

23. INTERNAL REVIEW PROCESS

The [Section 45 Code of Practice](#) places a duty on the Department to put an appeals process in place to ensure that applicants are able to ask for an internal review if they are not content with the Department's decision on release. When an applicant requests a review of the Department's response to their request for information, the internal review process must be initiated. An appeals officer will be appointed to carry out an independent review of the business area's decision.

A request for an internal review must be made within two calendar months of receipt of the Department's decision letter. Although any request for a review made outside this time limit will normally be refused, discretion should be used in cases where there are extenuating circumstances, for example, incapacitation of the requester.

On receiving an appeal, the Information Management Unit (IMU) will notify the relevant Business Area Information Manager (BAIM) who must take immediate action to ensure that the FOI case file is delivered to the Unit. In all cases, this must be on the day of receipt or before noon on the following working day.

The review is a fresh decision and the appeals officer must start from scratch in terms of the evaluation of the evidence and the application of the Act. The appeals officer can consider new arguments put forward by the applicant.

In the outcome letter, applicants should already have been advised of their right to request the Department to formally review a decision and asked to forward any appeals direct to the IMU. However, in the event of an appeal or complaint being received directly in a business area, all staff should be aware of the importance of forwarding it to the Unit as soon as possible.

Procedures to be followed by IMU on receipt of an appeal

- (i) Register the appeal on the tracking system within one working day of receipt.
- (ii) Open an appeal case file, complete details on front cover and place correspondence inside within one working day of receipt.
- (iii) Contact relevant BAIM and make arrangements for original FOI case file containing all background documentation to be forwarded to IMU no later than next working day following receipt of appeal.
- (iv) Prepare and issue acknowledgement letter, including target completion date of 20 working days and name of the appeals officer handling the case.
- (v) Ensure the appeal file and all background papers, including the FOI case file, are passed to the designated appeals officer within one day of receipt.
- (vi) Record BF date to check progress of appeal with appeals officer after seven days.

- (vii) On receipt of the appeals officer's report and recommendations, prepare and issue letter to applicant. Copy to relevant BAIM advising business area to issue any required information to applicant within 3 working days.
- (viii) Place a copy of the decision letter on both the appeal file and the original FOI case file and return letter to relevant BAIM. Retain appeal file within IMU.
- (ix) Update tracking system with outcome of the appeal.

Procedures to be followed by the FOI Appeals Officer

How is it to be conducted?

Internal reviews should not be overly bureaucratic, but must be a fair and impartial means of reviewing decisions made during the original consideration of whether to release the information. The appeals officer must consider the information released against the information requested and make a full review of the papers associated with the original application. The appeals officer should also discuss the decisions made with the staff member(s) within the relevant business area who dealt with the original application in order to build a full picture as to how the decisions were made. The reviewer must consider the information released against the information requested and make a full review of the papers associated with the original application. The appeals officer should also discuss the decisions made with the staff member(s) who dealt with the original application in order to build a full picture as to how the decisions were made.

To ensure impartiality, the Departmental Information Manager and staff in IMU will have no role to play in the appeals process except to clarify any advice provided to the business area concerned at the time of the original request.

In the event of the letter of appeal containing a request for additional information, the appeals officer should contact the applicant to clarify that this is a new request and explain the procedures for submitting such requests. He/she will give an undertaking on this occasion to pass the new request to the relevant BAIM before carrying out a review of the original application.

The appeals officer must inform the business area of his/her decision prior to the applicant being notified. It is important that full records are kept on the progress of the review and any outcomes as a result of the review. This will assist in any further investigations by the Information Commissioner. The business area, in conjunction with the BAIM, will undertake any subsequent actions arising from the determination of the appeals officer.

After concluding the internal review, the appeals officer should prepare a report for the Departmental Information Manager setting out his/her conclusions and specifying any internal processes which may need to be altered as a result.

What are the timescales?

Internal reviews have to be completed in reasonable time and, in most cases within 20 working days of receipt. If it becomes clear at any stage of the internal review that you are not able to meet this deadline, you should ensure that the applicant is kept fully informed. You should also set a secondary deadline by which you will respond, and every effort must be made to ensure that this is adhered to.

What about the outcome of the review?

The appeals officer will prepare a report for the Departmental Information Manager setting out his findings and recommendations. A draft letter will also be prepared for the Departmental Information Manager to issue to the applicant.

An internal review can have two outcomes:

- (i) the original decision is reversed; or
- (ii) the original decision is upheld.

Where the original decision is reversed, the applicant must be told, and made aware of, when they can expect the information originally requested to be provided to them. **It will be the responsibility of the business area to ensure this information is provided.**

Where the original request is upheld, and the internal review finds in favour of the Department, the applicant must be made aware of their further rights of appeal to the Information Commissioner. You must also ensure that full contact details for the Information Commissioner's Office are provided to the applicant.

Irrespective of the outcome of the internal review, you must ensure that the final outcome of the review is recorded. Once finalised, a copy of the decision letter should be placed on the appeal case file and all papers passed to the Information Management Unit to update the tracking system.

What about an internal review where the decision has been made by the Minister?

In making a decision on an FOI request, the Minister has effectively directed the Department to act in a certain way. It is therefore not feasible for the internal appeals procedure to provide for an official to overturn the Minister's decision. In these circumstances, it is entirely proper to invite the Minister to reconsider the decision himself/herself.

The following procedure should therefore be adopted in such circumstances:

- (a) The appeal should be passed to one of the Department's appeals officers to investigate the complaint and re-evaluate the case following the procedures outlined earlier in this chapter.

- (b) The appeals officer should provide a submission to the Minister which:
- (i) indicates whether the correct procedures were followed in taking the original decision;
 - (ii) reviews the original decision, including application of the public interest test (if applied), and indicates whether that decision was sound;
 - (iii) highlights any subsequent change, or perceived change, in the public interest test, or any change in the circumstances of the case;
 - (iv) contains a risk assessment on whether any subsequent appeal to the Information Commissioner may succeed and the implications to the Department of such an appeal; and
 - (v) provides advice on whether the information should be released in light of the appeal.

The submission should address specifically each of the arguments or grounds for complaint put forward by the applicant.

- (c) The Minister will re-visit his/her decision taking into account the matters raised by the investigation of the complaint and re-evaluation of the case.
- (d) Where the Minister decides that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be informed how soon this will be.
- (e) Where the Minister upholds the original decision to withhold information, the applicant should be reminded of his/her right to apply to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of Part 1 of the Act.

Click [here](#) for Ministry of Justice Guidance if the applicant is unhappy with the response.

