

22 December 2023

Case reference: IC-273514-G0L2

We are now in a position to respond to your information request of 30 November.

Request

"I would like to make an FOI Request about the ICO's "Undue Delay" Policy, relating to the handling of FOI Complaints against public authorities. Please number your responses, to tally with the requests outlined below..."

*Request 1:
FOIA/EIR Casework Service Guide's "Undue Delay" Policy*

The following three pages have extracts from the FOIA/EIR Casework Service Guide. Page 1 shows this edition was Last updated: January 2022, with Review date: October 2022. Pages 2 & 3 show that the official deadline for considering FOI Complaints is: "... three months after the complainant has received their final response or last substantive contact with the PA."

1a) Please provide the previous edition of this document, to show whether this policy was the same back then, or different.

1b) This document is published on the ICO Website's "Policies and Procedures" page, with a note which says: "this service guide is currently being redeveloped and the revised version will be published when it is complete."

EITHER: If the new edition is now ready, then please provide it, along with the reason(s) why it hasn't yet been published on the website.

OR: If the new edition isn't yet complete, but the sections mentioned above have been revised, then please send those, along with the date(s) of revisions.

OR: If the new edition isn't yet complete, but these sections have not been revised, then please send the relevant pages, to show that.

1c) If the Undue Delay policy has been updated in this newer edition, please indicate which senior ICO officers approved this change, and what procedure was followed, to do that. And provide any minutes or emails which outline the reasons for this change.

Request 2:

ICO Case Officers' "Undue Delay" Policy I understand that the Undue Delay policy operated by ICO Case Officers is now "six weeks from the outcome of an Internal Review."

2a) Please provide whichever document(s) indicate what the Case Officers' Undue Delay policy was, in January 2022.

2b) If it was not the "three months... from last contact..." stated in the 2022 Service Guide, then please check back further, and indicate the most recent date on which the two policies were in agreement.

2c) Please provide whichever document(s) indicate on what date the Case Officers' Undue Delay policy was changed, to "six weeks from the outcome of an Internal Review."

2d) If there were any intermediate versions of the Case Officers' policy — eg "six weeks from last contact" — then please provide whichever document(s) specify them, and indicate the dates during which they operated.

2e) Please confirm which senior ICO managers approved this/these change(s), and what procedure was followed to do this. Provide any minutes or emails which outline the reasons for this/these changes.

2f) Please provide whichever documents or emails demonstrate what efforts were made, to get the ICO Website's published rules updated, in order to match the new policies.

Request 3:

ICO Website's "Undue Delay" Policy. The following pages have "before and after" images from three pages of the ICO Website: "Our Service Standards", "Before you complain" and "FOI and EIR complaints." Until they were recently changed, to align with the Case Officers' policy, these webpages stated a deadline of "within six weeks of the public authority's response, or your last contact with them."

3a) Please state the policy which was published on these webpages in January 2022, with screenshots of each page.

3b) If it was not the "three months" stated in the Service Guide, then please check back further, and indicate the most recent date on which the two policies were in agreement.

3c) Assuming it ever agreed with the Service Guide, please indicate on what date the website's Undue Delay policy was changed, from "three months..." to "six weeks..." (If various pages were changed on different dates, then please provide details.)

*3d) If there were any other versions of these webpages since January 2022, then please provide screenshots, with the dates that they were live to the public.
3e) Please state which senior ICO managers approved this/these website change(s), and what procedure was followed. Provide any minutes or emails which outline the reasons for this/these changes."*

We have handled your request under the Freedom of Information Act 2000 (FOIA).

Our response

Under section 50 of the FOIA, any person may apply to the Commissioner for a decision whether a request for information they have made to a public authority has been dealt with in accordance with the requirements of Part I of the Act.

Section 50 2(b) states:

"(2) On receiving an application under this section, the Commissioner shall make a decision unless it appears to him— (b) that there has been undue delay in making the application,"

The term 'undue delay' is not defined in the FOIA. The Commissioner has broad discretion in how he interprets and applies the Act, which is delegated to the relevant departments and teams within the ICO.

We conducted a consultation on our prioritisation framework for handling FOI and EIR complaints in late 2022. The results of this were published in March 2023 and are available online [here](#).

There was strong support (79%) for considering complaints ineligible if they were brought to us more than 6 weeks after the last meaningful contact with the public authority, unless there was a good reason for the delay. The new timeframe of 6 weeks was adopted with effect from 1 April 2023.

Please find enclosed a copy of an email of 21 April 2023 to our website team requesting changes to reflect the new 6 week timeframe. An internal email address has been redacted under section 31(1)(g) of the FOIA and further detail on this is provided later in the response.

The requested changes went live on 24 April 2023. We do not hold any other emails requesting changes relating to the April amendment. The website team have advised that changes can be requested verbally.

The 3 month timeframe was adopted in 2014. Prior to that, the timeframe was 6 months. It was therefore 3 months in January 2022.

You can find a previous FOI disclosure about undue delay which discusses the change in timeframe from 6 to 3 months in 2014 on the WhatDoTheyKnow.com website [here](#).

We also disclosed information in response to a recent request about undue delay on our disclosure log [here](#). In this, we provided recorded information relating to a change in the wording on our website in October 2023.

It is important to note that there is no specific policy document for 'undue delay'. The timeframe adopted by the FOI complaints team is reflected in the documents produced, such as the FOIA/EIR casework service guide, and the advice to the public on our website.

Previous published versions of our website are available via The National Archives [here](#). You can view archived versions of our website by selecting the dates these were saved.

Please find enclosed the previous version of the FOIA/EIR casework service guide published on our website (version 1 February 2020). This precedes the current version on our website (version 2 January 2022). We did not publish any intermediate versions of this guide.

We are withholding the FOIA/EIR casework service guide that is currently being developed under section 22 of the FOIA, as this is intended for future publication. Further details on this exemption are provided later in the response.

Advice and assistance

The aim of the change of wording in October 2023 was to provide more clarity on undue delay. In particular, to help share that a complaint could be brought to us if the complainant had not received a response from the public authority.

Our FOI complaints team have advised that following a number of queries regarding the present wording, it has been decided that the wording will be changed to bring it in line with the consultation wording published in March 2023. Unfortunately, it appears the wording from October has caused some confusion, which was not the intention.

The wording has been changed to: "You should complain to us within six weeks of receiving your final response or last substantive contact with the public authority", and this was effective 6 December 2023. This does not change the policy on undue delay, which is 6 weeks following the published consultation in March that was adopted on 1 April 2023.

As requested, please find below numbered responses to the questions contained in parts 1 to 3 of your request.

Request 1

- 1a) See attached FOIA/EIR casework service guide (version 1 February 2020).
- 1b) Withheld under section 22 of the FOIA.
- 1c) The current timeframe for undue delay is 6 weeks. This has been in effect since 1 April 2023.

Request 2

- 2a) The timeframe for undue delay on 1 January 2022 was 3 months. This is reflected in page 40 of version 1 of the FOIA/EIR casework service guide (February 2020), and pages 9 and 51 of version 2 of the FOIA/EIR casework service guide (January 2022).
- 2b) See 2a.
- 2c) The current timeframe for undue delay is 6 weeks. This has been in effect since 1 April 2023. Please see the previous disclosure relating to the website wording change in October 2023 and above advice and assistance section. This wording change did not alter the timeframe for undue delay.
- 2d) There have been no intermediate changes to the undue delay timeframe from the dates given above, i.e. 6 months until 2014, 3 months until 1 April 2023, 6 weeks from 1 April 2023. There have been no intermediate published versions of the FOIA/EIR casework service guide.
- 2e) Please see previous disclosure relating to the website wording change in October 2023 and above advice and assistance section. This website wording change did not alter the timeframe for undue delay (6 weeks).
- 2f) See 2e. We have also provided an email from 21 April 2023 for the April changes from 3 months to 6 weeks.

Request 3

- 3a) Please refer to The National Archives website for previous versions of our website. The dates for the previous timeframes for undue delay are provided above.

3b) There has been no overlap in the timeframe for undue delay. See dates given above.

3c) 21 April 2023. See email attached.

3d) Please refer to The National Archives website for previous versions of our website.

3e) See email attached. The change from 3 months to 6 weeks was adopted following the consultation published in March 2023.

Section 21 FOIA

The published information within scope of your request is technically withheld under section 21 of the FOIA, which explains that we are not required to provide information in response to a request if it is already reasonably accessible to you from another source. We have provided version 1 of the FOI/EIR casework service guide (2020) in this response for ease of reference.

Section 22 FOIA

We are withholding the FOIA/EIR casework service guide that is being developed for publication under section 22 of the FOIA.

Section 22 of the Act states that information is exempt from disclosure in response to an information request if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

The exemption at section 22 is qualified by the public interest test, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

In this case, the public interest factors in disclosing the information are:

- Encouraging openness and transparency by providing information about the ICO's guidance on how it administers FOI complaint cases as regulator.

The factors in withholding the information are:

- The ICO has a history of publishing this information and has committed to publishing the relevant guidance when completed at the appropriate time.
- Earlier disclosure is not necessary to satisfy any pressing public interest at the present time.

Having considered the public interest arguments, we have decided to withhold this information in reference to section 22 of FOIA.

Section 31(1)(g) FOIA

We have redacted an internal ICO email address pursuant to section 31 of the FOIA. This exemption refers to circumstances where the disclosure of information, "would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

In this case, the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

- a. the purpose of ascertaining whether any person has failed to comply with the law, and
- c. the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

We are satisfied that any misuse of internal non-public facing email addresses that exist to support ICO staff would likely prejudice our ability to perform our regulatory functions. Public disclosure would leave these email addresses vulnerable to phishing or other cyber-attacks, spam, or an increased volume of irrelevant correspondence which would divert our limited resources away from our regulatory work.

There are other channels that are more appropriate for the public to contact us, and these are publicly available on our website.

The exemption at section 31(1)(g) is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

In this instance, the public interest factors in favour of disclosing the information are as follows:

- Increased transparency in the way in which the ICO conducts its operations.

The public interest factors in maintaining the exemption are as follows:

- Internal email addresses being utilised for purposes contrary to their intended purpose will reduce the effectiveness and efficiency of our regulatory functions.
- The disclosure of the information is not of primary relevance to the request.
- The public interest relating to transparency is met by the provision of several other and more appropriate means of contacting the ICO.

Having considered all of these factors, we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

This concludes our response to your request. We hope you found this information helpful.

Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days. You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority. You can [raise a complaint through our website](#).

Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
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**For information about what we do with personal data
see our [privacy notice](#)**