

FREEDOM OF INFORMATION ACT 2000

DCMS INTERNAL REVIEW PROCEDURE

A. Introduction

1. This document sets out the internal review procedure¹ adopted by the Department for Culture, Media and Sport (*DCMS*) pursuant to the Freedom of Information Act 2000.
2. This internal review procedure should be put into operation immediately on receipt of a written reply (including by e-mail) from any person, which expresses dissatisfaction with:
 - (a) DCMS' handling of a request for information (e.g. regarding a late response to a request);
 - (b) DCMS' decision whether to release information; or
 - (c) DCMS' compliance with its publication scheme (details of the latter are on DCMS' website).

Any such communication should be treated as a complaint and handled in accordance with this complaints procedure, *even if* the complainant does not expressly state that he/she wants DCMS to conduct an internal review.

3. In the case of complaints received orally, the person who receives the complaint must inform the complainant of the requirement to provide it in writing.

B. Process Description

Action by recipient of complaint

4. The **person who receives** the complaint must, on the same day that the complaint is received:
 - (a) log the details of the complaint onto the Correspondence Management System (CMS); and
 - (b) copy the complaint to the Information Management Unit (*IMU*). (All FoI complaints must be copied to the IMU.)

¹ The procedure is based on the Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000, issued under section 45 of the Act and dated November 2004. It is also based on procedural guidance issued by DCA (chapter 9), which was published on the DCA website as at June 2005.

Action by IMU

5. The IMU will then:
- (a) acknowledge receipt of the complaint (within 2 working days of it being received by the Department); and
 - (b) inform the complainant of DCMS' target date for replying, which will normally be within 10 to 30 working days following receipt of the complaint²;
 - (c) provide the complainant with details of DCMS' internal review procedure³, and how to contact the Information Commissioner;
 - (d) assess the nature and complexity of the initial request and DCMS' response to it, together with the resulting complaint, and decide on the type of internal review that needs to be undertaken (and therefore the appropriate person to undertake it);
 - (e) forward the complaint to the individual who will be responsible for the internal review (copied to the appropriate Divisional IMA and the Head of Division), stating the name of the legal adviser who dealt with the original request;
 - (f) refer to the DCA Clearing House requests for internal reviews of DCMS' decisions to withhold information (not reviews about process) for guidance on, or consultation about, the response to the request⁴.

² Internal reviews have to be completed in a reasonable timescale. As a matter of best practice DCA recommend that: (a) simple reviews should aim to be dealt with within 2-3 weeks of receiving the complaint; and (b) complex reviews - in particular where it is necessary to reconsider the public interest test - should aim to be completed within 6 weeks of receiving the complaint.

³ This can be done by giving the link (URL) for where the procedure appears on DCMS' website, while offering to send a hard copy of it to the complainant, if s/he requests one.

⁴ The DCA Clearing House *Toolkit for Practitioners* (May 2005) states that all requests for internal reviews of Departmental decisions to **withhold** information (**not reviews about process**) should be referred to the Clearing House. In those cases where the Clearing House or the Cabinet Office have previously provided advice, the Clearing House will review this role and the advice that was provided. Departments will be responsible for issuing the response to the applicant and for considering their own procedural handling of the request.

In those cases where the Clearing House has not previously been involved in the decision on the initial request, the Clearing House will determine the role it needs to play in the internal review process. For example, in some cases the Clearing House may need to be fully involved in the decision on the internal review whereas in other cases it may simply need to review the response to be issued to the applicant. The Clearing House will notify Departments of this when receipt of the referral is acknowledged.

6. There are three types of internal review, which are set out in Table 1 below. The type of review that should be taken in each case should be determined by IMU with regard to the nature and complexity of the original request, DCMS' response to it and the complaint that has been made. IMU should seek legal advice on the type of review that should be undertaken, if appropriate.

Type of Review	Nature of Review
Simple (i.e. where no exemptions are applied and an obvious error was made on the original request)	<p>The relevant Head of Division should conduct the internal review. The Head of Division should discuss the decisions that were made on the original request with the staff member(s) who handled it and make a full review of the papers.</p> <p>There is no need to inform the DCA Clearing House of the existence of an internal review about process. IMU may, however, wish to advise DCA about complaints that are of a broader interest, but need not consult the Clearing House on the response.</p>
Medium	<p>A person senior to the individual who answered the original FOI request should conduct the internal review. (The person who answered the request is the person who signed the reply to the request. Normally, this will be a Head of Division, therefore medium level internal reviews will usually be handled by a Director or Director General.)</p> <p>Legal advice should be sought, where possible from the same legal adviser who advised on the original request.</p> <p>The reviewer should discuss the decisions that were made on the original request with the staff member(s) who handled it and make a full review of the papers.</p> <p>IMU should refer requests for internal reviews of decisions to withhold information to the DCA Clearing House, and consult DCA on the proposed response to the complaint.</p> <p>The Press Office may need to be informed.</p>
Difficult	<p>A person senior to the individual who answered the original FOI request should conduct the internal review. (The person who answered the request is the person who signed the reply to the request. Normally, this will be a Head of Division, therefore difficult level internal reviews will usually be handled by a Director or Director General. If, however, a Minister was consulted on the response to the original request, where possible the same Minister should handle the internal review.)</p> <p>Legal advice should be sought, where possible from the same legal adviser who advised on the original request.</p> <p>The reviewer should discuss the decisions that were made on the original request with the staff member(s) who handled it and make a full review of the papers.</p> <p>IMU should refer requests for internal reviews of decisions to withhold information to the DCA Clearing House, and consult DCA</p>

	on the proposed response to the complaint. Ministers may need to be consulted and Press Office informed.
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Table 1

Action by Head of Division

7. The Head of Division who handled the original request will be responsible for ensuring that the reviewer is provided with all relevant information. Where the complaint relates to information that has previously been withheld, the Head of Division will need to ensure that the reviewer is provided with:

- (a) a copy of the original request;
- (b) any other pertinent correspondence with the complainant;
- (c) an explanation of what information was released in response to the original request, what was withheld and why it was withheld;
- (d) a copy of the complaint; and
- (e) the Division's views on the merits of the complaint.

Action by reviewer

8. Following receipt of the complaint, the **reviewer** will, having taken account of the overriding principles in section C of this procedure, carry out the following action:

- (a) conduct the appropriate type of internal review (as described in table 1 above) within 10 working days, taking into account any views expressed by the complainant;
- (b) where it becomes apparent that the determination of the complaint will take longer than the target time (10 - 30 working days), which should only arise where the issues surrounding the complaint are complex, the reviewer must notify the IMU, who will inform the complainant of the delay, explain the reason(s) for it and set a secondary deadline by which to respond;
- (c) ensure that DCA Clearing House (through the IMU) and Ministers are consulted and the Press Office involved, where appropriate;
- (d) ensure that no reply to a "medium" or "difficult" level internal review is sent out without the involvement of a legal adviser;
- (e) ensure that proper records are kept of the complaint and the internal review. These will assist in any investigations by the Information Commissioner, should the requestor complain to him;

- (f) communicate the outcome of the review to the Division who handled the original request, the legal adviser involved and the IMU, highlighting any issues/learning which may be of wider application to DCMS;
 - (g) communicate the outcome of the review to the applicant, as set out below, and ensure that any information is duly despatched to the applicant.
9. Where the outcome of the internal review is:
- (a) *a determination that FOI request handling procedures have not been properly followed*, the reviewer should apologise, on behalf of the Department, to the complainant in writing. The reviewer should also confer with the Division that handled the request, to ensure that steps are taken to prevent similar errors occurring in the future. If any issues of wider application to DCMS arise, then the reviewer should make IMU aware of them;
 - (b) *a determination that information which was withheld should be released*, the reviewer should inform the complainant in writing of this determination and enclose the information. If the information cannot be enclosed at that time, the reviewer should inform the complainant when the information will be released to him/her. (The information must be released as soon as practicable);
 - (c) *a determination to uphold an earlier decision to withhold information*, the reviewer should inform the complainant in writing of this and the reasons behind the determination and notify the complainant of his/her 'right to appeal' to the Information Commissioner, under section 50 of the FOI Act. Details of how to appeal (including full contact details for the Information Commissioner's office) must be provided to the complainant;
 - (d) *a determination that DCMS' publication scheme has not been complied with*, the reviewer will apologise in writing (on behalf of the Department) to the complainant. The reviewer should then ask the IMU to ensure that steps are taken to ensure compliance with the scheme in future.
10. If the outcome of the complaint is mixed, e.g. a determination that some of the information should be released, but some withheld, the reviewer should follow a mixture of the procedures mentioned above, as appropriate.

C. Overriding principles

11. The following points apply to **all** internal reviews:
- (a) it is important to be aware that the internal review stage is an opportunity to **consider a case completely afresh**. An internal review should not be treated as an appeal, but as a chance to ensure that DCMS made the right decision on the original request, in the light of all the relevant records. The review stage

may also be a trigger for the involvement of senior officials, Ministers, or the DCA Clearing House, for the first time;

- (b) internal reviews do not need to be overly bureaucratic, but must be a **fair and impartial means** of reviewing decisions made during the original consideration of whether to release information;
- (c) as a minimum, all internal reviews must consider the information released against the information requested and make a **full review of the papers** associated with the original application. The internal reviewer should also discuss the decisions made with the staff member(s) and legal adviser who dealt with the original application, to build a full picture as to how and why previous decisions were made. A case meeting may be the best way to hold these discussions, enabling the reviewer to ask questions or request further papers, as necessary;
- (d) the reviewer should not feel bound by any views on the complaint expressed by those who dealt with the original request. These views should simply be treated as background information, rather than a suggestion of how to handle the complaint.