

Introduction

This document sets out the way in which the Information Commissioner (IC) deals with applications for review under the Freedom of Information Act 2015 (FOI).

A person (review applicant) who is dissatisfied with a Public Authority's (PA) response to an FOI request can make an application to the IC for a review of that decision. However, the IC cannot take action until the person has exhausted the PA's complaints procedure.

The main stages

In summary:

1. Application and eligibility assessment

An application for review must relate to eligible matters that are covered by FOI.

Before commencing a review, the IC must confirm that an application is complete and that the applicant has exhausted the PA's complaints procedure.

Not all applications will be progressed: in certain circumstances there may be no requirement for the IC to make a decision, or the IC may be prohibited from making a decision.

2. Alternative dispute resolution

Where appropriate, and at any point during the investigation, an alternative resolution can be suggested by any party in line with FOI section 44.

3. Investigating eligible applications

In carrying out investigations, the IC will:

- (i) work in an impartial, independent and objective manner
- (ii) communicate with both parties promptly

4. Issue of Decision Notice

The IC must make a decision in respect of the particular application as soon as possible and issue a legally binding decision notice to the applicant and PA.

5. Consideration of any other action

The IC may consider whether it is necessary to provide further good practice advice or issue an Enforcement Notice.

6. File Closure

Files will be closed after completion of the review and any subsequent legal action.

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1. Application and eligibility assessment

The IC must confirm that an application for review is complete, eligible and that there is a requirement to make a decision.

1.1. Completeness of applications

The application cannot be progressed if:

- The complaint form is not fully completed
- All the required information is not provided
- If an application is incomplete, the applicant will be sent a letter to advise why the application is incomplete and provide advice.

1.2. Eligibility of applications

The application cannot be progressed if

- The applicant has made a request to a public authority which is not subject to FOI
- The applicant has not exhausted the public authority's appeals process, or
- the applicant's request for information made to the public authority did not comply with the requirements of the Act.

If an application is ineligible, the applicant will be sent a letter to advise why the application is not eligible and provided with advice.

1.3. Cases where there is no requirement/ no power to make a decision

Section 44 of FOI set outs circumstances when the IC is not required, or is not empowered, to make a decision.

These circumstances include if:

- there has been an undue delay in applying to the IC – (the IC considers this to be longer than 28 days since the last meaningful communication from the public authority)
- the application is vexatious, malicious, frivolous, misconceived or lacking in substance
- the application would require the IC to challenge the conclusiveness of a certificate (Section 42(4) precludes the Information Commissioner from making a decision in specified cases).

If there is no requirement/no power for the IC to make a decision, the applicant will be sent a letter to advise why there is no requirement/power to make a decision.

1.4. Withdrawn and abandoned requests

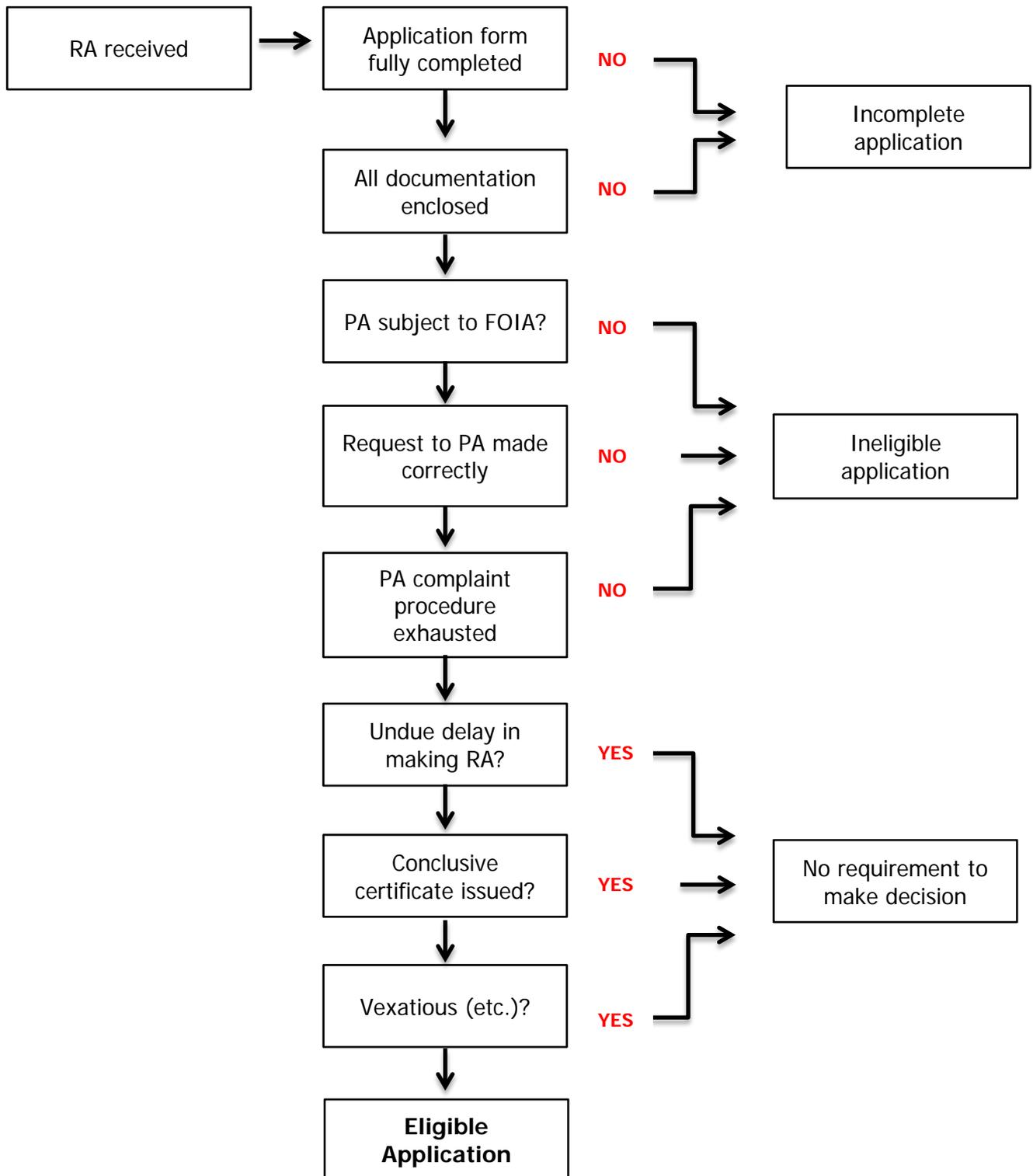
An applicant may advise the IC at any time that they wish to withdraw or abandon their application.

If the applicant has withdrawn or abandoned their application there is no requirement for the IC to make a decision (Section 44).

The IC will consider that the application has been abandoned if the applicant fails to reply to correspondence from the IC and there is no evidence otherwise that the applicant wishes to continue with their application.

If the applicant advises the IC that they wish to withdraw the application, or it appears that the application has been abandoned, this will be confirmed to the applicant.

1.5. Application and eligibility assessment flowchart



1.6. Weighting of eligible applications

All eligible applications will be considered in the order in which they are received. The IC will determine if prioritisation of any particular request is required.

To allow for an equitable distribution of workload, each application will be given a weighting of 1, 2 or 3.

Weightings may be altered up or down during the review process.

Examples of criteria for weighting:

Weighting	Criteria
1	Failure to respond to the FOI request by PA Straightforward cases – e.g. applications where information is clearly subject to an ‘absolute exemption’, or the information is clearly not ‘held’ by the PA
2	Straightforward cases which require some judgement, but which do not involve new issues Straightforward cases which would be weighted 1 but involve large amounts of information
3	Cases likely to involve complex arguments or legal points not previously considered, or which involve complex public interest considerations Cases likely to receive media attention Cases involving information on a sensitive subject matter

2. Alternative dispute resolution

Section 42(3)(c) provides for the IC to consider whether the matter may be resolved without the need to make a decision and issue a decision notice.

In line with FOI section 44 the IC may, where appropriate, and at any time during the investigation, attempt to resolve a matter by alternative dispute resolution (ADR).

ADR is a process by which one or both of the parties agree to a course of action, which results in the applicant withdrawing their review application. The applicant is the only person who may decide whether or not any form of alternative resolution proposed is acceptable.

ADR may be proposed by any of the parties.

If the IC considers it appropriate, either or both parties will be provided with the opportunity to suggest alternative means of resolution and may make suggestions at any time during the review process.

In considering whether ADR is appropriate, the IC will consider the duty of PA's to advise and assist persons who propose to make, or have made, requests for information and the Freedom of Information Code of Practice.

Informal resolution between the parties is most likely to result in disclosure of information, identification of an alternative method to receive the information, or provision of additional explanation by the PA which satisfies the applicant.

If informal resolution is achieved this must be communicated to the IC. If the applicant wishes to withdraw their review application, this must also be communicated to the IC.

The IC may also propose ADR to the applicant, and suggest the withdrawal of the review application, in some circumstances: for example where the IC is satisfied that:

- the PA does not hold the information;
- the information is exempt in its entirety and the IC can point to precedent in previous decisions;
- the PA accepts that it handled the request incorrectly and discloses all information.

3. Investigating Eligible Applications

In carrying out investigations, the IC will:

- work in an impartial, independent and objective manner
- communicate with both parties promptly

Alternative dispute resolution (ADR) may be considered at any stage of the process, but it is the prerogative of the applicant to decide whether to accept a proposed ADR.

3.1. Review Stage 1 – reason for application

The IC will as far as possible establish from the application the reason that the request was refused, in part or in full, by the PA.

These reasons include:

- The PA has not responded to the request at all
- The PA has not complied with one or more of the administrative requirements of Part 2 in responding to the request.
- The PA has not responded to the request for information for one or more of the following reasons:
 - the applicant has not complied with section 14(2) (applicant must give additional information or pay additional fees requested within 28 days).
 - a practical refusal reason applies and cannot be removed, despite the public authority complying with the duty in section 15 (advice and assistance); or
 - the information is absolutely exempt information or qualified exempt information.

3.2. Review Stage 2 -Acknowledgment to the applicant

The means of communication preferred by the applicant must be used as far as possible.

If the application is clear, a letter acknowledging receipt, and the scope and eligibility, of the application will be sent to the applicant.

If further information, or clarification, from the applicant is necessary, this will be sought promptly and a response will be requested within 28 days. If no response is received the IC will consider that the applicant has abandoned the application and advise the applicant and close the file.

3.3. Review Stage 3 - Requesting submissions from the public authority

The IC can make a decision as to:

- whether the PA has responded to a request for information in accordance with the requirements of Part 2 (access to information held by public authorities); or

- whether the PA was justified in refusing to give information requested.

The PA will be requested to complete and return a submission to assist the IC in establishing what actions and decisions the PA took in handling the applicant's request.

The IC expects that the PA will have properly administered and considered the applicant's request, and review request, and all the information sought in the submission should be readily to hand.

The PA will, therefore, be requested to complete and return the submission within 10 working days.

If the PA fails to return the submission within the timeframe, an Information Notice will be issued under the provisions of section 45.

The IC may, if considered necessary, exercise the power of entry and inspection provided by section 49.

3.4. Review Stage 4 - Receipt of submission from public authority

The response received from the PA may be received in electronic form or hard copy.

On receipt, the submission will be passed to the Deputy Commissioner for consideration and to decide which officer should deal with the matter.

3.5. Review Stage 5 - Consideration of submission

The submission will be considered in respect of the concerns raised by the Applicant and will be based on the information supplied by the PA and the Applicant. Any information obtained from research undertaken may also, if relevant, be considered.

The main considerations will be:

3.5.1. General compliance with Part 2

Including, but not limited to;

- Failure to respond
- Provision of advice and assistance
- practical refusal reasons,
- time for response
- issue and content of refusal notices.

3.5.2. Reliance on exemptions

- How/why the exemption applies
- If the information is qualified exempt information:
 - whether any prejudice/harm test etc. set out in the particular exemption was met;
 - the public interest considerations in respect of the non-disclosure of the particular information.

4. Issue of Decision Notice

A decision in respect of the particular application must be made as soon as possible, unless the IC is precluded from doing so or is under no obligation to do so (including where an applicant has accepted alternative resolution or withdrawn their application).

A legally binding decision notice must be issued to the applicant and PA.

The decision notice must include:

- The reasons for the decision
- Any steps to be taken by the PA
- The period of time within which the steps are to be taken
- The right of appeal to the High Court.

5. Consideration of other action

It may become apparent during an investigation that the PA is generally failing to comply with Part 2 of FOIA or that its practice in relation to its functions under FOIA does not conform with the code of practice.

The IC may make recommendations as to good practice, or, if necessary, issue an Enforcement Notice in respect of compliance with Part 2.