practice to have one. Section 17(7) of the FOIA provides that, in a refusal notice, an authority must give details of any review procedures, as well as details of the right of appeal to the Information Commissioner.

What are the benefits under the FOIA of having an internal review procedure?

- It enables conformity with the codes of practice
- In considering a complaint, the Commissioner will take into account the position at the time of completion of the internal review. The review process provides an authority with an opportunity to correct most breaches, mistakes or errors.
- It should enhance the authority's reputation.
- By providing a mechanism for the applicant's concerns to be addressed at an early stage, it may result in fewer complaints being made to the Information Commissioner about the handling of the request.

How to conduct an internal review under the FOIA

If a public authority has an internal review procedure, guidance is available under the section 45 Code. In [Campaign Against Arms Trade v the Information Commissioner & the Ministry of Defence \(EA/2006/0040; 26 August 2008\)](#), the Information Tribunal took the view that adherence to the section 45 Code should be included as part of the process of considering "whether a complaint has been dealt with in accordance with the requirements of Part 1" of the FOIA.

Part VI of the section 45 Code sets out the procedure for the authority to follow when an applicant complains about the authority's response to his or her request. Any such communication should be treated and handled in accordance with the authority's procedures. The section 45 Code provides detailed guidance; in particular:

- the review procedure should provide "a fair and thorough review of handling issues and of decisions taken pursuant to the Act...";
- the review should be impartial and undertaken by someone senior to the person who took the original decision where practicable, or if not, by someone different to the original decision maker but who is trained and understands freedom of information;
- it should enable a fresh decision to be taken on a reconsideration of all factors relevant to the issue;
- the review should be as prompt, thorough, clear and simple as possible. In our view this should be a one stage procedure.
- authorities should keep records of all complaints and their outcome and monitor their own performance in handling complaints; and

- any action required as a result of the review should be carried out promptly. For example, if procedures have not been properly followed, the authority should give an apology and explanation to the applicant and take appropriate steps to prevent a recurrence. If the outcome of the review is that the information must be disclosed, that should be done as soon as possible. If the original decision is upheld, the authority must inform the applicant of his or her right of appeal to the Information Commissioner.

Time limits under the FOIA

The FOIA does not stipulate a time limit for completion of an internal review, but the section 45 Code states that they should be dealt with in a reasonable timeframe. The Information Commissioner's view is that a reasonable time for completing an internal review is **20 working days** from the date of the request for review. Please refer to the ICO's guidance: [Time limits on carrying out internal reviews](#) (Good Practice Guidance 5).

We accept that, in a small number of cases, it may be reasonable to take longer. In these circumstances, the public authority should notify the requester, explain why more time is needed and give an estimate of the completion date. However we also consider that the total time taken for review should not exceed 40 working days. If appealed, we would also expect to see evidence that the authority had acted promptly in response to the request for review and that it had actively worked on it throughout that period.

On which circumstances should the authority base its review?

Circumstances relating to a request might change between the time the authority made its decision about a request and the time it undertakes an internal review. Should an authority reconsider its decision based on factors at the time the original decision was made, or at the time of the review? Our view is that the authority should reconsider the exemptions and the public interest test on the basis of the circumstances as they existed at the time of the request, or at least by the time for compliance with sections 10 and 17 of the FOIA. The position is similar for the EIR. Also if circumstances at the time of review are such that the authority can now release the information, it should do so.

What do the EIR say?

If the information being considered is environmental information, the request must be considered under the provisions of the EIR rather than the FOIA. For more information on what constitutes environmental information, see our guidance: [What is environmental information?](#)

In contrast to the FOIA, the EIR do oblige public authorities to have a complaints procedure in place. Regulation 14(5) of the EIR also requires public authorities to inform applicants in the refusal notice of:

- their right under regulation 11 to request a review of the refusal; and
- their right to appeal to the Information Commissioner.

What are the benefits under the EIR of having an internal review procedure?

It is obligatory under the EIR to have an internal review procedure. Similar benefits apply as described for the FOIA, above.

How to conduct an internal review under the EIR

The [EIR Code of Practice](#) (“the EIR Code”) sets out recommendations for internal review procedures.

The EIR Code contains similar provisions to the section 45 Code. The EIR procedure applies to “any person who considers that their request has not been properly handled or who are otherwise dissatisfied with the outcome of the consideration of their request”. As with the FOIA, the EIR Code requires an internal review procedure to be fair, impartial, clear and simple and carried out quickly. As with the FOIA, we consider that the procedure should not have more than one stage. The EIR Code requires authorities to keep records of all requests, decisions, complaints and reasoning. The authority must acknowledge all complaints and inform the complainant of the target date for a decision.

Time limits under the EIR

The EIR differ from the FOIA in that there is a time limit for a complainant to submit a request for review of the authority’s decision or procedures in relation to his or her request. Under the EIR the complainant must have requested the internal review within 40 working days of the alleged failure to comply.

The public authority must also complete its review and notify the complainant of the outcome as soon as possible; and in any event within 40 working days from when the complaint was received.

Enforcement by the Information Commissioner

The enforcement and appeal provisions under the FOIA apply to requests made both under the FOIA and the EIR.

We expect a complainant to have exhausted a public authority’s internal review procedure, but we also consider there should be no unreasonable delay. It will be better for both the complainant and the public authority if an internal review leads to a prompt and satisfactory outcome.

We have therefore set out what we regard as “reasonable” in terms of the timescale for completing an internal review in our guidance: [Time limits on carrying out internal reviews](#). (Good Practice Guidance 5).

Internal reviews are referred to in the section 45 Code, the EIR Code and the EIR. Significant or repeated unreasonable delays in dealing with internal reviews, or other failures to conform to the codes of practice will be monitored by the Commissioner's Enforcement team and, in some instances, may lead to regulatory intervention; for example, the issuing of a Practice Recommendation. The Commissioner's [Enforcement Strategy](#) provides more detail about structured and regulatory intervention.

More information

This guidance will be reviewed and considered from time to time in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our general recommended approach to this area, although individual cases will always be decided on the basis of their particular circumstances.

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

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