



Internal Review of Information Request Handling Complaints

Version: 3
Date: March 2020

Doc No: IMPR05

1.0 Background

This procedural note covers information requests processed under any of the following legislation:

General Data Protection Regulations 2016 (GDPR)

Data Protection Act 2018 (DPA)

Freedom of Information Act 2000 (FoIA)

Environmental Information Regulations 2004 (EIR)

Both Regulation 11 of the EIR and the EIR Code of Practice specifically require public authorities, such as the NDA, to have an internal review process. Although not a legal requirement under the FoIA, the Section 45 Code of Practice does require the NDA to have a complaints procedure. All initial responses to requests for information therefore include a standard appeals paragraph advising requesters that, if dissatisfied with the response they have received, or if they wish to complain about the handling of their request, they should initially contact the member of staff who sent the response. Within the NDA this is usually the Information Access Manager or their deputy.

Unlike FoIA and EIR, there is nothing in data protection legislation to say that an organisation must carry out an internal review. However, the Information Commissioner's Officer (ICO) usually suggests that a requester go back to an organisation if they are concerned about the way that their request has been handled.

This period of resolution allows public authorities to clarify outstanding points or resolve misunderstandings informally rather than proceeding directly to a more official review by the ICO.

2.0 Scope

This procedure outlines how internal reviews should be conducted if a complaint is made regarding NDA handling of requests for information. Any complaint received regarding request handling is a potential non-compliance with NDA procedures:

- CSPR01 - Information Request Handling Procedure;
- IMPR04 – Subject Access Request Procedure.

It may also indicate non-compliance with the GDPR, DPA, FoIA & EIR.

NB, any other type of complaint not covered by this note must be dealt with by the NDA Complaints Procedure – CPPR03.

The internal review stage is an opportunity to reconsider a request and ensure that the NDA made the right decision in light of all the relevant information. As a minimum, all internal reviews must consider the information released against the information requested after taking account of the papers associated with the original application. The person leading the review should discuss the decisions made with all parties involved with handling the request, enabling them to build a full picture as to how and why decisions were made.

3.0 Responsibilities & Definitions

- **Head of Compliance** - Responsible for logging complaints, keeping legally admissible records, correspondence with complainant, drafting internal review reports, ensuring reviews are conducted within defined timescales, collating evidence and recording decisions



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taken by the panel, notifying NDA's Senior Risk Information Owner (SIRO) and Group Chief Compliance Officer (GCCO) when complaints are received.

- **GCCO** - responsible for chairing the panel, overseeing the procedure, approval of panel recommendations, and reporting to the Accounting Officer as appropriate.
- **Internal Reviewers** - appointed by the Head of Compliance to assist with internal reviews on an ad-hoc basis. They must not have been involved in the original decision making or have contributed to the request response which resulted in the complaint under review. They should provide an objective review, based on evidence, of the original decision made.
- **NDA employees** - must cooperate with the review panel and provide evidence as and when required. All officers responding to requests, whether directly or indirectly have a duty to provide advice and assistance to the requestor as far as is it reasonably practicable to do so.

3.0 Circumstances under which a request for an internal review can be made

3.1 Requests submitted under the FoIA or EIR

3.1.1. Circumstances

Under the above legislation a requester can ask for an internal review if they consider that the NDA has failed to:

- provide the information requested;
- tell the requester whether or not we hold information (if required);
- respond to a request within the permitted time limits (see below)
- give proper advice and help;
- give information in the form in which it was requested;
- properly explain the reasons for refusing a request;
- correctly apply an exemption (FoIA) or an exception (EIR);
- charge the correct fee for providing information.

3.1.2 Timescales for response

In accordance with the Section 45 Code of Practice an internal review on a FOI response should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

Request for reviews of responses to, or the handling of, EIR requests will be dealt with as soon as possible, and in any event, within 40 working days of receipt, in accordance with the ICO guidance.

3.2 Requests submitted under GDPR, UK GDPR, DPA

3.2.1 Circumstances

Requesters or data subjects have a right to complain about decisions related to disclosures made under data protection legislation if:

- they have been denied any of their rights, including the right to see all personal information that the NDA holds about them;



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- personal information about them is used, held or disclosed:
 - unfairly
 - for a reason that is not the one it was collected for, or
 - without proper/adequate security
- personal information about a requester is:
 - inadequate, irrelevant or excessive
 - inaccurate or out of date, or
 - kept for longer than is necessary

3.2.2 Timescales for response

Although there is nothing in data protection legislation to say that an organisation must carry out an internal review the ICO may suggest that a requester go back to an organisation if they are concerned about the way their request has been handled. In these circumstances we must respond as soon as possible, but certainly within one month.

3.3 What can't a request for an internal review be about?

Requesters are unable to ask for an internal review solely because they do not like the answer they have received. Abuse of the internal review procedure, e.g. by repeatedly asking for internal reviews following every information request made, may result in the request being deemed vexatious and consequently refused.

4.0 Complaints Procedure

See Appendix 1 – Flow chart 'Internal review of information request complaints procedure' and Appendix 2 – checklist for internal review.

5.0 Possible outcomes

Once the internal review is complete the Head of Compliance will report the findings, including any recommendations, to the Information Access Manager and a decision letter/email will be sent to the requester. This will clearly explain any proposed course of action and will include one of the following:

The request handling procedure has not been properly followed

- The Head of Compliance will provide an apology to the requester;
- They will also make recommendations to relevant officers to prevent similar errors occurring in the future;
- If any issues arise which may have wider implications for the NDA, the Head of Compliance will escalate the matter to the SIRO.

Information was incorrectly withheld

- The Head of Compliance will inform the requester in writing of this determination and enclose the information;
- If the information cannot be enclosed at that time, they will inform the requester when the information will be released to them. NB: the information must be released as soon as practicable.



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The initial decision to withhold information is upheld

- The Head of Compliance will inform the requester of this decision in writing, including the reasons behind the decision and their 'right to appeal' to the ICO;
- Contact details for the ICO must be included in the correspondence.

The NDAs Publication Scheme is not compliant

- An apology will be provided to the requester by the Head of Compliance;
- They will also ask the Information Access Manager to take any necessary steps to ensure compliance with the scheme in future;
- In all cases the requester will be informed about their right to complain to the ICO;
- Contact details for the ICO must be included in the correspondence.

6.0 Documentation

As a minimum the internal review file kept on Livelink will include:

- A copy of the original complaint;
- The internal review report (using the template in Appendix 3) which sets out:
 - how the review was conducted;
 - conclusions and actions taken;
 - any recommendations for improvements;
 - any material used during the review to inform the final decision;
 - a copy of the response to the requester, including any information sent out as a result of the review.

Appendices

Appendix 1 - flow chart 'Internal review of information request complaints procedure'

Appendix 2 - checklist for internal review

Appendix 3 - internal review report template

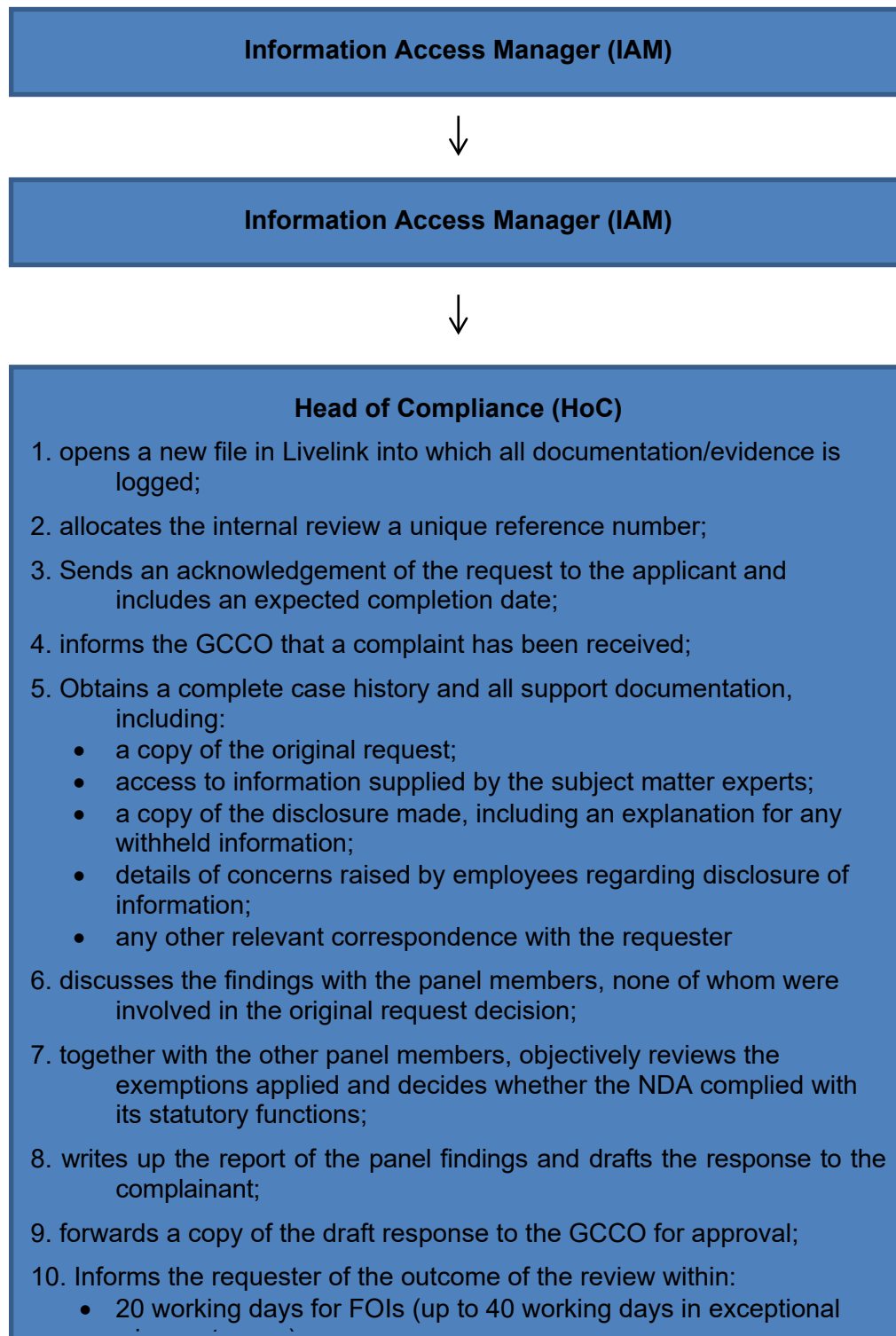


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Appendix 1 - Flow chart 'Internal review of information request complaints procedure'





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Appendix 2 – checklist for internal review

In order to carry out an internal review the following information should be collated and reviewed:

A copy of the RFI log (Livelink) detailing correspondence with the applicant, original request and complaint.	
Any other relevant correspondence with the requester	
Access to all the material from the original search carried out to find the information requested and details of the approach used in the search.	
A copy of the disclosure made, including an explanation for any withheld information	
A copy of any relevant advice given, e.g. legal advice regarding exemptions, public interest tests etc., or advice from the ICO which has been taken into account when making a decision	
Details of concerns raised by employees regarding disclosure of information	
Where the refusal was based on a calculation that the cost of meeting the request would be above the appropriate limit, a copy of the supporting calculations.	
A copy of any relevant case decisions - these might be cases which have been to the Commissioner or Tribunal decisions.	
Any other relevant information/documentation	



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Appendix 3 - internal review report template

Complaint Number	Complaint Date	FOI/EIR Request No	FOI/EIR Request Date	Review Panel	Report date
Background – include Timeline					
Internal Review - Regime Applied – FOIA, EIR, Exemptions applied, Public Interest Test if applicable					
Findings – Include reconsideration of advice received. (3 rd party consultation)					
Conclusion – Does panel uphold the original decision or not and if so why. Are panel releasing further documents and if so why, any recommendations for improvement.					
Internal Learning Points					

Record Description: [eg. Form, report, etc]

Record Owner: [insert function]



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Record Format: Electronic/Hardcopy