



Complaints Procedure

External review guide

This is a general guide to the procedures used by the Information Commissioner (**the Commissioner**) when dealing with complaints under the *Freedom of Information Act 1992* (WA) (**the FOI Act**).

What is expected of you?

The Commissioner expects all parties to a complaint to be actively engaged in the external review process.

For complainants this includes:

- being available to attend and participate in Conciliation Conferences and meet with the Commissioner's officers to promptly clarify matters or provide further information; and
- negotiating constructively and flexibly with the Commissioner's officers and agency officers in a genuine effort to resolve the complaint.

For agencies this includes:

- preparing and providing documents to the Commissioner's office in a timely manner and in a form that enables ready review of the documents;
- providing additional information to the Commissioner's office when requested;
- attending the Commissioner's office for meetings and conferences; and
- participating constructively in the external review process.

The Commissioner usually deals with complaints in three stages, as outlined below.

Stage 1 – Assessment

- 1.1 When a valid complaint has been made, the Commissioner will notify the parties in writing. If an agency has claimed exemption under clause 3 or clause 4 of Schedule 1 to the FOI Act, *it is the agency's responsibility* to notify any third parties that a complaint has been made to the Commissioner.
- 1.2 If the agency's notice of decision does not comply with the requirements of section 30 of the FOI Act and does not contain sufficient reasons for its decision, the Commissioner will require the agency to provide further information to justify its decision. This may include preparing a schedule of disputed documents, depending on the complexity of the matter.
- 1.3 The Commissioner will usually require the agency to provide a complete copy of the disputed documents and a complete copy of the agency's FOI file, together with a Statement of Certification completed by an officer of the agency that states

that the disputed documents produced are true and complete copies of the original documents.

Stage 2 – Investigation

- 2.1 The Commissioner will usually make preliminary inquiries to determine whether it is possible to resolve a complaint by conciliation. It is essential for both parties to keep an open mind at this point. Matters open to negotiation may include:
 - the form of access that could be provided;
 - charges that may be payable;
 - the type of document required;
 - whether information can be provided in another form; and
 - whether the agency is prepared to exercise its discretion to disclose a document that may be technically exempt, if no harm is likely to follow.
- 2.2 The Commissioner may hold meetings with representatives of the agency and with the complainant, separately or together, to:
 - identify disputed documents;
 - resolve inconsistencies; and
 - clarify issues and reduce misunderstandings.
- 2.3 The parties to a complaint may also be required to attend a compulsory Conciliation Conference.
- 2.4 The Commissioner makes maximum use of the Internet for the transmission by email of information and documents where possible and appropriate. Therefore, all parties should ensure that the officer assigned to their complaint has that party's current email address and it is essential that parties and their representatives respond promptly to any email messages.
- 2.5 Complainants are also expected to notify the Commissioner of changes to any contact details previously provided, in particular the postal address.
- 2.6 The Commissioner has the power to require any person to attend before the Commissioner or to produce information or documents to the Commissioner that the Commissioner considers relevant to the complaint. Failure to comply with such a requirement is an offence.
- 2.7 Parties are expected to comply with time frames set by the Commissioner, but may seek extensions in exceptional cases. A request for an extension of time must be in writing and include persuasive reasons as to why the time frame cannot be met.
- 2.8 If a complainant does not respond to communications from the Commissioner or his officers in the time frame set, the Commissioner may proceed on the basis that the complainant no longer wishes to proceed with the complaint and close the file.
- 2.9 If a complainant is unable to participate in the external review process because of other commitments, they need to ensure that someone else is authorised to act on their behalf. Alternatively, they can inform the Commissioner in writing of the

reasons for their unavailability so that consideration can be given to suspending proceedings.

- 2.10 Where it is considered appropriate, the Commissioner may provide details of any submissions received to the other parties to the complaint.
- 2.11 If the matter has not been resolved by this stage, after considering all of the material and the disputed documents, the Commissioner may inform the parties of his preliminary view of the complaint, including reasons. Each party then has the option of reconsidering its position and may withdraw or provide additional material in support of its view.

Stage 3 – Finalisation

- 3.1 If any matters remain in dispute, after considering any further information and submissions, the Commissioner will formally determine the issues in dispute between the parties.
- 3.2 The Commissioner informs the parties in writing of his final decision and the reasons for it. The agency is then responsible for giving effect to the decision.
- 3.3 The Commissioner is required to have his decisions published in full or in an abbreviated, summary or note form. The decisions are published at www.foi.wa.gov.au.
- 3.4 It is the usual practice of the Commissioner to identify all of the parties to the complaint in the published decision. However, where the issues involve certain kinds of sensitive or private matters, the Commissioner may decide not to publish the identity of one or more parties in order to protect their privacy.
- 3.5 The Commissioner may also decide to stop dealing with any complaint, which does not relate to a matter the Commissioner has power to deal with, or is frivolous, vexatious, misconceived or lacking in substance.
- 3.6 An appeal lies to the Supreme Court on any *question of law* arising out of a decision of the Commissioner. That is, an appeal to the Supreme Court is not a further full merits review. There is no appeal to the Supreme Court in relation to decisions on a deferral of access, imposition of charges, or the payment of a deposit. The Rules of the Supreme Court stipulate the time within which an appeal can be lodged.

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