



Information Commissioner's Office

Policies & Procedures: Appeals

December 2009

1. DEFINITIONS

“**agent**” means a person who is authorized to act on behalf of an appellant;

“**appeal**” means an appeal to the Information Commissioner by an applicant under section 42 that a public authority has not complied with any of its obligations under the Act;

“**applicant**” means the individual who made the original application for access to records;

“**commissioner**” means the Information Commissioner appointed under section 35;

“**counsel**” means a lawyer who is authorized to act on behalf of an appellant;

“**deemed refusal**” means a public authority has been deemed to refuse access to requested records by virtue of the fact that the public authority has failed to provide a response within the legal time limit

“**internal review**” means a formal internal review within a public authority by a person more senior than the individual who made a decision respecting access, deferral, fees, annotation or correction;

“**mediate**” means a confidential and without prejudice process where one person works with parties to a dispute to facilitate the settlement of one or more of the issues in dispute;

“**mediator**” means a person from the Information Commissioner’s Office who works with parties to a dispute to facilitate the settlement of one or more of the issues in dispute;

“**personal information**” means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including but not limited to-

- (a) the individual’s name, home address or home telephone number;
- (b) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations;
- (c) the individual’s age, sex, marital status, family status or sexual orientation;
- (d) an identifying number, symbol or other particular assigned to the individual;
- (e) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics;
- (f) information about the individual’s health and health care history, including information about a physical or mental disability;
- (g) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given;
- (h) anyone else’s opinions about the individual; or
- (i) the individual’s personal views or opinions, except if they are about someone else;

but does not include-

- i. where the individual occupies or has occupied a position in a public authority, the name of the individual or information relating to the position or its functions or the terms upon and subject to which the individual occupies or occupied that position

or anything written or recorded in any form by the individual in the course of and for the purpose of the performance of those functions;

- ii. where the individual is or was providing a service for a public authority under a contract for services, the name of the individual or information relating to the service or the terms of the contract or anything written or recorded in any form by the individual in the course of and for the purpose of the provision of the services; or
- iii. the views or opinions of the individual in relation to a public authority, the staff of a public authority or the business or the performance of the functions of a public authority.

“public authority” means-

- (a) a ministry, portfolio or department;
- (b) a statutory body or authority, whether incorporated or not;
- (c) a government company which-
 - I. is wholly owned by the Government or in which the Government holds more than 50% of the shares; or
 - II. is specified in an Order under section 3(2)
- (d) any other body or organization specified in an Order under section 3(2)

“record” means “information held in any form including-

- (a) a record in writing;
- (b) a map, plan, graph or drawing;
- (c) a photograph;
- (d) a disc, tape, sound track or other device in which sounds or other data are embodied, whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied whether electronically or otherwise, so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom, held by a public authority in connection with its functions as such, whether or not it was created by that authority or before the commencement of this Law

“third party” in relation to a request for access to a record means any person or group of persons other than the person who made the request.

“without prejudice” means that statements made or an offer made to settle a dispute cannot be used against the person that made the statement or offer in a future hearing before the Commissioner.

2. PURPOSE OF THESE POLICIES & PROCEDURES

The Commissioner has established these Policies and Procedures to advise members of the public and public authorities covered by the FOI Law what guides her in exercising her duties and authorities under the FOI Law. For the purposes of these Policies and Procedures, the term “FOI Law” includes the Regulations. The Policies and Procedures explain the process by which the Commissioner accepts and rules on appeals, and the responsibilities of public authorities and appellants in this process. The Policies and Procedures intend to provide fairness, certainty, transparency and efficiency in the dispute resolution and appeal processes.

3. GROUNDS FOR APPEAL

Under section 42(1) of the FOI Law, an applicant who has made a request for access to information and who has exhausted all other means of redress provided for in the FOI Law may ask the Commissioner to review and rule on their belief that, in relation to their request, a public body as failed to properly:

- Grant access to the record and/or has grant partial access to the record;
- Defer access to the record and/or fail to notify the requester of that fact within 14 days;
- Charge an appropriate fee for access;
- Grant a fee waiver;
- Respond to the request inside the time limits set by the FOI Law;
- Respond to the request without asking for the motives or reasons for the request;
- Extend the time for responding with reasonable cause and/or give reasons for the extension;
- Transfer the request in time and/or appropriately transfer the request;
- Respond to the request because the request was vexatious;
- Respond to the request because the public authority already responded to the request or one similar;
- Respond to the request because it would unnecessarily divert public resources;
- Inappropriately refused to respond to the request because the information is already in the public domain;
- Provide the record in the requested form;
- Identify their authority for withholding information;
- Amend or annotate a requester's personal information;
- Conduct an Internal Review;
- Disclose the personal information of a third party without providing the third party prior notice of the pending disclosure;
- Expedite the processing of the request;
- Disclose personal information about a child to the parent or guardian.
- Comply with an obligation imposed under the FOI Law.

4. APPEAL PROCEDURES FOR APPELLANTS (ORIGINAL REQUESTER)

4.1 There are two types of appellants. The first is a person who has made an access request to a public authority and is dissatisfied with the response. The second is a third party appellant, who is a person notified by a public authority that it intends to disclose

his or her personal information to another person. The appeal procedures are different for each. Procedures for third party appellants are discussed in section 6.

- 4.2 An appeal must be in writing, which includes appeals sent by email, and addressed to the ICO. However, an oral appeal is acceptable where an appellant has a limited ability to read and write, or a physical disability that impairs the ability to file an appeal.
- 4.3 Where an appellant makes an oral appeal, the ICO will put it in writing. After the appellant has reviewed it, the appellant must acknowledge and sign the document.
- 4.4 The Commissioner may expedite the processing of an appeal where the appellant shows that there is a compelling need or urgency justifying any request being dealt with earlier than other pending applications, including:
 - the record is required for judicial or quasi-judicial proceedings relating to the applicant's life or liberty and has to be made available to the court or tribunal concerned and the court or tribunal does not have the ability to compel production of the document;
 - production of the record within the periods specified under the FOI Law or Regulation would endanger public health and public safety; or
 - production of the record within the periods specified under the FOI Law or Regulations would endanger the applicant's life, health, or liberty.
- 4.5 The Commissioner may refuse to accept an appeal, where no reasonable claim is disclosed or where no meaningful remedy is available at a hearing.
- 4.6 Where an appellant, other than a third party appellant, has not given the public authority an opportunity to conduct an Internal Review on issues relating to:
 - denial of access;
 - deferring access;
 - fee issues; or
 - matters relating to the amendment or annotation of personal information

The ICO must refer the appellant back to the Public Authority.

- 4.7 The ICO treats an appeal of the fact that a Public Authority has not responded at all to an access request as a decision to withhold the requested records. In such situations, the ICO will deem the appeal to be an application for Internal Review and the case will be forwarded by the ICO to the Chief Officer for a decision. The due date for the Internal Review decision is 30 days from the date the case was forwarded to the Chief Officer. The ICO will direct the Chief Officer to conduct an expedited Internal Review, given the disadvantaged position of the requester.
- 4.8 Where an appellant believes the Public Authority has not conducted a reasonable search for the requested information but has not given the public authority an opportunity to respond to an attempt to resolve the issue, the ICO will normally refer the applicant to the public authority before it takes further action.
- 4.9 An appeal must provide enough information for the ICO to identify the issues involved. Specifically, an appellant should provide:

- (a) the appellant's name and email and/or postal address, (supply phone or fax details if available for ease of contact);
- (b) a copy of the request made to the public authority;
- (c) a copy of the public authority's decision;
- (d) a written appeal to the Commissioner specifying the matter to be reviewed, a brief explanation of the applicant's position with respect to the matter and the remedy or outcome the appellant is seeking from the Commissioner;
- (e) the Internal Review decision if applicable;
- (f) any other relevant information respecting the matter.

4.10 The appellant must generally file an appeal to the ICO within 30 calendar days:

- of notification of the public authority's decision;
- of notification of an internal review decision; or
- of the date a decision should have been received and has not been received.

4.11 The Commissioner may extend the time to file an appeal where it is fair and reasonable to do so.

5. APPEAL PROCEDURES FOR THIRD PARTY APPELLANTS

5.1 A third party notified by a public authority that it intends to release the third party's personal information to another person may file an appeal. **It is not necessary for the third party to exhaust all other remedies before filing an appeal.**

5.2 An appeal must be in writing, which includes appeals sent by email, and addressed to the ICO. However, an oral appeal is acceptable where the third party appellant has a limited ability to read and write, or a physical disability that impairs the ability to file an appeal.

5.3 Where an appellant makes an oral appeal, the ICO will put it in writing. After the appellant has reviewed it, the appellant must acknowledge and sign the document.

5.4 A third party appellant must provide enough information for the ICO to identify the issues involved. Specifically, a third party appellant should provide:

- (a) the third party appellant's name and email and/or postal address, (supplying phone or fax details if available for ease of contact);
- (b) a copy of the decision made by the public authority;
- (c) a written appeal to the Commissioner specifying the matter to be reviewed, a brief explanation of what the appellant wants reviewed and the remedy the appellant is seeking from the ICO;
- (d) any other relevant information with respect to the matter.

5.5 The third party appellant must file an appeal to the ICO within 30 calendar days after notification of the public authority's decision. The Commissioner may allow a longer time to file an appeal where it is fair and reasonable to do so.

6. NOTICE OF APPEAL

- 6.1 Once the ICO has received all of the necessary documentation and accepted an appeal, it will send out a Notice of Appeal and a copy of the written appeal or a summary thereof to the public authority concerned and any other person that the Commissioner considers appropriate.
- 6.2 When the ICO receives an appeal from a third party it will notify the public authority by email the same day that it has received the appeal, and direct the public authority to notify the original applicant that:
- an appeal has been filed;
 - the records in dispute will not be released unless the Commissioner upholds the decision to release the personal information after a formal hearing; or the matter is otherwise mediated;
 - a final response to the request will be delayed until the appeal is resolved.
- 6.3 Before considering an Appeal from an appellant or a third party appellant under section 43 of the FOI Law, the Commissioner will normally direct staff from the ICO to investigate the appeal and attempt, through mediation, to assist the parties to settle the dispute. Not all appeals are appropriate for referral to mediation and you will be advised accordingly, should this be the case.
- 6.4 A copy of the mediation policy will be sent to all the parties along with the Notice of Appeal. For information about the Mediation process please see our Mediation Policies and Procedures at www.infocomm.ky .