

FREEDOM OF INFORMATION ACT 2000 COMPLAINTS PROCEDURE

1. Purpose

The purpose of the complaints procedure is to provide a speedy, timed and impartial response to expressions of dissatisfaction with decisions made by the council under the Freedom of Information Act 2000 ("the FOIA") and where appropriate to resolve at the lowest level any such issues to mutual satisfaction. By implication it should be designed to obviate the need for any reference to the Information Commissioner under s50 of the FOIA.

2. Complaints

A complaint is defined by the Commissioner as any expression of dissatisfaction with an authority's response to a valid request for information. The process for making a complaint about a response to a request for information should be detailed on all decision notices, stating that first an informal complaint should be made to the person referred to on the decision notice. Details should also be given of how to receive information on making a formal complaint, such as referral to the Council's website or an address to write to, in the event that the complainant is unhappy with using the informal procedure.

The process for making complaints about the authority's publication scheme which has been issued under the FOIA is different and is detailed at the end of this document.

3. Making a Complaint

Any expression of dissatisfaction should be in the first instance be received informally and dealt with on this basis by the service champion. The complaint will in most instances be addressed to the person who issued the decision notice, but should be referred when received to the service champion of the individuals' service area. The purpose of this informal procedure is to see if it is possible to arrive at a mutually acceptable resolution of any issues. It is likely that in a significant number of cases it will not be. The informal resolution process should not last longer than 20 working days; in the event that it does the matter must be referred to the complaints co-ordinator for evaluation.

Informal resolutions of issues do not need to be recorded.

In the event that the issues cannot be dealt with in this way the person seeking access to the information must be formally notified in writing by the service champion of the process by which a formal complaint might be made under the Council's complaints procedure. Details of how to complain to the Information Commissioner (under section 50 of the FOIA) should be given, but it should be stated on the notification that under the FOIA the Information Commission will not make a determination on a complaint if the complainant has not first exhausted the relevant authority's own complaints procedure.

Formal complaints need to be made in writing (which can include complaints made via email) and recorded by the service champion before forwarding to the complaints co-ordinator. Complainants may need assistance with this process and it is the duty of the service champion to make sure that any assistance as may be required by the complainant is provided to him in making the complaint.

Alternatively complaints can be made in writing (or e-format) and sent directly to the complaints co-ordinator. The complaints co-ordinator will record the receipt of the complaint and its details.

4. Role of the Complaints Co-Ordinator

The role of the complaints co-ordinator is to try to find a resolution of the complaint if that is appropriate.

Each formal complaint will be given a year-based serial number and the details will be recorded in the designated format. The complainant will be given a copy of the complaint and a time limit by when he might expect the complaint to be resolved. That date will also be recorded.

The complaints co-ordinator will take the following steps following receipt of the complaint:

1. Speak to the complainant either in person or over the phone so as to ensure that he has a good grasp of the matter in dispute.
2. Record the detail of the complaint and any contact had with the complainant and supply a copy of this record to the complainant and the service champion.
3. Speak to the service champion or decision maker (in the case of exemptions) and ascertain why the matter recorded is in dispute.
4. Explore with the service champion and the complainant bases for resolving the dispute.
5. Make a finding as to the matters that are actually in dispute and propose a resolution of them or determine that there can be no such resolution.
6. Notify both parties of his determination and where appropriate notify the complainant of his right to seek an independent determination of the matter in dispute by an independent person(s) appointed by the Council for that purpose.
7. The service champion will consider the position of the service in light of the determination and where appropriate release the information sought. The service champion is not obliged to follow the determination of the complaints co-ordinator but if he chooses not should refer the matter to the Head of Service for decision. Reasons for not following the determination should be recorded on file and notified to the complainant.
8. In the event of being able to close the complaint the service champion will record that fact and the date upon which it was closed.

On the referral of any matter to the complaints co-ordinator under paragraph 3 above as a result of the 20 working day period being exceeded the complaints co-ordinator may take over the informal process of resolution or may chose to treat the complaint as a further complaint to be dealt with under this paragraph where it appears to him to be unlikely to be resolved using the informal process.

Independent determination

Where following the determination of the complaints co-ordinator the matter is still not resolved to the satisfaction of the complainant the complaints co-ordinator will refer the matter for an independent determination.

The council will identify a panel of persons with experience or knowledge of complaint determination and the co-ordinator will at the request of the complainant refer the complaint to the next available person for determination.

The independent person will take the following steps following receipt of the complaint:

9. Review the matter(s) in dispute.
10. Review the determination made by the complaints co-ordinator.
11. Speak to the complainant either in person or over the phone so as to ensure that he has a good grasp of why the matter is still in dispute.
12. Record the details of the complaint and any contact had with the complainant and supply a copy of such a record to the complainant and the service champion.
13. Explore with the service champion and the complainant bases for resolving the dispute.
14. Make a finding as to the matters that are actually in dispute and propose a resolution of them or determine that that there can be no such resolution.
15. Send the finding to the Head of Service responsible for a decision on the finding.
16. Refer the matter back to the complaints co-ordinator.

5. Procedure following Independent Determination

On a matter being referred back the complaints co-ordinator will contact the Head of Service responsible for the matter in dispute and seek notification of his decision on the determination.

Where following a determination by the independent person that information should be released no decision may be made by the Head of Service not to release without first consulting with the Head of Legal and Democratic Services

Following notification the complaints co-ordinator will notify the complainant and the service champion of the decision and will in the event of it being to uphold the original decision in part or in whole remind the complainant of his right to make a further complaint to the Information Commissioner (under s50 of the FOIA) and the process for so doing.

In the event the decision is to disclose some or all of the information sought by the complainant the service champion will take all necessary steps to release to the complainant that information as soon as is possible or within 10 working days at the latest.

The decision notification and the finding of the Independent person will be recorded and kept with the details of the complaint which will then be closed and the date upon which it was closed will be recorded and kept with the other details.

6. Timescales

The complaints co-ordinator must notify the complainant of the date by which each stage of this process should be completed.

Where the complainant has been notified of a date by which a stage of the process should be complete and it appears to the complaints co-ordinator that this date is unlikely to be met he must notify the complainant of that fact and the reasons for it.

The complaint's co-ordinator must keep each stage of each complaint under review to assess progress and take necessary action to deal with any matters causing avoidable delay, if necessary in consultation with the relevant Head of Service.

Where agreement as to dates cannot be reached with the relevant Head of Service the complaints co-ordinator must notify the Head of Legal and Democratic Services of this fact and seek his assistance in agreeing a date by when the process is to be completed. All such notifications to the Head of Legal & Democratic services will be reported to the Council's Heads of Service meeting and may if required form the basis of a Monitoring Officers report.

8. Complaints about Publication Scheme

Where a person feels that an authority is not complying with its publication scheme they have a right to complain to the authority, and such a complaint should be dealt with in accordance with paragraphs 3 – 7 of this document. However, if a complainant is not happy with the determination made by the Council following the independent determination in paragraph 6, they should be informed that although they have a right to write to the Information Commissioner and inform him of their dissatisfaction, they do not have the ability to make a formal complaint to him under section 50 of the FOIA. The Information Commissioner then has the ability to investigate the matter at his own discretion.