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Requests for assessment

Complaints about alleged non-criminal breaches of the DPA or complaints about data protection problems will be treated as requests for assessment. **They do not have to be submitted on a data protection complaint form and if a form has been completed, it does not automatically mean that the matter should be treated as a request for assessment.**

What the DPA says

Section 42 of the DPA says that a request

'may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the DPA'.

By 'directly affected' we usually mean that the problem involves the processing of the individual's own personal data.

The DPA also says that on receiving such a request, the Commissioner shall make an assessment

'unless he has not been supplied with such information as he may reasonably require in order to satisfy himself as to the identity of the person making the request and enable him to identify the processing in question'.

The Commissioner has discretion as to how he carries out an assessment and the DPA gives the following non-exhaustive list of some of the matters he may take into account:

- The extent to which the request appears to raise a matter of substance
- Any undue delay in making the request, and
- Whether the person making the request is entitled to make an access request under section 7 of the DPA, in respect of the data.

Next

Given the variety of correspondence we receive it is difficult to definitively describe when a matter would be best dealt with as a request for assessment. The officer should, however, check whether it meets the assessments threshold criteria.

CAD procedures>Casework>RFA>Threshold criteria

RFA Threshold criteria

Given the variety of correspondence we receive it is difficult to definitively describe when a matter would be best dealt with as a request for assessment. The officer should, however, answer the following questions before writing to anyone:

Does the correspondent appear to have (or believe they have) experienced a data protection problem or have they specifically asked for an assessment?

- If the answer to this is 'no', then consider treating the matter as an enquiry or ask for clarification.
- If the answer to this is 'yes' then go on to next question

Can you identify and understand the processing that has led to or is leading to the problem?

- If the answer to this is 'no', then consider treating the matter as an enquiry or ask for clarification.
- If the answer to this is 'yes' then go on to next question.

Were the issues covered by the DPA at the time of the incident?

- If the answer to this is 'no', but there are likely to be ongoing issues concerning compliance with the DPA, treat as a compliance request.
- If the answer to this is 'no', and there are unlikely to be ongoing issues concerning compliance with the DPA, treat as an enquiry.
- If the answer to this is 'yes' then go on to next question.

Can you identify the correspondent?

- If the answer to this is 'no', ask for clarification or treat as a compliance request.
- If the answer to this is 'yes' then go on to next question.

Is the correspondent directly affected by the processing (or do they believe they are)?

- If the answer to this is 'no', then consider treating the matter as a compliance request or ask for clarification.
- If the answer to this is 'yes' the officer should treat the matter as a request for assessment.

Next

Where the threshold criteria are satisfied the matter should be treated as a request for assessment. But this does not mean that a lengthy investigation must follow. The Commissioner has discretion as to how he carries out an

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DPA Enquiries

Correspondence which appears to concern the DPA but which does not appear to constitute a request for assessment or compliance request, will be classified as a DPA enquiry.

Writing to the enquirer

The officer should try to respond by providing relevant information about the application of the DPA in the circumstances, sending pre-published guidance notes as necessary.

The officer should then close the case in accordance with the 'DPA enquiry case attribute reference guide'.

Although we do not invite appeals concerning the way an officer has responded to an enquiry, the correspondent can challenge the officer's view through the case reviews and service complaints policy.

Where the 'enquiry' is not an enquiry

In the unlikely event that a matter has been classified as a DPA enquiry but it appears that the correspondent:

- may be experiencing a data protection 'problem', or
- has a data protection complaint and the matter cannot be dealt with by the provision of some basic information **and**
- the officer feels they need more information in order to understand the matter properly,

they may decide to ask the correspondent to complete a DPA complaint form, sending them a form and explanatory leaflet (or a link to those documents if they are sending the request by email).

The officer should then change the CMEH case type to a 'request for assessment' or 'compliance request' in accordance with the 'changing case type' procedures in the CMEH user guide before closing the case 'closed - advice given'. The case should remain closed unless and until the correspondent provides the information requested, in which case it should be 'reopened' and returned to the team queue.

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This section applies only where a case has been assigned to a case officer. It does not apply to unassigned cases in the CAD team queues.

Initial checks will have been carried out by the CST during the classification process and also by the CAD officer responsible for checking incoming cases in the team CMEH queue. When the case is assigned to an officer, the officer should check again to see whether they can identify and understand the problem or the relevant processing. Their actions will depend on whether:

- clarification has previously been requested
- clarification has not previously been requested

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CAD procedures>Pre-casework>Clarity check>If clarification has previously been requested

If clarification has previously been requested

Where the requested information was sent

If clarification has previously been requested, the information requested was provided and the officer can now understand the problem (or the processing that led to the problem) they should deal with the case.

If clarification has previously been requested, the information requested was provided but the officer still cannot understand the problem (or the processing that led to the problem) they should consider whether to ask for further clarification or treat the matter as a DPA enquiry (in accordance with the assessments threshold criteria) or a PECR enquiry, whichever is appropriate. If the officer is unsure how to proceed, they should ask their manager.

If the officer decides to treat the matter as an enquiry, they should not change the case type but should rather mark the RFA or the COM case as 'closed - advice provided' before completing the relevant case attributes in accordance with either the request for assessment section or the compliance request section of the CMEH user guide.

If in any case information is provided outside of the specified 28 days, the officer should ask their manager how to proceed.

Where other additional information was sent instead

If clarification has previously been requested, the complainant failed to provide the information requested but did provide some other additional information and the officer can now understand the problem (or the processing that led to the problem) then they should make their assessment.

If clarification has previously been requested, the complainant failed to provide the information requested but did provide some other additional information but the officer still cannot understand the problem (or the processing that led to the problem) they should treat the matter as an enquiry, in accordance with the assessments threshold criteria.

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CAD procedures>Pre-casework>Clarity check>If clarification has not previously been requested

Clarification has not previously been requested

The officer should ask the complainant to clarify matters.

Where the requested information is sent

If the correspondent provides the information requested and the officer can now understand the problem (or the processing that led to the problem) then they should make their assessment.

If the correspondent provides the information requested was but the officer still cannot understand the problem (or the processing that led to the problem) they should consider whether to ask for further clarification or treat the matter as an enquiry, in accordance with the assessments threshold criteria. If the officer is unsure how to proceed, they should ask their manager.

If the information is provided outside of the specified 28 days, the officer should ask their manager how to proceed.

Where other additional information is sent instead

If the correspondent provides additional information but does not provide the information that was requested but the officer can now understand the problem (or the processing that led to the problem) then they should make their assessment

If the correspondent provides additional information but does not provide the information that was requested and the officer still cannot understand the problem (or the processing that led to the problem) they should treat the matter as an enquiry, in accordance with the assessments threshold criteria.

In accordance with either the request for assessment section of the CMEH user guide or the compliance request section of the CMEH user guide (whichever is appropriate), the officer should complete the CMEH work item, fill in all the relevant case attributes and mark the case as 'closed - advice given'.

If in any case information is provided outside of the specified 28 days, the officer should ask their manager how to proceed.

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CAD procedures>Casework>RFA>Threshold criteria>Manner of assessment

Manner of assessment - verified or unverified?

The officer should then decide whether to make the assessment based on the information the correspondent has provided (an 'unverified assessment') or to contact the relevant data controller before making the assessment (a 'verified assessment'). In doing so, they should consider the following:

Have the matters raised been submitted within 12 months of the requester becoming aware of them (unless there is good reason why not)?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then go on to the next question

Do the matters raised constitute a 'matter of substance'?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then go on to the next question

On the face of it, does the correspondence suggest there has been a breach of the DPA?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then go on to the next question

Has the requester taken all reasonable steps to resolve the matter with the data controller directly (and have they provided evidence of this)?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then go on to the next question

In spite of the above, are there likely to be any outstanding issues?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then go on to the next question

Would we be likely to need further information to make a decision as to enforcement?

- If the answer to this question is 'no' then conduct an 'unverified assessment'
- if the answer to this question is 'yes' then conduct a 'verified assessment'.

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Unverified assessments

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Where the officer has determined that:

- The matters raised have not been submitted within 12 months of the requester becoming aware of them (unless there was good reason);
- The matters raised are not likely to constitute a 'matter of substance';
- 'On the face of it', the correspondence does not suggest there is likely to have been a breach of the DPA;
- The requester does not appear to have taken all reasonable steps to resolve the matter with the data controller directly;
- There are not likely to be any outstanding issues; and
- It is unlikely that we will need any further information to make a decision as to enforcement,

they should determine whether on the balance of probabilities it is likely or unlikely that the data controller has conducted the processing in question in compliance with the provisions of the DPA, based on the information provided by the requester, and any knowledge they might have about the processing undertaken by the relevant data controller and/or the wider sector. There will be no need to ask the data controller first.

- Unverified assessments - 'compliance likely'
- Unverified assessments - 'compliance unlikely'

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Non-Casework Policies and Procedures

CAD procedures>Casework>RFA>Threshold criteria>Manner of assessment>Unverified assessments>Compliance likely

Unverified assessments - 'compliance likely'

The officer should write to the requester, using the

' *unverified assessments - compliance likely - letter to requester* '

as a guide, enclosing the "how we can help you (v3)" guidance note.

There is no need to write to the controller. As it is our assessment that they are likely to have complied with the DPA, we will not usually have any reason to contact them.

The officer should then mark the case 'closed - compliance likely' and complete the case attributes in accordance with the relevant section of the CMEH user guide.

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CAD procedures>Casework>RFA>Unverified assessments>Compliance likely >Letter to requester

Unverified assessment - compliance likely - letter to requester

The text for steps 1, 2 and 3 should be included in all cases.

The officer can be more flexible from step 4 onwards as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter**. Section headings should also not be included.

Step 1 - clearly describe the correspondence you are responding to

Thank you for your [data protection complaint form/letter] of [date] concerning the processing of your personal information by [data controller].

Step 2 - give basic information about the DPA

You have made a complaint that relates to the Data Protection Act 1998 (the DPA). The DPA has eight principles of 'good information handling'. These give people specific rights in relation to their personal information and put certain obligations on those organisations that are responsible for processing it.

Step 3 - explain broadly what the requester can expect from us

Where we receive a data protection complaint we are under a duty, in most cases, to make an 'assessment'. This assessment is our view as to whether it is likely or unlikely that an organisation has complied with the DPA in the situation that has been described to us.

If we consider it is unlikely that an organisation has complied with the DPA, we will let you know and will decide what action, if any, to take. Whilst we cannot award compensation, we will educate the organisation to help them understand their obligations and advise them to take steps to comply with the law in the future. More information about our role is enclosed.

Step 4 - say what you understand to be the individuals concerns and how they relate to the

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CAD procedures>Casework>RFA>Threshold criteria>Manner of assessment>Unverified assessments >Compliance unlikely

Unverified assessments - 'compliance unlikely'

Where an officer makes an adverse assessment they should write to both the requester and the data controller.

Writing to the requester

The officer should use the

'unverified assessments - compliance unlikely - letter to requester'

as a guide, enclosing the 'how we can help you (v3)' guidance note.

Writing to the data controller

The officer should also write to the data controller, using the

'unverified assessments - compliance unlikely - letter to data controller'

as a guide.

They should also enclose the 'information for data controllers (v2)' guidance note unless the data controller is, to the best of the officer's knowledge, familiar with the Commissioner's role and the assessments process. Team managers should, however, ensure that data controllers they deal with regularly are sent a guidance note occasionally, for example once every six months or where the process has been amended, to make sure that they remain up to date.

Remedies

Step 7 of the sample letter says that where appropriate the officer should 'clearly explain any remedial action you expect the DC to take'. The officer should consider whether a remedy is required whenever they make a 'compliance unlikely' assessment. In all cases the purpose of the remedy should be to:

- Help the data controller achieve compliance with the DPA in that case; and/or
- Help prevent similar breaches occurring in the future.

Next

- Identifying the remedy
- What if the data controller challenges the assessment?

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CAD procedures > Casework > RFA > Compliance unlikely > Letter to requester

Unverified assessments - compliance unlikely - letter to requester

The text for steps 1, 2 and 3 should be included in all cases.

The officer can be more flexible from step 4 onwards as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter. Section headings should also not be included.**

Step 1 - clearly describe the correspondence you are responding to

Thank you for your **[data protection complaint form/letter]** of **[date]** concerning the processing of your personal information by **[data controller]**.

Step 2 - give basic information about the DPA

You have made a complaint that relates to the Data Protection Act 1998 (the DPA). The DPA has eight principles of 'good information handling'. These give people specific rights in relation to their personal information and put certain obligations on those organisations that are responsible for processing it.

Step 3- explain broadly what the requester can expect from us

Where we receive a data protection complaint we are under a duty, in most cases, to make an 'assessment'. This assessment is our view as to whether it is likely or unlikely that an organisation has complied with the DPA in the situation that has been described to us.

If we consider it is unlikely that an organisation has complied with the DPA, we will let you know and will decide what action, if any, to take. Whilst we cannot award compensation, we will educate the organisation to help them understand their obligations and advise them to take steps to comply with the law in the future. More information about our role is enclosed.

Step 4 - say what you understand to be the individuals concerns and how they relate to the

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Unverified assessments - Compliance unlikely - letter to data controller

The text for steps 1, 2 and 3 should be included in all cases.

The officer can be more flexible from step 4 onwards as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter. Section headings should also not be included.**

Step 1 - Describe why you are writing

The Information Commissioner has received a complaint from:

[Name of data subject/requester]

[Address of data subject/requester]

[Any reference number by which the data subject/requester may be known to the data controller]

about the way **[data controller]** has processed **[his/her]** personal data.

Step 2 - give basic information about the DPA

[As you are aware] **[T/t]he** Information Commissioner enforces the Data Protection Act 1998 (the DPA). The DPA has eight principles of 'good information handling'. These give people specific rights in relation to their personal information and put certain obligations on those organisations that are responsible for processing it.

Step 3 - describe the Commissioner's role

Under section 42 of the DPA an individual can ask the Commissioner to conduct an 'assessment', that is, give a view as to whether it is likely or unlikely that an organisation has complied with the DPA in the situation that has been described to us. We are treating **[data subject's]** complaint as a request for assessment.

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Finally you should be aware that the Information Commissioner often receives requests for copies of the letters we send and receive when dealing with casework. Not only are we obliged to deal with these in accordance with the access provisions of the Data Protection Act 1998 (the DPA) and the Freedom of Information Act 2000 (the FOIA), it is in the public interest that we are open, transparent and accountable for the work that we do.

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However, whilst we want to disclose as much information as we reasonably can, there will be occasions where full disclosure would be wrong. It is also important that the disclosures we make do not undermine the confidence and trust in the Commissioner of those who correspond with him.

When you reply to this letter, I would be grateful if you would indicate whether any of the information you provide in connection with this matter is confidential, or for any other reason should not be disclosed to anyone who requests it. I should make clear that simply preferring that the information is withheld may not be enough to prevent disclosure. You should have a good reason why this information should not be disclosed to anyone else and explain this to us clearly and fully.

CAD procedures/Casework/Remedies

Remedies

Most remedies work will be carried out in relation to assessments we have made as a result of complaints we have received from members of the public. These should be dealt with in accordance with the procedures set out below.

Remedies work will be carried out differently in relation to assessments we have made as a result of a self reported security breaches.

Whenever they make a 'compliance unlikely' assessment, the case officer should consider whether a 'remedy' is required. The purpose of the remedy should be to:

- Help the data controller achieve compliance with the DPA in that case; and/or
- Help prevent similar breaches occurring in the future.

Note - The numbering of the paragraphs below relates to the numbering on the remedies flowchart.

1.0 - Identifying the remedy

1.1 - In order to determine the best way to 'remedy' the matter the officer should consider whether the ICO has had any previous dealings with the relevant data controller or industry in relation to the same or similar matters (for example by consulting the relevant DPA 'watch lists').

Where a case indicates systemic or persistent breaches of the DPA by a particular data controller or industry which affects (or potentially affects) a large number of individuals and the ICO has previously received assurances from the data controller or industry that the issue in question has been addressed or resolved, the officer should consider referring the case (or cases) to the Enforcement Team.

A referral to the Audit Team may also be appropriate where the particulars of a case suggest that cooperation with the data controller is both a viable route to obtaining the remedy sought and a more appropriate route to obtaining a remedy than simply 'imposing' a measure on them. However, a referral to Audit is likely to be most appropriate where a 'one off fix' has been obtained by the case officer but still feels that the data controller would benefit from an Audit and/or the data controller has expressed a willingness to be audited.

1.2 - Where a remedy is required in the form of a relatively simple 'one off fix' to put things right for the complainant or to put things in right in an area about which we have not previously corresponded with the data controller (or the industry in which they operate) the case officer should recommend the steps the data controller should take to achieve compliance with the DPA in this case. The specific considerations in each case will be different but the officer should ensure that the proposed remedy is **proportionate** to any risks posed by continued non-compliance with the DPA.

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help ensure future compliance. Again they should consider whether the proposed remedy is proportionate to any risks posed by continued non-compliance with the DPA.

If the officer doesn't believe that the alternative remedy is likely to be enough to achieve compliance with the DPA, they should outline their concerns and either reiterate their proposed remedy or, if more appropriate, propose an alternative that is likely to be acceptable to all parties.

3.3 - Where the data controller doesn't propose an alternative this is still not necessarily the same thing as demonstrating an unwillingness to comply with the DPA outright. Where they appear to need some additional clarification the officer should provide it.

In any event it may take some additional correspondence before the officer is satisfied that they have agreed a satisfactory remedy with the data controller, that has been (or will be) implemented as described and that once it has been implemented there are likely to be no outstanding compliance issues. Where a long term commitment of change is required and the monitoring of such change is necessary, the officer may wish to create an agreed written plan of action with the data controller in conjunction with their manager.

However the officer should avoid being drawn into protracted correspondence where it appears that the remedy is likely to be difficult to achieve. In such cases, the officer should consider if the case is best resolved some other way, for example by arranging a meeting with the data controller. This will depend on factors such as the nature of the non-compliance and any previous contact we have had with them. Such a decision should always be taken in conjunction with their line manager.

3.4 - The officer should also avoid being drawn into protracted correspondence where it appears that the data controller appears to be using 'delaying tactics' and/or is showing an unwillingness to comply with the DPA and/or to cooperate with the ICO. In those cases the officer should refer the case to the Enforcement Team.

What if the data controller doesn't respond?

If the officer asks the data controller to confirm they have taken, or intend to take, the recommended steps to achieve future compliance and they do not respond, they should send a reminder letter, enclosing a copy of their original letter, giving them 14 days to provide the information requested.

If the data controller still does not respond, either to provide the information requested or to let the officer know when they will be able to provide that information, the officer should escalate the case in accordance with the non/inadequate response case escalation procedure.

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What if the data controller challenges the assessment?

Where a data controller gives reasons why they think the 'compliance unlikely' assessment should be revised, the officer should consider their views and decide whether or not to revise the assessment.

Where the officer decides not to revise the assessment

If the officer feels that on the basis of the information provided by the data controller that they should not revise the assessment they should write to the data controller only. There is no need to write to the requester.

Writing to the data controller

The officer should write to the data controller, using the

'unverified assessments - representations received but assessment will not be revised - letter to data controller' as a guide.

The officer should also decide whether to ask the data controller to confirm that they have taken the steps recommended to help bring their processing into compliance with the DPA in this case and/or to prevent similar likely breaches in the future. Such confirmation is more likely to be requested in cases which in the officer's view constitute a 'matter of substance' and the case is such that if the officer was unable to get the data controller to comply voluntarily, they would be likely to recommend the case for enforcement. If the officer is unsure whether to ask the data controller to confirm the action they have taken, they should discuss it with their line manager.

The CMEH case should remain closed.

If the data controller still disputes the assessment

If the data controller writes again indicating that they still disagree with the assessment, the matter should be considered in accordance with our case review and service complaints policy. There will be no need to ask them to complete the case review and service complaint form if they have clearly explained the reasons for their disagreement.

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Verified Assessments

In this section

- Verified assessment threshold criteria
- First letter to the requester
- First letter to the data controller
- Where the data controller fails to respond
- Where the data controller responds, but does not provide the information requested
- Making the assessment

Verified assessment threshold criteria

Where the officer has determined that:

- The matters raised have been submitted within 12 months of the requester becoming aware of them (or longer if there was good reason);
- The matters raised are likely to constitute a 'matter of substance';
- 'On the face of it', the correspondence suggest there may have been a breach of the DPA;
- The requester has taken reasonable steps to resolve the matter with the data controller directly;
- There may well be outstanding issues; and
- It is likely that we will need any further information to make a decision as to enforcement,

the officer should write to the data controller to ask for their views before making an assessment.

First letter to the requester

The officer should write to the requester, using the

' *verified assessment - assessment not yet made - letter to requester* '

as a guide. They should also enclose the 'how we can help you (v3)' guidance note

First letter to the data controller

The officer should also write to the data controller using the

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If it is not, the officer should send a reminder, using the

verified assessment - partial response - 14 day letter to data controller

as a guide. The reminder letter should be sent 'Recorded Delivery' and the officer must be sure to make a note of the reference number.

If the data controller fails to provide all of the information the officer needs to make an assessment as listed in the '14 day' letter, the officer should escalate the case to the appropriate CAD manager.

Making the assessment

Once the officer has the information they need to make the assessment they should determine whether on the balance of probabilities it is likely or unlikely that the data controller has conducted the processing in question in compliance with the provisions of the DPA:

- Verified assessments - 'compliance likely'
- Verified assessments - 'compliance unlikely'

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Verified assessments - 'compliance likely'

Where the data controller and/or the requester have provided the relevant information and the officer is of the view that compliance is likely to have been achieved, they should write to both the requester and the data controller explaining their assessment and giving reasons for their view.

Writing to the requester

Where the data controller has provided the relevant information and the case officer is of the view compliance with the DPA is likely to have been achieved the officer should write to the requester, using the

' *verified assessments - compliance likely - letter to requester* '

as a guide.

Writing to the data controller

The officer should also write to the data controller, using the

' *verified assessments - compliance likely - letter to data controller* '

as a guide.

The officer should then close the case 'closed - compliance likely' and complete the relevant case attributes in accordance with the relevant section of the CMEH user guide .

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Verified assessments - compliance likely - letter to requester

Some of this text might not be entirely suitable in the circumstances of each case. The officer can therefore be flexible with the language they use as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter**. Section headings **should also not be included**.

Step 1 - clearly explain why you are writing

I write further to my letter of **[date]** concerning your complaint about the processing of your personal information by **[data controller]**. As I have already explained, our duty in relation to your complaint is to make an assessment. An assessment is a view or opinion about whether it is likely or unlikely that **[data controller]** complied with the principles of the Data Protection Act 1998 (the DPA) in the situation that you described to us.

Step 2 - identify what you understand to be the individual's concerns and how they relate to the DPA

You were concerned that **[data controller]** [...]

The **[x principle]** says that [...]

Step 3 - explain that you now have enough information to make your assessment

From the information you provided I was not able to make my assessment. I asked **[data controller]** for more information and they have now provided the information I requested.

Step 4 - clearly explain your assessment, the reasons for it and that the matter is considered as closed

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Verified assessment - compliance likely - letter to DC

This letter was written primarily to help deal with RFAs. It may also be suitable for serious compliance request cases (COMs) but it will sometimes be inappropriate to give the personal details of the correspondent in these cases. If an officer is unsure whether to include these details, they should speak to their manager.

Whatever the case type some of this text might not be entirely suitable in the circumstances of each case. The officer can therefore be flexible with the language they use as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter**. Section headings should also not be included.

Step 1 - clearly explain why you are writing

Thank you for your letter of [date] concerning [data subject's] complaint. As I have already explained, our duty in relation to this complaint is to make an assessment. An assessment is a view or opinion about whether it is likely or unlikely that [data controller] has complied with the Data Protection Act 1998 (the DPA) in this case.

Step 2 - identify what you understand to be the individuals concerns and how they relate to the DPA

[Data subject] was concerned that [...]

The [x principle] says that [...]

Step 3 - explain that you now have enough information to make your assessment

From the information [data subject] provided I was not able to make my assessment. I therefore asked [data controller] for their views.

Step 4 - clearly explain your assessment, the

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Non-Casework Policies and Procedures

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Verified assessments - 'compliance unlikely'

Where the officer is of the view that compliance with the DPA is unlikely to have been achieved, they should write to both the requester and the data controller explaining their assessment and giving reasons for their view.

Writing to the requester

When writing to the requester the officer should use the

' *verified assessments - compliance unlikely - letter to requester* '

as a guide.

Writing to the data controller

The officer should write to the data controller, using the

' *verified assessments - compliance unlikely - letter to data controller* '

as a guide.

The officer should also decide whether to ask the data controller to confirm that they have taken the steps recommended to help bring their processing into compliance with the DPA in this case and/or to prevent similar likely breaches in the future. If the officer is unsure about this they should discuss it with their manager.

Next

In all cases where an officer makes a 'compliance unlikely' assessment they should consider whether the case requires a remedy or should otherwise be referred to RAD.

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Some of this text might not be entirely suitable in the circumstances of each case. The officer can therefore be flexible with the language they use as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter**. **Section headings should also not be included**.

Step 1 - clearly explain why you are writing

I write further to my letter of **[date]** concerning your complaint about the processing of your personal information by **[data controller]**. As I have already explained, our duty in relation to your complaint is to make an assessment. An assessment is a view or opinion about whether it is likely or unlikely that **[data controller]** complied with the principles of the Data Protection Act 1998 (the DPA) in the situation that you described to us.

Step 2 - identify what you understand to be the individuals concerns and how they relate to the DPA

You were concerned that **[data controller]** [...]

The **[x principle]** says that [...]

Step 3 - explain that you now have enough information to make your assessment

From the information you provided I was not able to make my assessment. I asked **[data controller]** for their views and they have now provided the information I requested.

Step 4 - clearly explain your assessment and the reasons for it

[Data controller] explained [...]

From all of the information that is now available to me it appears that **[data**

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Verified assessments - compliance unlikely - letter to DC

This letter was written primarily to help deal with RFAs. It may also be suitable for serious compliance request cases (COMs) but it will sometimes be inappropriate to give the personal details of the correspondent in these cases. If an officer is unsure whether to include these details, they should speak to their manager.

Whatever the case type some of this text might not be entirely suitable in the circumstances of each case. The officer can therefore be flexible with the language they use as long as they comply with the broad instructions for each section. They should also include any additional information they think is necessary.

Text in bold/square brackets/italics indicates that there is data to be selected or added and **should not be included in the letter**. Section headings should also not be included.

Step 1 - clearly explain why you are writing

Thank you for your letter of [date] concerning [data subject's] complaint. As I have already explained, our duty in relation to this complaint is to make an assessment. An assessment is a view or opinion about whether it is likely or unlikely that [data controller] has complied with the Data Protection Act 1998 (the DPA) in this case.

Step 2 - identify what you understand to be the individuals concerns and how they relate to the DPA

[Data subject] was concerned that [...]

The [principle] says that [...]

Step 3 - explain that you now have enough information to make your assessment

From the information [data subject] provided I was not able to make my assessment. I therefore asked [data controller] for their views.

Step 4 - clearly explain your assessment and that

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CAD referrals to the Regulatory Action Division

The overriding aim of the the Regulatory Action Division (RAD), is to take purposeful risk-based regulatory action where obligations are ignored, examples need to be set or issues need to be clarified, based on the Strategy for Data Protection Regulatory Action. They do this by taking action in three main areas

- Audit;
- Enforcement; and
- Criminal Investigations.

A Casework and Advice Officer should refer a matter to RAD where they believe formal action in any of these areas may be appropriate.