



# Decisions of the Information Commissioner

## External review guide for agencies



This sheet is intended to assist agencies following receipt of a formal published decision from the Information Commissioner (**the Commissioner**).

### The Commissioner's decision

The Commissioner's formal published decision on a complaint finalises the Commissioner's role in the matter.

After the decision is made, the Office of the Information Commissioner will not give legal advice to the parties about the decision or discuss the reasons for the decision with the parties. If a party seeks advice about, or wishes to appeal, the Commissioner's decision they will need to seek their own independent advice.

### Giving effect to the Commissioner's decision

Under the *Freedom of Information Act 1992* (**the FOI Act**), the Commissioner's decision is to be regarded as the agency's decision and has effect accordingly.

If the Commissioner has decided that a document or information in a document **IS EXEMPT**, the applicant is not entitled to access to it under the FOI Act, subject to the right of appeal set out below.

If the Commissioner has decided that a document, or information in a document, is **NOT EXEMPT**, the agency is required to give effect to that decision by giving the applicant access to that document or information. This usually means that the agency has to give the applicant a copy of the document or information, unless the Commissioner has decided that access should be given by inspection only (for example, because of copyright).

It is always the agency and not the Commissioner who gives the applicant access to the document or information. The agency should not give access to documents or information about a third party who is a party to the Commissioner's decision until it has considered the third party's right of appeal.

### Appeals to the Supreme Court

Under the FOI Act, all parties to the Commissioner's decision have the right to lodge an appeal against that decision with the Supreme Court. The right of appeal is limited to a question of law.

The agency is a party to an appeal even if it is neither the appellant nor the respondent (section 86(1)). The Commissioner is not a party to the appeal.

The timeframe and process for lodging an appeal is governed by the *Rules of the Supreme Court 1971*. As at the time of drafting this document, an appeal must be lodged

within 21 days after the date of the Commissioner's decision. Some periods of time, for example the Christmas period, may be excluded when calculating the 21 days to appeal: please refer to the *Rules of the Supreme Court 1971* for further guidance.

If an agency lodges an appeal against the Commissioner's decision, it is not required to give the applicant access to the document or information pending the outcome of the appeal. However, if the agency does not intend to lodge an appeal and no third parties are involved, the agency should give the applicant access to the document or information without delay.

### **When third parties are involved**

It is important that agencies consider the following when a third party is a party to the Commissioner's decision.

When an agency is not going to lodge an appeal against the Commissioner's decision but a third party is a party to the Commissioner's decision, the agency SHOULD NOT give the applicant access to any document or information UNTIL AFTER the 21 day appeal period has expired OR the third party has notified the agency that an appeal against the Commissioner's decision will not be lodged.

If a third party lodges an appeal against the Commissioner's decision, the agency must not give the applicant access to the document or information pending the outcome of the appeal.

### **Checking if an appeal has been lodged**

Before an agency gives the applicant access to the document or information, it is a good idea to check whether an appeal has been lodged.

Apart from providing the Supreme Court with documents as required by the Court, the Commissioner is not usually involved in the appeal.

For further information about lodging an appeal, agencies should contact the Supreme Court and obtain their own legal advice.

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