

09 February 2005

MOD FOI AND EIR COMPLAINTS AND APPEALS PROCEDURES

1. This document gives an outline of the MOD procedures for the handling of appeals under the Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations 2004 (EIR). The FOI Act and EIR allows any person to complain or appeal if they consider that the Department is not complying with its publication scheme or that a valid request for information has not been properly handled, or they are otherwise dissatisfied with the outcome of their request (in general, the EIR processes are the same as for the FOI Act – changes will be notified as and when required in this document).

PROCEDURE AT THE INITIAL REQUEST STAGE

2. It is important to state in the initial response that the applicant should contact the person who is replying, in the first instance, if they are dissatisfied with the response. This will give an opportunity to clarify any points, clear up misunderstandings etc prior to a request for an MOD independent internal review if the applicant remains dissatisfied. Branches have a duty to assist the applicant when possible.

3. Any written response from the applicant that expresses dissatisfaction, *but not a formal complaint* must still be considered to be a complaint. Respond to the applicant, thanking them for their letter and noting that they have expressed dissatisfaction with a reminder that the applicant has a right of appeal for an internal review.

4. Formal requests for MOD independent internal reviews will normally be addressed to:

Director of Information (Exploitation)
Level 6, Zone F
MOD
Main Building
Whitehall
LONDON
SW1A 2HB

However, if formal requests are received by branches, they must be re-directed to the above address.

MOD INDEPENDENT INTERNAL REVIEW

5. The internal review will consist of a full reconsideration of the handling of the case, as well as the final decision. The review will be fair and impartial

and will ensure that the Department's position is justified, should the case be referred to the Information Commissioner at a later date.

6. The internal review process (in outline) will be as follows:

- a. On receipt of a request for an internal review, D Info Exp will acknowledge receipt and inform the target date for responding to the applicant (normally 40 working days).
- b. The Info-Access team in D Info Exp will request a full history of the case from the branch that responded to the original request. The relevant documents must arrive in D Info Exp within 3 working days.
- c. The Info-Access team will inform the complainant if it is apparent that determination of the review will take longer than the target time. A full reason for the delay will be given with a new estimated response date.
- d. The Info-Access team will seek advice and assistance from appropriate MOD and external sources.
- e. Any proposed disclosure of information or further information will only be made with the agreement of the lead branch concerned. In the event of agreement, Info-Access staff will prepare a submission to D Info Exp with the proposed response to the applicant. In the event of a disagreement, D Info Exp will write to the relevant 1-Star official to attempt to resolve the dispute. If there is still disagreement, a decision will be made either to refer the case up the chain of command or to uphold the decision to withhold the information (effectively passing the decision to the Information Commissioner).
- f. There are two possible outcomes from the review:
 - (1) The original decision is upheld, or
 - (2) The original decision is overturned (in full or in part).

If the original decision is upheld

g. D Info Exp will inform the applicant by letter and advise him or her of the right to complain to the Information Commissioner at Wycliffe House, Water Lane, WILMSLOW, Cheshire SK9 5AF.

If the original decision is overturned (in full or in part)

h. D Info Exp will inform the applicant by letter and, either impart the information (or part of the information) in the letter or an attachment, or inform him or her when they can expect to receive the information. The letter will also give the right to complain details as in sub-paragraph g above.

COMPLAINTS TO THE INFORMATION COMMISSIONER

7. If applicants remain unhappy with the response from the MOD Independent Internal Review they can complain to the Information Commissioner's Office. The IC is the independent statutory body which polices the operation of the Act, as well as the Data Protection Act.
8. The MOD procedure for the handling of complaints to the IC is:
 - a. Assuming that the IC wants to proceed with the complaint, the IC office will write to PUS to state that a complaint has been received and to ask for comments and all papers relevant to the case. PUS will task D Info Exp to produce a draft response for him to send to the IC in time to meet the IC's timescale.
 - b. D Info Exp will gather all of the documents held as a result of the MOD Independent Internal Review into the case and will carry out a further review consulting the relevant 1-Star officer in the business area that handled the initial request.
 - c. D Info Exp will prepare a submission to PUS with the proposed response to the IC. The response may take the view that MOD still wishes to withhold the information or some of the information, or it may accede to the disclosure of information as a result of the complaint to the IC.
 - d. Subject to any necessary clarification on the issues of the case, PUS will respond to the IC.
9. Although no definitive guidance has been published, it is understood that the IC will prepare a *preliminary* Decision Notice setting out his findings and recommendations for action following investigation of any refusal to disclose information. Similarly, it is expected that a *preliminary* Enforcement Notice is to be provided following the investigation of other purported failures to comply with the FOI Act. These preliminary notices are expected to provide an opportunity to comment on any points of fact and to comment on the terms and recommendations.

APPEALS TO AN INFORMATION TRIBUNAL

10. The next stage of appeal is to an Information Tribunal. This will be for example, MOD appeals against the service of Information Notices, Decision Notices or Enforcement Notices by the IC or Appellants' appeals against IC Decision Notices.
11. Processes for appeals to the Information Tribunal and further levels of appeal will be drawn up when the Information Commissioner publishes his appeals processes.