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*IMMIGRATION DIRECTORATES' INSTRUCTIONS*

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**CHAPTER 25 SECTION 3**

**APPEAL RIGHTS FOR APPLICANTS UNDER THE FREEDOM OF INFORMATION ACT 2000**

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**CHAPTER 25  
SECTION 3**

**APPEAL RIGHTS FOR APPLICANTS UNDER  
THE FREEDOM OF INFORMATION ACT 2000**

**1. INTRODUCTION**

This Section sets out the rights of the applicant in the event that they are unhappy with the response that they receive in connection with a request for information under the Freedom of Information Act 2000 ("the Act").

Applicants may be unhappy with the treatment they have received if;

- Their application was not dealt with within the 20 working days timescale.
- They did not receive all of the information requested.
- They feel that they have not received proper advice and assistance.
- They did not receive the information in the form that they requested.
- They feel that their request was unfairly rejected for procedural reasons (see Section 4 of this IDI Chapter).
- They feel that any of the substantive exemptions (see Section 5 of this IDI Chapter) have been wrongly applied and the information they requested has not been disclosed.

**2. INTERNAL REVIEW**

Where the applicant chooses to appeal, this will be done via the Home Office's internal review process which has been established to handle those appeals made by applicants under the Act.

The internal review process is the last opportunity for IND and the wider Home Office to assess an appeal before the matter is considered by the Information Commissioner. Even in cases where senior officials or a Minister have been involved in making an original decision, the internal review process should not be waived. It is possible that even over a comparatively short period of time the sensitivity of the information can have diminished sufficiently to allow the information to be released after internal review.

The IND Central FOI Team will take the lead in conducting the internal review process where it may involve IND related requests. All of the standard template responses which have been produced throughout this IDI Chapter make it clear to the applicant, that if they wish to seek an internal review they should write to the IND Complaints Unit.

Where the applicant mistakenly writes back asking for an internal review from the direct member of staff or IND Directorate who was responsible for sending them the initial response, their request should be forwarded **immediately** via the internal post to the following address:

IND Complaints Unit

11th Floor, West Wing  
Block 'C'  
Whitgift Centre  
Wellesley Road  
Croydon  
CR9 1AT

It is important that IND Directorates do not lead or conduct the internal review process where they have been involved in answering the initial case, as this may prevent an applicant from receiving an independent hearing on their case.

Once a request has been received in the IND Complaints Unit, it will be allocated accordingly to the IND Central FOI Team for further action. The IND Central FOI team will acknowledge receipt of the applicant's request for an internal review and advise them when they can expect to receive a response. There is no statutory provision regarding the time that an internal review should take or when an applicant should receive a response. The Home Office target for all internal reviews is a maximum of 40 working days within receipt. Staff should be aware that this target may be subject to change from time to time.

During the internal review process, the IND Central FOI Team will contact the relevant IND department to request all of the information relating to the initial request. They will then consider the information released against the information requested and make a full review of the papers associated with the original application. The IND Central FOI Team will consult with the relevant IND Directorate who replied to the applicant and discuss the decisions made with the staff member, or members, who dealt with and authorised the original response to the applicant to help build a full picture as to how these were made. It is important, therefore, that all IND Directorates ensure that staff keep an audit trail relating to any decisions they have made to refuse any types of information to an applicant on any grounds.

Where the IND Central FOI Team has been involved in authorising a refusal of information to an applicant, it will refer the decision for review on to the Home Office's Internal Review Panel to ensure that the independence of the appeal's process is not in any way compromised.

An internal review can have two outcomes: the original decision made by staff can be reversed or upheld. Once an internal review has been completed, a final response will be provided by the IND Central FOI Team to the applicant and a copy of the final decision will be sent to the relevant IND Directorate who dealt with the request initially. If the original decision is upheld, the applicant will be advised that they can refer their case to the Information Commissioner if they are still dissatisfied with the way IND has dealt with their request.

It is the responsibility of the unit which handled the original request to supply further information to the applicant if the original decision is reversed. In this case, information should be sent to the applicant as soon as possible and no more than 10 working days after the applicant has been informed of the internal review decision. The IND Central FOI Team should also be advised when the information has been sent.

### **3. APPEALS TO THE INFORMATION COMMISSIONER**

As detailed above, it is open to the applicant to challenge the Department's decision at the internal review process by referring it to the Information Commissioner, who is currently Richard Thomas. The Information Commissioners Office (ICO) is the independent statutory body that polices the operation of the Freedom of Information Act, as well as the Data Protection Act. If an applicant wishes to refer their case to the Information Commissioner, they should do so as soon as possible and in any event within 2 months of the final response from IND.

All applicants should follow the internal review process detailed above before approaching the Information Commissioner. The Information Commissioner will expect an applicant to have brought their complaint to the attention of IND before referring the case to him.

The Information Commissioner expects public authorities to act swiftly in the event of a complaint. He will demand a copy of the request, a copy of IND's initial response to the applicant, a copy of the information requested by the applicant and the information from the internal review process carried out by the Department.

The IND Central FOI Team will be IND's focal point of contact with the ICO. It is responsible for providing the ICO with IND related case papers and for advising senior IND staff and Ministers on the ICO's decisions.

If the ICO decides to investigate a complaint referred to them by an applicant, it can ask to see all of the requested data and IND case handling information in order to review the case through an information order.

The ICO also has statutory powers of entry if any public authority refuses to hand over the documents. Once the Information Commissioner has made his final assessment he will issue a decision notice outlining his view as to whether IND has complied with the Act. If the ICO finds against IND, it has powers to specify the steps that must be taken by IND or the wider Home Office in order to comply with that requirement and the timescale for compliance in a decision notice.

If the decision notice is not implemented by the Department, the Information Commissioners Office may serve an enforcement notice, which if not complied with could lead to judicial proceedings against the Department.

### **4. INFORMATION TRIBUNAL**

As part of the wider Home Office, IND may appeal to the Information Tribunal against a decision notice, information notice or an enforcement notice that has been served by the ICO. On hearing the appeal the Information Tribunal may uphold the notice in its entirety, substitute an alternative notice or dismiss the notice.

The decision of the Information Tribunal may in turn be appealed on a point of law to the High Court of Justice (England and Wales), Court of Session (Scotland) or High Court of Justice in Northern Ireland (Northern Ireland).

Where a Ministerial certificate has been issued in relation to the exemptions under sections 23 or 24 of the Act, any appeal is heard by the Information Tribunal rather

than by the Commissioner.

All such appeals will be handled for IND by the IND Central FOI Team in liaison with the relevant IND Directorate, the central Home Office's Record Management Services Team and senior officials.

## **5. MINISTERIAL VETO**

Section 53 of the Act provides a mechanism for Ministers to overturn a decision notice or an enforcement notice decision issued by the Information Commissioners Office.

Under the terms of section 53 a Minister can certify that they have formed a reasonable opinion that, contrary to the view of the Information Commissioner, the balance of the public interest in a qualified exemption comes down in favour of withholding information.

This power does not arise until the Information Commissioner has begun to take formal enforcement procedure measures and it is a step which will always be taken only after careful consideration of its wider implications.

In particular:

- The Act requires full reasons to be provided for taking a different view from the Commissioner.
- It requires a copy of the certificate issued to be laid before Parliament.

The Government has decided that this power may only be used with collective Cabinet agreement; its use will also be subject to challenge by judicial review by the courts.

Where an IND related issue may become subject to a section 53 certificate under the Act, this will be handled at all times by the IND Central FOI Team in liaison with the relevant IND Directorate, the central Home Office's Record Management Services Team and senior officials.