

Internal Compliance Department procedure for handling information requests

1. Introduction

It is important to remember that the Information Commissioners Office (ICO) is subject to all the legislation it regulates. All requests for information to the ICO need to be handled in accordance with the Freedom of Information Act 2000 (FOIA), Data Protection Act 1998 (DPA) and the Environmental Information Regulations (EIR).

The Internal Compliance Department (ICD) is responsible for acknowledging requests for information, collating the information requested and responding to all requests received by ICO unless they can be dealt with as a normal day to day enquiry. There is separate guidance about what should be dealt with as a normal course of business enquiry which also covers what staff should do should they receive an information request.

The ICD is also responsible for acknowledging and coordinating responses to internal review requests under FOIA and EIR. These procedures set out the processes that the ICD follow when dealing with an information request or request for internal review.

2. Requests for information contained in the ICO publication scheme

Requests for information contained in the guide to information should be dealt with as a normal course of business enquiry and therefore should not need to be dealt with by ICD. Any such request should be passed to the First Contact Department to deal with.

All staff should also be familiar with the information available via our publication scheme. Our guidance on information reasonably accessible to the applicant by other means states that "It will generally be fair to assume that any information described within a publication scheme and made available under it is reasonably accessible to an applicant and that all the public authority needs to do, therefore, is to draw the applicant's attention to the scheme."

The response to such requests should be issued as soon as possible and certainly within the statutory time limits.

3. Types of requests submitted to the ICO

There are four different types of other request that the ICO might receive, aside from those which should be dealt with as enquiries in the normal course of business. It is important that the legislation under which a request is made is identified from the outset, as each will be dealt with slightly differently. The requests may be any of the following:

- Requests for information made under FOIA.
- Requests for personal data made under the DPA.
- Requests for environmental information made under the EIR.
- Request from complainants for information held on their case files which are primarily dealt with under DPA, with other information on the case file falling outside the DPA being considered under FOIA or EIR depending on the nature of the complaint (hybrid requests).

All requests under FOIA and DPA should be made in writing. Verbal requests are valid under EIR although a written record should be made of any verbal request.

The ICO has a duty to comply with the DDA (Disability Discrimination Act). Individuals requiring assistance in submitting requests are dealt with in accordance with the ICO's reasonable adjustments policy available on ICON. Where a verbal request is taken over the telephone the written note of the telephone request is sent to the applicant and once verified and returned by the applicant, would constitute a written and therefore valid request for information. The statutory time limit for response would begin when the written confirmation was received.

4. Receiving and acknowledging a request

The ICD receives requests through a number of different routes:

- Directly into the ICD mail in-box or direct letter/fax addressed to the team
- Communications which are referred by First Contact to the information request queue
- Requests embedded in cases which are referred either to the ICD in-box or to the CMEH information request queue as a provide advice item

Requests will be referred to the ICD either by First Contact, via the ICD in-box, or by Case Officers when the request is embedded in an existing case.

All requests for information to be dealt with by ICD will be logged on CMEH as cases and given a reference number that starts with IRQ. For confidentiality reasons, we may process some requests outside CMEH for example where the request has been made by member of staff. A paper file will be created by ICD and a note added to CMEH confirming the location of the file. There is a separate set of procedures on how to administer an IRQ on CMEH '*Information Requests – CMEH Procedures*'.

The request case will be set up and an acknowledgement letter sent to the requester within two days. The letter will clearly state the date by which the requester can expect a response. The case is then added to the ICD queue.

5. Establishing whether it is a valid request

The first stage once a request has been received is establishing whether it is a valid request:

- is it in writing?
- does it contain the name and an address for correspondence?
- has the requester used a pseudonym?
- does it describe the information being requested?

Where a request has been made via Twitter it may well be a valid request in line with section 8(1) of FOIA if the requester has provided their name and a valid address. Where possible a response to the requester should be sent for example by providing a web link. If the name or address is not provided it is not a valid request, therefore if information is not being provided a reply should be sent advising the requester of this, and asking for the required information.

6. Seeking Clarification

At the stage of acknowledgement, we may need to ask for proof of ID or authorisation (where dealing with a SAR), or any other clarification. Where the request is not clear, can be read in more than one way or we haven't got enough information needed to locate and retrieve the information being requested, clarification should be sought from the requester rather than try and interpret the scope of the request.

Advice and assistance must be provided to the applicant to enable him or her to describe more clearly the information requested. The aim of providing advice and assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the requester. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.

The case is closed in the acknowledging team member's name pending the receipt of the requested clarification. Once the clarification is received, the case is then reopened and referred back to the ICD queue for processing in the normal way.

7. Requests which can be responded to immediately

Alternatively the request may be for information which, although not included in the publication scheme, can be provided immediately, or for information which is not held by the ICO.

In either of these circumstances the response can be sent immediately, and the case closed. Where the information is not held it may be appropriate to explain why and, if the request is misguided, to provide advice and assistance suggesting where the information may be held.

Advice should be sought by members of staff outside the ICD regarding requests that can be responded to as normal course of business. Such requests should be responded to promptly and certainly within the statutory 20 working days.

8. Transferring the request

If, after seeking clarification, there is reason to believe that some or all of the information requested is not held by ICO but it is held by another public authority, consideration must be given as to what would be the most helpful way of assisting the requester with his or her request.

In most cases this is likely to involve contacting the requester and informing him or her that the information requested may be held by another public authority, or suggesting that the applicant re-applies to the authority which the original authority believes may hold the information and providing him or her with contact details for that authority.

9. Gathering and collating the information

Having interpreted the request searches should be carried out as appropriate on CMEH, ICON, Meridio and the website to establish what information is held in an accessible area of the network. The disclosure log and previous responses should also be consulted when gathering information, although due to the time elapsed since the response accuracy may be an issue.

The request handler then identifies the possible department/s which may hold any additional information. The department is added on the CMEH party list as "request consultant" and an e-mail should be sent to the request consultant as soon as possible to allow them a reasonable time to respond.

The communication with the consultant should:

- Clearly specify the information requested. You can either provide a summary of the request or the actual wording of the request
- Enquire whether information which falls within the scope of the request is held by the department
- Specify a date by which a response should be provided to ICT (usually at least one week before the request is due)
- Ask for any views that the Department may have on disclosing the information
- Ask for any additional information which might put the information being requested into context and provide additional assistance to the requester.

In some cases it may be necessary to send an 'all staff' email to ask staff to check their computers and manual files for information covered by the scope of the request.

10. Cost

If the information is held, estimate whether the cost of complying with the request exceeds the 'appropriate limit' as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Fees Regulations).

You may only consider the following factors when estimating the cost.

- Determining whether the information is held
- Locating the information or documents containing the information
- Retrieving the information
- Extracting the information from documents

Under section 12(2) of FOIA, if you estimate that the cost of complying with the request would exceed the appropriate limit, you do not have to comply. However, you must provide advice and assistance to the applicant to enable them to reformulate their request, and try to bring it within the cost limit, advising them that this will be treated as a new request.

11. Consultation

If the information requested includes correspondence or information provided by a third party (for example a data controller, public authority or any government department) it may be necessary to contact that individual or organisation to seek their views on the disclosure.

The communication with the consulted organisation should specify the documents considered for disclosure, and where necessary we may also need to provide a copy of the information considered for disclosure. A time frame for the reply should be given to the organisation consulted.

12. Case Advisory Groups

Where there are concerns as to the extent of the information which should be provided in response to the request or the impact of disclosure, it may be necessary to call a Case Advisory Group. Case advisory groups can be set up where there are concerns about whether an exemption is engaged, to ensure that a full public interest test is carried out, or where there may be Section 59 DPA implications. Arrange the meeting as soon as possible within the 20 day response period. The composition of the group will depend on the nature of the request (DP or FOI) and the nature of the information requested.

A record should be made of any decisions reached by the Case Advisory Group and this should be placed on the file on CMEH.

We may also need to consult with staff internally regarding the release of personal information about them.

13. Responding to a request

A checklist has been developed for use by the ICD which is a really useful guide. This is attached as an annex to these procedures.

Responses to requests should be sent as soon as the information is available. In some cases it may be possible to respond immediately, upon receipt, in which case it is not necessary to send an acknowledgment.

The information contained within the response will vary according to the nature of the request. Generally speaking a response to an FOI/EIR request should initially confirm whether or not the information requested is held, although there are some exceptions to this.

In cases where information is withheld, a refusal notice should be issued. This should set out the exemption/s applied, and the reason why it is engaged. It will also be necessary to apply the public interest test when certain FOIA exemptions are used.

As the majority of cases are dealt with on CMEH, make sure that there is a record for what information was provided in response to the request. Clearly label the copy of un-redacted information in case it is subject for future request, internal review or Section 50 complaint to the Commissioner. Requests handled outside CMEH should have a clearly labelled copy of the information provided and the unredacted copies of information as appropriate.

Ensure that you have complied with any reasonable request for a particular format, electronic or hardcopy. Where an electronic copy is being sent make sure it is sent in pdf format.

Ensure that the correct review or right of appeal paragraphs are included and for an FOIA or EIR request a copy of the review procedure is enclosed or attached.

14. Responding to requests for reviews

Create an RCC case and keep it in your name. Acknowledge receipt of the request for review as soon as it is received and give the latest date by which the requester can expect a response.

Copy on to the RCC from the IRQ case copies of:

- The original request
- The response
- Copies of information provided
- Copies of unredacted information where applicable
- Request for review
- Acknowledgement

Identify the reviewer and send them an email confirming the case reference, a brief outline of the reason a review has been requested and confirm the deadline for response. Provide assistance to reviewers who require you to send a response through CMEH.

Make sure that the reviewers are including in their response advice to the requester about their right to complain to the Commissioner under section 50 of the FOIA. Add the details of the review, the outcome and any actions needed to the 'Information Requests - Internal Review' spreadsheet held on Meridio.

Annex

ICO Information requests – checklist

- Is the request from an individual for information about their case/complaint? If so, generally in the first instance treat it as a DPA subject access request, but bear in mind that some information in the file may need to be considered for disclosure under FOIA or EIR. Policy Delivery is currently developing tools to help decide to what extent information held on case files should be considered for disclosure under DPA or FOIA/EIR, and the relevant guidance will be available shortly.
- Is the information already available through our publication scheme?
- Where necessary offer advice and assistance as soon as possible, preferably by phone.
- Advice and assistance should be offered if the request is vague or framed as a question:
 - Give as much information as possible in normal course of business
 - Check whether they still require further information
 - Explain the right to request recorded information
 - Explain what sort of information we might hold
- In every case where advice and assistance is provided:
 - Check we have understood what information they require
 - Explain what happens next in considering their request
 - Confirm date of receipt and latest date for response (20 working days)
- Search for the information. If the search would exceed the cost limit contact the applicant as soon as possible to explain this and help to reformulate their request.
- If we don't hold any information, contact the applicant to explain this (unless we have a policy not to confirm or deny, in which case send a refusal notice). Offer advice on who else may hold the relevant information.
- If we hold the information, is there a good reason not to disclose it?

- Has the applicant specified a preferred means of communication?
- Do we need to consult with a third party (eg employee, contractor, stakeholder) before deciding on whether to disclose or withhold the information under an exemption?
- If we want to withhold the information, can we provide redacted documents?
- If we withhold or redact any information, issue a refusal notice. Include:
 - A confirmation that we hold the information (unless an exemption applies to the confirmation itself)
 - The section and subsection of the exemption
 - Why the information falls within the exemption (unless explanation would disclose exempt information)
 - If prejudice-based, an explanation of likely prejudice
 - If qualified, set out the public interest arguments for and against disclosure
 - If absolute, explain there is no public interest test requirement
 - How to request an internal review and how to appeal under s50 FOIA