

How FOIA complaints are dealt with – a guide for review applicants

If you have asked for information from a public authority and think they have wrongly withheld information or incorrectly handled your request, you can complain to the Information Commissioner (Commissioner). The complaint must relate to matters that are covered by the Freedom of Information Act (FOIA).

For your complaint to be eligible for further consideration the complaint form must be fully completed and all documentation that is required must be included.

We can consider:

- If the public authority 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
- If you have a right to receive the information held by the public authority

We cannot consider:

- The public authority's appeal, or internal review, process
- The accuracy, correctness, or legality, of any information or decision contained in the information provided to you
- Whether the public authority should have recorded certain information but failed to do so

What we expect you to do

We need you to complete the complaint form and 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.

You must also provide the information that the public authority has sent to you in response to your request.

The complaint form gives you the opportunity to express your views and provide background information on the case, or to clarify your complaint. This could include why you think the exemptions, if cited in the refusal notice, do not apply or what public interest you think there is in the information that means it should be provided.

As the Commissioner is only concerned with how the public authority has handled the request, please avoid commentary, as far as possible, about particular members of the public authority's staff. Complaints or compliments about a public authority's staff are not a matter for consideration by the Commissioner and should, instead, be made to the public authority concerned.

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

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.

Informal resolution

It may be possible for the public authority to informally resolve your complaint with you and there is nothing to prevent you discussing your case with the public authority even once the Commissioner is involved, especially where this could lead to the case being resolved informally.

The Commissioner may also suggest an alternative dispute resolution at any time.

Informal resolution 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 with any informal alternative resolution offered if you don't want to.

However please let us 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 accept the offer of informal resolution, we will ask that you withdraw your application for a decision from the Commissioner.

Where an informal resolution is reached, the Commissioner may still decide that the circumstances require a decision notice to be issued, for example where practices by public authorities or review applicants need to be addressed or improved, or where the application of a particular exemption or practical refusal reason sets a precedent or needs to be publicised.

Our investigation

If your complaint is eligible, we will acknowledge that we have your case and send you a complaint reference number.

We will look into the issues raised by your case and 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.

In most cases we 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 10 working days to provide its submission to us. A copy of your complaint will usually be provided to the public authority.

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

- an explanation of how it dealt with your request;
- why the request was refused, or partially complied with;
- a detailed explanation about the application of any exemptions.

It is possible that the public authority could decide, in the course of our investigation, that it should change an exemption it used to withhold the information.

If that happens, we 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 public authority's submissions to the Commissioner will not be disclosed to the review applicant as they are confidential and it is an offence for the Commissioner or members of staff to disclose any such information.

The Commissioner's decision

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. You will be advised of any undue delay.

After concluding the investigation, a legally binding decision notice will be drafted. The decision notice will set out the Commissioner's final decision about your complaint. 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 and the public authority.

If the Commissioner finds that the public authority was wrong to withhold information from you, it will be ordered 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 will 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, please contact us.

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 have been 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 High Court.

Details about the appeal process will be included in the decision notice. Further guidance is set out in "Appeals against Notices issued by the Information Commissioner" document which is available on the website.

We cannot help you make an appeal and you should consider taking legal advice about the process.