



## HS2 – FOI and EIR complaints procedures

Following an FOI or EIR decision, the applicant has a right of complaint and may request an internal review. This should be handled in line with the policy below:

### **Introduction**

The procedures for handling internal reviews are as follows.

All complaints should be notified to the Head of Corporate Services and the FOI Manager.

The original decision taker (ie the manager level or above who agreed that the original decision) should consider the case. Unless the original decision taker agrees that the complaint is justified, and upholds the complaint in full (in which case he/she should apologise to the applicant and correct the shortcomings) the original decision taker must appoint an independent person to carry out the internal review. They should do this as soon as possible, and in any event no later than five working days after the complaint is received.

### **How to find a reviewer**

The case reviewer should be manager level or above and have had FOI training.

Cases which involve the following must be reviewed by Exec Team member.

- finely balanced public interest considerations
- considerations around the harm or prejudice that would result from disclosure, by reference to the exemptions cited in the original decision
- a minister giving their reasonable opinion as the qualified person in relation to the section 36 exemption (which may require a fresh appraisal and submission to allow the Minister to reconsider that decision)
- the FOIA legal professional privilege exemption (s42) or its EIR alternative (reg. 12(5)(b))
- the FOIA security exemptions in section 23 and/or section 24 (note that Transec cases can usually only be considered by an approved reviewer within Transec)
- the use of 'neither confirm nor deny'
- personal data, where there are complex considerations around the use of the FOIA section 40 personal information exemption
- a dispute about whether the correct regime, between EIRs and FOIA, has been used
- the request was refused as being 'repeated' or 'vexatious'

### You need to act quickly

It is very important to make a quick decision on whether there needs to be an independent review and if so who will do the review. The ICO expects most internal reviews to be fully completed within 20 working days. Therefore, the appointment of the reviewer needs to be within the first five days after receipt of the complaint so that they can start work without further delay.

### Further advice

Internal reviewers should use the checklist below, which is a step-by-step guide to help all staff to conduct internal reviews.

If you need further advice, please contact the Head of Corporate Services or the FOI Manager

| <b>FOI Act and EIR Complaints:<br/>A checklist of actions required when undertaking internal reviews</b> |  |
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| <b>On receipt of the complaint and within the first 5 working days:</b>                                  |  |
| 1)   | Treat any expression of dissatisfaction with the original FoI/ EIR response as a request for an internal review (even if the complainant does not specifically ask for one).   |
| 2)   | Assign it to the original case handler or if absent someone else connected with the original decision who can retrieve the case file and make an initial recommendation to the original SCS decision maker.                              |
| 3)   | Acknowledge the request in writing, giving a date when the full reply will be sent.<br><b>NB – the deadline for FOIA and EIR reviews is 20 working days but for exceptionally complex cases it may be extended up to 40 working days</b> |
| 4)   | Always read the complaint carefully and identify any particular concerns expressed   |
| 5)   | Look carefully at the history of the case and consider how well the response covers the original request   |
| 6)   | Check that the correct regime was applied – was the FOIA or EIR applicable wholly or in part.  |
| 7)   | Check that all the available, relevant information was located and properly considered.  |
| 8)   | If the s.12 cost limit was applied, check that the calculations were recorded and are fair and reasonable  |
| 9)   | If other exemptions were applied, consider whether they were the right ones.   |
| 10)  | If qualified exemptions were applied, consider whether we were right to conclude that the public interest favours non-disclosure where information has been withheld.  |
| 11)  | Seek advice from Legal as appropriate.   |



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| 12) | Where third parties were consulted and the PIT included factors they provided, consider whether they need to be re-consulted in the light of the complainants letter |
| 13) | Make a decision within 5 working days whether the complaint is wholly or partially justified.  |

**If the original decision is being fully overturned**

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| 14) | Record approval for any additional material that is now to be released.   |
| 15) | Where the complaint is found to be fully justified, inform the complainant of this outcome, including details of why the original decision is now considered to be incorrect and particularly where procedural lapses have occurred include a suitable apology. |

**If the original decision is being upheld wholly or in part:**

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| 16) | Refer the case file urgently to an independent manager or above  |
| 17) | Confirm to FOI manager who is carrying out the independent review.   |
| 18) | The independent reviewer must aim to complete their review within the remainder of the original 20 working day deadline.<br><b>NB</b> If this is not however achievable, the complainant must be informed of the delay, the reasons for it, and the revised deadline <b>(note deadlines as per step 4)</b> . |
| 19) | The reviewer should first interview the original case-handlers, and then undertake a fair, thorough and impartial review, duplicating steps 5) to 14) above. Always consult Legal too where required, as you start the review so that you can be aware of relevant ICO etc decisions/ wider implications.    |

**Where the independent review decision is to overturn the original decision in full or in part:**

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| 20) | Follow steps 15) and 16) above and include in the decision letter how the applicant may exercise their right to complain to the Information Commissioner should they remain dissatisfied with the outcome of the internal review. |
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**Where the independent review decision is to maintain the original decision in full:**

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| 21) | issue a decision letter setting out in detail for the complainant the reasons why the original decision is being upheld, indicating where possible when in the future or in what particular circumstances the need to with hold that information would cease, and inform the applicant of their right to complain to the Information Commissioner. |
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