



## What happens next? A guide for applicants

### How we investigate your application

#### Introduction

1. This guide tells you what to expect now that we are investigating your application. It covers applications made to us under FOI law, i.e.:
  - (i) the Freedom of Information (Scotland) Act 2002 and
  - (ii) the Environmental Information (Scotland) Regulations 2004.
2. If you have a question that isn't answered here, feel free to contact us.

#### Contacting the authority

3. By law, we must let the authority know you have made an application to us. We send a copy of your application to the authority so that the authority knows what your application is about.
4. At the same time, we ask the authority to comment on your application and, if the authority has refused to disclose information because it believes it is exempt from disclosure, we will get a copy of the information from the authority.

#### Case allocated to investigator

5. Once we have heard from the authority, your case will be allocated to an investigator. The investigator will contact you and will give you their name and contact details.
6. The investigator will examine the questions raised by your case and will draft the decision. The final decision is taken by the Commissioner or other senior officer.
7. What happens during the investigation will depend on why you applied to the Commissioner. For example:
  - (i) if you believe the authority holds the information you have asked for, despite it telling you it doesn't, the investigation will focus on what searches were carried out by the authority and what information the authority actually holds
  - (ii) if you are unhappy that an exemption has been used to withhold information, the investigation will focus on whether the exemption was correctly applied
  - (iii) if the public authority refused to comply with your request on cost grounds or because it is vexatious or manifestly unreasonable, the investigation will focus on whether the authority should have complied with your request

8. The investigator might have to ask the authority some questions about how it dealt with your request. The investigator might also contact you to ask about your views or for background information about the case. This can help us come to a decision.

### **Are there things the investigation can't look at?**

9. Our role is to decide whether a public authority complied with FOI law in dealing with your request.
10. By law, we can't issue a decision on any matters not raised in your application.
11. In addition, we can't investigate any matters not covered by FOI law. For example, we can't look at:
  - (i) complaints about how public authority staff have treated you – unless it relates directly to the way your information request was handled
  - (ii) whether the authority should have recorded particular information, but failed to do so. FOI law doesn't require Scottish public authorities to keep records: the Commissioner can only consider information held by the authority at the time you made your request
  - (iii) whether the information held by the public authority is accurate or correct
  - (iv) whether a decision taken by a public authority (e.g. on a planning application) was wrong.

### **Resolving cases**

12. We have the power to try to resolve cases. This may involve some compromise – for instance, the public authority may offer to disclose only some of the information you asked for or may give you the information while still refusing to make it publicly available under FOI law.
13. Resolution can help you get the information you want more quickly than waiting for a decision to be issued. You do not have to accept the offer of settlement. If you do, you will be asked to withdraw your application.

### **Keeping in touch**

14. The investigator will keep you updated during the investigation. We publish a [list of current investigations](#) on our website, which you can search to find out what stage your case is at. (The list does not name you, but you can search the list using the case reference.)
15. It's really important you reply to correspondence from the investigator, and that you let them know about anything that will affect the investigation – for instance, if the public authority discloses information to you during the investigation, or if you decide you no longer want to carry on with the case.
16. If you don't reply to any questions asked by the investigator, we might have to conclude you have abandoned your application. If we think you might have abandoned your application, we'll get in touch before we close the case.

### **How long will it take to issue a decision?**

17. Each investigation is different, so it's difficult to say how long it will take to issue a decision in your case. We aim to close 75% of cases in six months or less.

## **Issuing the decision**

18. If the case is not settled, we will issue a decision setting out whether the authority complied with FOI law in dealing with your information request.
19. If you have given us an email address, we will email the decision to you at that address. If you change your email address during the investigation, please let us know straight away.
20. If we only have a postal address for you, we will send the decision by recorded delivery post. If you would prefer us to email the decision to you, please let us have your email address. Again, if you change your email address during the investigation, please let us know straight away.

## **What will the decision require the authority to do?**

21. If we decide the authority failed to comply with FOI law, the decision will set out what steps the authority has to take. We might, for example, order the authority to disclose information to you. In some cases, particularly if the authority changed its approach to the case during the investigation, we might order the authority to reconsider its approach to your request.
22. By law, we must give authorities at least 42 (calendar) days to comply.
23. The Commissioner's decision is legally binding, and the public authority must take any steps set out in the decision – unless it successfully appeals against our decision.

## **Publishing the decision**

24. The decision will be published on our website. You will not be named in the website version. We will also take out other information from the published version of the decision if we think it would identify you or other individuals.

## **Understanding the decision**

25. Our decisions look at whether public authorities complied with FOI law when responding to a request and can be appealed to the Court of Session. We try to keep legal jargon to a minimum, but this is not always possible.
26. If you have questions about the meaning of the decision, you can contact the investigator for an explanation.
27. However, the investigator cannot discuss the rights and wrongs of the decision with you. Once the decision notice is issued, it cannot be changed – except following a successful appeal to the courts.

## **Appealing against the Commissioner's decision**

28. Both you and the authority have the right to appeal the decision to the Court of Session on a point of law. This means you can't appeal just because you are unhappy with the outcome of the decision. But you can appeal if you believe, for example, that we have wrongly interpreted the law, has acted in a way that goes beyond what is laid down in FOI law or has failed to take account of relevant issues.
29. If you want to appeal, you must do so within 42 calendar days. We cannot help you make an appeal. You should seek independent legal advice as soon as possible.

**For information contact us at:**

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