



OFFICE OF THE
INFORMATION
COMMISSIONER

Policy Statement and Guidance

CASE HANDLING

Published: November 2014

Brunel House, Old Street, St.Helier, Jersey, JE2 3RG
Tel: (+44) 1534 716530
Email: enquiries@dataci.org

Contents	Page
Part 1: Guidance	
Raising a concern with an organisation	3
Template letter	4
What else should I do?	5
What is the role of the OIC?	6
Should I raise my concern with the OIC?	6
Part 2: Policy	
Introduction	7
Policy statement on case handling (Data Protection)	8
Policy statement on the handling of FOI appeals	16

PART 1:

Introduction

Part of our role is to improve the information rights practices of organisations by gathering and dealing with concerns raised by members of the public. These concerns can either directly relate to compliance with the Data Protection (Jersey) Law 2005 or the Freedom of Information (Jersey) Law 2011, or could be general enquiries on matters of privacy and information rights. Each year we address a large number of enquiries, written concerns and complaints about information rights issues.

How we deal with the concerns reported to us

Once a concern is raised with us, we record and consider it.

In some cases, we collate further information on similar issues, looking at the concern alongside others raised about the organisation. All concerns raised contribute to our understanding of an organisation's performance against its obligations and will help us decide on any improvements we might expect them to make.

In cases where a clear and serious breach of the legislation has taken place, we may be able to take direct action on the specific concern raised. If we decide that there has been a serious failure to comply with the law, we will provide advice and instruction to help ensure the organisation gets it right in future. If an organisation isn't taking its responsibilities seriously, we may also take enforcement action where our statutory powers allow us to do so. In the most serious cases where criminal offences are evidenced, we may refer the matter to the Attorney General for consideration of prosecution.

You have the right to be confident that organisations handle your personal information responsibly and in line with good practice.

If you have a concern about **the way an organisation is handling your information**; for example if you know or suspect it:

- is not keeping your information secure;
- holds inaccurate information about you;
- has disclosed information about you;
- is keeping information about you for longer than is necessary; or
- has collected information for one reason and is using it for something else;
- has not allowed you access to either your personal information or official information

If any of the above apply, or if you are having difficulty gaining **access to information**, we believe that the organisation responsible should deal with it. We expect them to take your concern seriously and work with you to try to resolve it.

How should I raise my concern about how an organisation has handled my information?

You can use the template letter below to help you raise your concerns to the organisation.

[Your full address]
[Phone number]
[The date]

[Name and address of the organisation]
[Reference number (if provided within the initial response)]

Dear [Sir or Madam / name of the person you have been in contact with]

Information rights concern

[Your full name and address and any other details such as account number to help identify you]

I am concerned that you have not handled my personal information properly.

[Give details of your concern, explaining clearly and simply what has happened and, where appropriate, the effect it has had on you.]

I understand that before reporting my concern to the Office of the Information Commissioner (OIC) I should give you the chance to deal with it.

If, when I receive your response, I would still like to report my concern to the OIC, I will give them a copy of it to consider.

You can find guidance on your obligations under information rights legislation on the OIC's website (www.dataci.org) as well as information on their regulatory powers and the action they can take.

Please send a full response within 28 working days. If you cannot respond within that timescale, please tell me when you will be able to respond.

If there is anything you would like to discuss, please contact me on the following number [telephone number].

Yours sincerely,
[Signature]

What else should I do?

Here are some tips to follow when you raise your concern:

- **Raise your concern quickly.** People move on, memories fade and records are deleted in line with retention policies. The longer it takes to raise your concern with an organisation, the harder it will be for them to look into it thoroughly.
- **Send it to the right place.** There's no point in raising a matter quickly if it then takes weeks to get to the right department. Check the organisation's website or give them a call to make sure you have the right address. In some cases, you may be able to find it on our Register of data controllers.
- **Write legibly.** Typed or word processed documents are easiest to read. If you write your complaint by hand, make sure your writing is easy for others to understand.
- **Keep your language simple.** Although you will have checked our website to see what the relevant legislation says, don't feel you have to quote it to raise a complaint. Just explain clearly and simply what has happened and, where appropriate, the effect it has had on you.
- **Be specific.** If you have had a long relationship with the organisation concerned, resist any temptation to include historical or unrelated complaints in your letter. This can confuse matters and leave the organisation unsure which of your concerns you really want them to deal with.
- **Don't move the goalposts.** Include full details of your concern at the beginning. If the organisation responds properly, don't raise additional unrelated matters as part of that complaint. However, if it appears that the organisation has misunderstood you, or has not given a full response, you should let them know.
- **Stay reasonable.** You may be justifiably angry or upset about what has happened. Keeping your letter calm and polite will help you get your points across more clearly. Remember that the person you are dealing with might have had nothing to do with the problem you had. Also, remember that they are only human. A rude letter might make it difficult for them to want to help.
- **Don't get personal.** Don't insult members of the organisation's staff. Apart from being unreasonable behaviour, the response may lack focus if the writer feels obliged to defend his or her colleagues or staff.
- **Request and respect timescales.** Ask when you can expect the organisation to respond and resist any temptation to contact them again before that. However, if you do not receive a response on time, you should chase it, although we recommend giving an extra couple of days to allow for administrative or postal delays.
- **Include all necessary information.** Include all relevant details such as account or patient numbers to help the organisation identify you and your concern correctly.
- **Include all necessary evidence.** Send copies of all the key documents you have to evidence your complaint. Don't send the originals as you might need them later. Also, don't include additional documentation 'just in case'. The more documents you send, the more likely it is that key information will be missed and may cause unnecessary delays.
- **Keep good records.** Clearly date all letters, make notes of all related conversations, including who with, and keep copies of everything.

- **Exhaust the process.** If the 'final' response you receive does not resolve the matter to your satisfaction but also signposts you to any further complaints or review procedure, make sure you exhaust that process before bringing the matter to our attention.

What's the OIC's role?

We give guidance and support to organisations to help them get things right. We can also help you take steps to address your concern. We can't act as your representative, award compensation or – apart from in the most serious cases – punish an organisation for breaking the law. But we can help you understand how to best work with the organisation to resolve your concern.

Should I raise my concern with the OIC?

If the organisation has been unable, or unwilling, to resolve your information rights concern, you can raise the matter with us. We will use the information you have provided, including the organisation's response to your concerns, to decide if your concern provides an opportunity to improve information rights practice.

If we think it does provide that opportunity, we will take appropriate action. This could take a variety of forms.

You should raise the matter with us within three months of your last meaningful contact with the organisation concerned, unless your concern is regarding an access request under the Freedom of Information (Jersey) Law 2011 in which case you must make your appeal within six weeks of you having exhausted the organisation's internal review process. You may raise your concern by completing the downloadable form from our website and sending it to us either by post or email.

Part 2 of this document sets out further details of our policies for dealing with complaints and appeals under the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011 respectively, and gives guidance on when you should raise your concern with the OIC.

PART 2: Policy

Introduction

The Office of the Information Commissioner (“the Commissioner”) is responsible for the supervision of all persons and businesses with regard to ensuring compliance with the provisions of the Data Protection (Jersey) Law 2005 (“the Law”) and the Freedom of Information (Jersey) Law 2011 (“the FOI Law”).

The purpose of this policy statement is to give guidance to individuals, Data Controllers and Scheduled Public Authorities with regard to the Commissioner’s handling of complaints, appeals and enquiries. The policy statement covers what is expected of the individual in the first instance, before addressing the circumstances in which the Commissioner will investigate complaints against a person or Data Controller. This policy statement also details what action the Commissioner can take with regard to an individual’s complaint.

Policy Statement on Case Handling (Data Protection)

From time to time, the Commissioner receives complaints about the way Data Controllers have handled information personal to the individual. This document explains the Commissioner's policy towards such complaints and how they will be dealt with.

1. Lodge your concern with the organisation first

- 1.1. If you have a complaint about the way a Data Controller has handled information personal to you, we would recommend that you first try and resolve the complaint directly with the Data Controller. Many businesses have a Data Protection Officer who is an employee of the company whose role it is to ensure that the business remains compliant with the data protection principles and the Law. However, complaints should be addressed in the first instance to the senior management of the company concerned. Complaining first to the Data Controller allows the business an opportunity to put things right at an early stage.
- 1.2. Data Controllers who are notified with the Commissioner will list a point of contact on their notification. This person will normally be the nominated point of contact for dealing with Data Protection issues. You can find their contact details by using the 'Search the Register' facility on our website.
- 1.3. If lodging your complaint with the institution first is either impractical or inappropriate, the Commissioner will be happy to listen to your complaint.

2. When to raise a concern with the Commissioner

- 2.1. If you are not happy with the way in which the institution has dealt with your concern, or if you have not received a response within 14 days after raising your concern, you may wish to seek the assistance of the Commissioner.
- 2.2. We will check to ensure that the institution has complied with the data protection principles with regard to the processing of personal data relating to you, as well as making sure that the institution has handled your concern in a proper manner.
- 2.3. The Commissioner will normally require copy documentation or evidence to support your concern.

3. How to raise your concern to the Commissioner

- 3.1. You should put your concern in writing, with full details of the nature of your concern, your name and how we may contact you. You should also include copies of any relevant correspondence that may assist us in our investigations. The Commissioner has a standard form available on our website which prompts you for all of the information required in order for the Commissioner to investigate your concern.
- 3.2. We do not normally deal with verbal or anonymous complaints; however, if your concern relates to the generic processes of an institution as opposed to a specific

concern in relation to you, we may consider investigation. Please contact us by telephone if you have any individual difficulties which might prevent you from making a written complaint.

- 3.3. In order to progress your concern, we will often need to disclose details of your concern to the relevant organisations. We will therefore also need your written consent for us to disclose details of your concern to the organisation.
- 3.4. You should include copies of any correspondence, documentary evidence or other material that is relevant to your concern. You should also detail what damage or distress you have suffered as a result of the actions of the data controller.
- 3.5. If you require any assistance in completing the enquiry form, a member of our team will be happy to assist you.

4. The nature of the Commissioner's role in complaint handling

- 4.1. Whilst the Commissioner does not have an explicit statutory responsibility for consumer protection, the Commissioner's primary duty is to promote the observance of the data protection principles by Data Controllers to ensure that personal data relating to individuals is afforded a high level of protection.
- 4.2. It is the role of the Attorney General to instigate prosecution proceedings where offences have been committed under this Law, upon referral by the Commissioner or the States of Jersey Police. Where a person is convicted of an offence under this Law, they shall be liable to a fine, and in some cases the Court may order that the data be forfeited, erased or destroyed.
- 4.3. The Commissioner has no powers of arrest or fining and will only take regulatory action against a Data Controller where considered necessary, based on all the circumstances.
- 4.4. We do however expect Data Controllers to have satisfactory systems and controls in place to enable them to deal with customer complaints in a thorough and prompt manner.
- 4.5. We will therefore try to ensure that the Data Controller handles your concern properly. It is important to note however that we do not have the power to order an organisation to pay you compensation. Only the Court is able to grant payments of compensation and then only in certain circumstances as prescribed by Law.

5. How will the Commissioner handle your complaint?

- 5.1. All complaints will be treated in strict confidence, although as already previously stated, and with your prior consent, we may need to disclose details of your complaint to the organisation concerned.
- 5.2. Upon receipt of a written complaint, we will issue an acknowledgement to you as quickly as possible, normally within seven calendar days.

- 5.3. Provided you are content for us to contact the organisation concerned, we will write to them to obtain any further documentary evidence that will assist the investigation and will seek their comments and/or explanation as to the circumstances surrounding the complaint. Alternatively, we may meet with representatives of the institution to discuss the complaint and attempt to broker a mutually acceptable solution. We ask the institution to provide this initial response within 14 days of writing to them.
- 5.4. We will review the response provided in order to ensure that:
- a) The Data Controller has handled your complaint properly and has followed its own complaint handling procedures; and
 - b) The Data Controller has complied with the data protection principles and its regulatory requirements as set out in the Law.
- 5.5. Upon the conclusion of our investigation, we will revert to you with the results of our investigation, together with details of the action we propose to take, if any.
- 5.6. Complainants should note that the Office of the Data Protection Commissioner is a small department with limited resources. The Commissioner deals with a high volume of complaints and enquiries and will do its best to keep you informed of the progress of your complaint during the investigation. Your complaint will be dealt with as expeditiously as possible, however we cannot guarantee a time scale for completion of an investigation.
- 5.7. For complaints relating to specific areas of data processing, the Commissioner may from time to time issue further information by way of appendices to this policy, in order to assist complainants seek a satisfactory resolution to their complaint.

6. Action we can take and remedies available

- 6.1. The vast majority of complaints are resolved quickly, with no breach being proven and without the need for enforcement action or further intervention from the Commissioner.
- 6.2. In the light of a complaint, or a series of complaints, the Commissioner may decide to take action against a Data Controller where a breach of the Data Protection Principles has been identified, for instance by requiring it to modify its procedures for the handling of personal data. These would include complaints that indicate that a Data Controller has breached the data protection principles or the Law.
- 6.3. In cases of regulatory concern, we will follow up with the organisation to establish the facts and, if necessary, require remedial action to be taken. We will advise you of the results of our investigations and any action we decide to take. In the cases of complaints where more serious concerns are highlighted, the Commissioner is able to take the following action:

Enforcement Notices:

The Commissioner has a power under Article 40 of the Law to issue Enforcement Notices in circumstances where the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles. The Commissioner may require the data controller to do one or both of the following, to ensure future compliance with those principles contravened:

- a) To take specified steps within a specified time, or to refrain from taking specified steps after a specified time; or
- b) To refrain from processing any personal data, or any personal data of a specified description, or to refrain from processing them for a specified purpose or in a specified manner, after a specified time.

Information Notices:

Article 43 of the Law gives the Commissioner the power to issue Information Notices, where the Commissioner:

- a) Has received a request under Article 42 in respect of any processing of personal data; or
- b) Reasonably requires any information for the purpose of determining whether a data controller has complied, or is complying, with the data protection principles.

The Commissioner may serve a notice on the relevant data controller (or on a data processor who processes data on behalf of the data controller, being data or processing relevant to the request or the determination, as the case may be), requiring the person served with the notice to furnish the Commissioner with specified information relating to the request or to compliance with the principles.

Special Information Notices:

Article 43 of the Law gives the Commissioner the power to issue Special Information Notices, where the Commissioner:

- a) Has received a request under Article 42 in respect of any processing of personal data; or
- b) has reasonable grounds for suspecting, in a case in which proceedings have been stayed under Article 32, that the personal data to which the proceedings relate:
 - i. Are not being processed only for the special purposes, or
 - ii. Are not being processed with a view to the publication by any person of any journalistic, literary or artistic material that has not previously been published by the data controller.

The Commissioner may serve a notice on the data processor concerned in the processing (or on the data controller on behalf of whom the processing is carried out) requiring the person served with the notice to furnish the Commissioner within a specified time and in a specified form (if any) with specified information for the purpose of ascertaining:

- a) Whether the personal data are being processed only for the special purposes; or
- b) Whether they are being processed with a view to the publication by any person of any journalistic, literary or artistic material that has not previously been published by the data controller.

Formal Undertaking:

Where a breach of the Data Protection Principles is identified by the Commissioner following investigation of a complaint, and in certain circumstances one of the enforcement tools available to the Commissioner is the issue of an Enforcement Notice. However, on occasions the Data Controller may have already taken sufficient steps to prevent any recurrence of the breach, which may make the issue of an Enforcement Notice unnecessary.

In such cases, the Commissioner may decide to issue a formal Undertaking. Whilst not backed by any formal statutory power in the Law, the Undertaking may serve as a final warning to the Data Controller and should future breaches of a similar nature be identified, the Commissioner is likely to proceed directly with issue of an Enforcement Notice.

7. Alternative solutions

- 7.1. There may be occasions where following our investigations and subsequent action, you are still not satisfied that your complaint has been resolved. Should this prove to be the case and we are unable to offer any further assistance, there are several alternative solutions you may wish to explore:

Independent legal advice:

You may wish to seek independent legal advice from your own lawyer should you wish to pursue a claim against the institution concerned. If you do not have your own legal advisor, the Law Society of Jersey has a listing of all Jersey Law firms on their website at www.jerseylawsociety.je.

Jersey Citizens Advice Bureau (CAB):

The CAB service is independent and provides free, confidential and impartial advice to everybody, regardless of race, sex, disability or sexuality. Further details of the services they can provide can be found on their website at www.cab.org.je.

Channel Islands Association of Accredited Mediators:

CAAM is an alternative dispute resolution mechanism, which employs the services of local lawyers to mediate between disputing parties to broker a mutually acceptable conclusion. It is a non-profit making organisation and the final settlement agreed is legally binding on both parties. Further information can be found on their website at www.caam.je.

Personal data published on the internet

This section of the policy is intended to provide information and guidance on the Commissioner's policy with regard to specific types of data processing enquiry.

When considering the most appropriate method to deal with a complaint, the Commissioner will look at the nature of the data processed in conjunction with the scale of the damage and distress suffered by the individual concerned.

The Commissioner will also consider whether the complaint can be resolved by one of three means:

- Assistance to the data subject and/or data controller;
- Regulatory enforcement action using the powers available under the Law;
- Recommendation of criminal sanction via the Attorney General.

The majority of cases investigated by the Commissioner are resolved by way of the provision of assistance to the data subject, the data controller, or both. Inevitably however, due to the severity of some cases, regulatory action may be more appropriate in certain circumstances. Where criminal activity under this Law is suspected or evidenced, the case may be referred to the Attorney General for consideration of prosecution.

Guidance in respect of complaints relating to personal information published on the internet

When considering the appropriate action to take when dealing with complaints of this nature and to assist data subjects, it is necessary to identify the levels of behaviour exhibited in order to determine the appropriate regulatory route:

Level 1

In the following examples where personal information is published on the internet, there may be little or no action taken by the Commissioner:

- Where the information is already legitimately available in the public arena;
- The damage or distress suffered by the complainant would be considered minimal;
- The material published is not considered invasive into the private life of the complainant.

In such cases, the Commissioner may consider that the most appropriate course of action is to assist the complainant by drawing their attention to the rights available under Article 10 and 14 of the Law:

- **Article 10** – The right to stop processing that causes substantial and unwarranted damage and distress.

Right to stop processing that causes distress or damage

- (1) An individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which the individual is the data subject, on the ground that, for reasons specified in the notice –*
 - (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to the individual or to another individual; and*
 - (b) that damage or distress is or would be unwarranted.*
- (2) Paragraph (1) does not apply –*
 - (a) if one or more of the conditions in paragraphs 1 - 4 of Schedule 2 is met; or*
 - (b) in such other cases as may be prescribed by Regulations.*
- (3) The data controller shall within 21 days of receiving a notice under paragraph (1) give the individual who gave it a written notice –*
 - (a) stating that the data controller has complied or intends to comply with the individual's notice; or*
 - (b) stating the data controller's reasons for regarding the individual's notice as to any extent unjustified and the extent (if any) to which the data controller has complied or intends to comply with it.*
- (4) If a court is satisfied, on the application of any person who has given notice under paragraph (1) –*
 - (a) that the notice is justified to any extent; and*
 - (b) that the data controller in question has failed to comply with the notice to that extent,*

the court may order the data controller to take such steps as it thinks fit for complying with the notice to that extent.
- (5) The failure by a data subject to exercise the right conferred by paragraph (1) does not affect any other right conferred on the data subject by this Part.*

- **Article 14** – The right to apply to the Court to have inaccurate personal data rectified, blocked, erased or destroyed.

Rectification, blocking, erasure and destruction

- (1) *If a court is satisfied on the application of a data subject that personal data of which the applicant is the subject are inaccurate, the court may order a person who is the data controller of the data to rectify, block, erase or destroy –*
 - (a) *those data; and*
 - (b) *any other personal data in respect of which the person is the data controller and that contain an expression of opinion that appears to the court to be based on the inaccurate data.*
- (2) *Paragraph (1) applies whether or not the data accurately record information received or obtained by the data controller from the data subject or a third party, but if the data accurately record such information then –*
 - (a) *if the conditions referred to in paragraph 7(a) and (b) of Schedule 1 Part 2 have been satisfied in respect of the data - the court may, instead of making an order under paragraph (1), make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve; or*
 - (b) *if one or both of those conditions have not been satisfied in respect of the data - the court may, instead of making an order under paragraph (1), make such order as it thinks fit for securing that those conditions are satisfied, with or without a further order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve.*
- (3) *If a court –*
 - (a) *makes an order under paragraph (1); or*
 - (b) *is satisfied on the application of a person that personal data of which the person was the data subject and that have been rectified, blocked, erased or destroyed were inaccurate,*

it may, if it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.
- (4) *If a court is satisfied on the application of a person who is a data subject –*
 - (a) *that the person has suffered damage by reason of any contravention by a data controller of any of the requirements of, or under, this Law in respect of any personal data, in circumstances entitling the person to compensation under Article 13; and*
 - (b) *that there is a substantial risk of further contravention in respect of those data in such circumstances,*

the court may order the rectification, blocking, erasure or destruction of any of those data.
- (5) *If a court makes an order under paragraph (4) it may, if it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.*

- (6) *In determining whether it is reasonably practicable to require notification under paragraph (3) or (5), a court shall have regard, in particular, to the number of persons who would have to be notified.*

Article 10(1)(b) is noteworthy, particularly in an instance where two or more individuals trade invective or insults with each other. A Court may subsequently reach the view that any damage or distress caused in an individual case was not “unwarranted” – borrowing from the idiom that if you lie down with dogs, you might get up with fleas.

Level 2

This level applies to the publishing of material on the internet which, whilst not amounting to criminal behaviour could be considered as inappropriate or distressing. Examples may include:

- Where person(s) are unfairly attacked for their performance in a public duty of public office;
- Where those person(s) are less capable of defending themselves because of their public office;
- Where the published material amounts to unwarranted intrusion into the individual’s private life;
- Where the published material causes substantial distress in the nature of the material or by way of inaccuracy.

Similarly, the Commissioner may consider that the most appropriate course of action is to assist the complainant by drawing their attention to the rights available under Article 10 and 14 of the Law, as described above. The Commissioner may also examine from where the information was sourced, which may result in the consideration of regulatory enforcement action, for example an enforcement notice.

Level 3

At the most serious end of the scale, there is the type of data processing which will point towards criminal investigation and/or prosecution. Matters such as these may be investigated either by the Commissioner or by the States of Jersey Police, and ultimately a decision on whether or not to prosecute will be made by the Attorney General. Examples may include:

- The inappropriate or unlawful disclosure of previous convictions;
- The publication of otherwise confidential or restricted information;
- The unauthorised publication of material or information obtained from another source;
- The disclosure of sensitive reports, medical records, or data in connection with children or other vulnerable people;

Criminal investigations into alleged offences will be conducted in accordance with the provisions of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

Policy statement on the handling of FOI appeals

The Commissioner also receives appeals about the way Scheduled Public Authorities (“SPAs”) have handled requests for information under the Freedom of Information (Jersey) Law 2011 (“the FOI Law”). This document explains the Commissioner’s policy towards such appeals and how they will be dealt with.

8. Lodge your complaint with the SPA first

- 8.1. If you have a complaint about the way a SPA has handled your information request, you must first try and resolve the complaint directly with the SPA. Complaints should be addressed in the first instance to the senior management of the SPA concerned. Every SPA must have a procedure in place for dealing with complaints in relation to its handling of requests for information. If the complaint cannot be dealt with swiftly and satisfactorily on an informal basis, the SPA should make you fully aware of its formal internal complaints procedure.
- 8.2. If the SPA refuses a request in reliance on an exemption, the SPA should tell you the particulars of the procedure provided by the authority for dealing with complaints. In doing so, they should provide full details of their complaints procedure (including how to make a complaint) as well as informing you of the right to appeal the SPA’s decision to the Commissioner if you remain dissatisfied following the SPA’s review of any complaint.
- 8.3. Further details of how to access information from a SPA can be found in the Freedom of Information guidance section on our website.

9. When to lodge an appeal with the Commissioner

- 9.1. If you are not happy with the way in which a SPA has dealt with your complaint, or if you have not received a response after making a request for an internal review, you may wish to lodge an appeal with the Commissioner on the grounds that in all the circumstances of the case the decision was not reasonable. You must do this within 6 weeks of receiving your response from the SPA, having fully exhausted the SPA’s internal complaints process. In the case relating to a lack of response from a SPA, that should be 6 weeks from the time of your last communication.
- 9.2. Please be advised that an appeal can only be made where the decision of the SPA relates to:
 - a) The amount of any fee payable under Articles 15(1) or 16(2);
 - b) The cost of supplying information for purposes of Article 16(1);
 - c) Any refusal to comply with a request for information on the basis that such request was deemed to be vexatious or repetitious;
 - d) Any refusal to comply with a request for information on the ground that the information is Absolutely Exempt information;

- e) Any refusal to comply with a request for information on the grounds that it is qualified exempt information and that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so; or
- f) Any decision taken in compliance/purported compliance with any requirement of Part 2 of the FOI Law, including regulations made under Part. 2, such decision being one that is not otherwise referred to in (a) to (e) above.

10. How to lodge your appeal to the Commissioner

- 10.1. You should put your appeal in writing, with full details of the nature of your concern, your name, and how we may contact you. The Commissioner has a standard form available on our website which prompts you for all of the information required in order for the Commissioner to investigate your appeal. We strongly recommend that you submit your appeal using this form.
- 10.2. You should also include copies of any relevant correspondence that may assist us in our investigations.
- 10.3. We do not normally deal with verbal or anonymous complaints; however, if your concern relates to the generic processes of an institution as opposed to a specific concern in relation to you, we may consider investigation. Please contact us by telephone if you have any individual difficulties which might prevent you from making a written complaint.
- 10.4. In order to progress your concern, we will often need to disclose details of your concern to the relevant organisations. We will therefore also need your written consent for us to disclose details of your concern to the organisation.
- 10.5. If you require any assistance in completing the enquiry form, a member of our team will be happy to assist you.

11. The nature of the Commissioner's role in complaint handling

- 11.1. Whilst the Commissioner does not have an explicit statutory responsibility for consumer protection, the Commissioner has a duty to promote the following of good practice and, in particular, to promote observance of the requirements of the FOI Law and of the provisions of the Code of Practice by SPAs. The FOI Law confers a number of powers on the Commissioner to enable him/her to carry out that duty specifically in relation to the Code.
- 11.2. Please see section 13 below for details of the action and remedies available to the Commissioner.

12. How will the Commissioner handle your complaint?

- 12.1. All complaints will be treated in strict confidence, although as already previously stated, and with your prior consent, we may need to disclose details of your complaint to the organisation concerned.
- 12.2. Upon receipt of a written complaint, we will issue an acknowledgement to you as quickly as possible, normally within seven calendar days.
- 12.3. We will decide the appeal as soon as practicable but may decide not to do so if the Commissioner is satisfied that:
 - c) The applicant has not exhausted any internal complaints procedure provided by the SPA;
 - d) There has been undue delay in making the appeal;
 - e) The appeal is frivolous or vexatious; or
 - f) The appeal has been withdrawn, abandoned, or previously determined by the Commissioner.
- 12.4. The Commissioner will normally require copy documentation or evidence to support your concern. On deciding the appeal the Commissioner will serve a notice of the decision on both you and the SPA. We will tell you our decision, the reasons for our decision and the right of appeal available to you to the Royal Court.
- 12.5. Upon the conclusion of our investigation, we will revert to you with the results of our investigation, together with details of the action we propose to take, if any.
- 12.6. Complainants should note that the Office of the Data Protection Commissioner is a small department with limited resources. The Commissioner deals with a high volume of complaints and enquiries and will do its best to keep you informed of the progress of your complaint during the investigation. Your complaint will be dealt with as expeditiously as possible, however we cannot guarantee a time scale for completion of an investigation.

13. Action we can take and remedies available

- 13.1. The vast majority of complaints are resolved quickly, with no breach being proven and without any further need for enforcement action or intervention from the Commissioner.
- 13.2. However, the Commissioner may refer to non-compliance with the Code in a Decision Notice issued as a result of an appeal under Article 46 of the FOI Law. Where relevant, the Commissioner will make reference to the specific provisions of the Code in specifying recommended steps to be taken to ensure compliance with the FOI Law.

- 13.3. If at any time it appears to the Commissioner that the practice of a SPA in relation to the exercise of its functions under the FOI Law does not conform with that set out in the Code of Practice, he/she may give to the authority a recommendation, under Regulations made pursuant to Article 44 of the FOI Law, specifying the steps which should be taken for the authority to comply with the Code. This notice is known as a "Practice Recommendation".
- 13.4. A Practice Recommendation must be given in writing and must refer to the particular provisions of the Code of Practice with which, in the Commissioner's opinion, the SPA's practice does not conform. A Practice Recommendation is a recommendation and cannot be directly enforced by the Information Commissioner. However, a failure to comply with a Practice Recommendation may lead to a connected failure to comply with the FOI Law. Furthermore, any failure by a SPA to take account of a practice recommendation may lead to the Information Commissioner publishing the facts relating to the issue of the recommendation, and including the details within the Commissioner's statutory annual report to The States Assembly.
- 13.5. Under the provisions of Article 48 of the FOI Law, if a SPA fails to comply with a Decision Notice issued by the Information Commissioner, the Commissioner may certify in writing to the Royal Court that the SPA has failed to comply with that notice. The Royal Court may then inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of, the SPA, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a Contempt of Court and/or substitute for the Commissioner's original Decision Notice such other notice that the Commissioner could have made.