



Consulting third parties during external review

External review guide for agencies

When do I need to consult with third parties once a matter is before the Information Commissioner?

In some cases it might be necessary for you to consult with third parties after a matter comes before the Information Commissioner. The Commissioner will highlight this requirement to an agency where it arises. Usually this will happen where an agency originally decided not to consult as it formed the view that third party information is exempt from disclosure, but the Commissioner's view is that the information is not exempt and should be disclosed.

How do I consult with a third party in such a situation?

When consulting with a third party, it is always important to ensure that your communication is precise and presented in a clear and useful context. This ensures that the third party is afforded a meaningful opportunity to inform the Commissioner of their views. It is important for the third party to understand that they are not being asked to express a general objection to disclosure, but that they are being given an opportunity to provide persuasive arguments as to why the matter in question is properly exempt under the terms of a legislative exemption.

Your approach to the third party should cover the following issues in clear and unambiguous terms:

1. A brief outline of the *Freedom of Information Act 1992* and the role of the Information Commissioner when conducting an external review;
2. The background to the current FOI matter, noting that the Commissioner is currently reviewing a decision your agency has made;
3. The fact that, on the evidence before him, the Commissioner considers that the material in question is not exempt and should be disclosed;
4. A precise explanation of the requirements of the particular exemption – using the words of that exemption;
5. An invitation to the third party to write to the Commissioner by a specific date and either:
 - a. confirm that the third party consents to the disclosure of the material; or
 - b. make persuasive submissions as to why the material in question is in fact exempt, by reference to the words of the exemption.
6. If no response is received from the third party by the required date, the Commissioner may proceed to deal with the complaint including finalising the matter without further reference to the third party; and

7. An outline of the third party's right to be joined as a party to the complaint; how to exercise that right and how to contact the Office of the Information Commissioner if the third party wishes to exercise its rights or seeks further information.

If you are unsure of what to do, please call the Office of the Information Commissioner. Usually the Commissioner will expect such consultation including the receipt of any submissions to be completed before the due date specified in the preliminary view letter.

Office of the Information Commissioner

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