



ADVISORY PANEL ON PUBLIC SECTOR INFORMATION

PROCEDURES FOR CONSIDERING COMPLAINTS AND FOR CONDUCTING REVIEWS UNDER THE RE-USE OF PUBLIC SECTOR INFORMATION REGULATIONS 2005

Background

The Re-use of Public Sector Information Regulations 2005 (the regulations) came into force on 1 July 2005 (<http://www.opsi.gov.uk/si/si2005/20051515.htm>). The regulations set out how public sector information may be re-used. These procedures describe the role of the Advisory Panel on Public Sector Information (APPSI) in considering complaints referred to it under regulation 18(3) and conducting reviews requested under regulation 20(1). These procedures are published in accordance with regulation 21(1).

2. APPSI is a non-departmental public body (NDPB) whose members are drawn from a wide range of information providers, re-users and experts in the information field. The full Terms of Reference of APPSI are at <http://www.appsi.gov.uk>.

3. Under the regulations, APPSI considers complaints about non-compliance with the regulations where the Office of Public Sector Information (OPSI), Her Majesty's Stationery Office (HMSO) or the Office of the Queens Printer for Scotland (OQPS) is the public sector body (PSB) concerned and conducts reviews where a person and/or PSB is dissatisfied with any recommendation made by OPSI. APPSI does not have a role where complaints are investigated by OPSI under the Information Fair Trade Scheme.

4. The APPSI complaints and review process only concerns issues of re-use of public sector information and not questions of access to information. In these procedures the PSB concerned means the PSB that has responsibility for allowing the re-use of the information in question.

5. If both sides agree, use can be made of the OPSI mediation service, an alternative disputes resolution process that enables the parties involved in a dispute to come together and, with the help of a mediator, attempt to reach a settlement (<http://www.opsi.gov.uk/ifts/ifts-mediation.htm>). This does not prevent either party from having recourse to Regulation 17(2) or Regulation 18 (1) at any time either during or after the mediation process.

Aim of APPSI complaint and review procedures

6. These procedures aim to be:

- independent, ensuring the confidence of all parties;
- fast, ensuring that recommendations are made within a reasonable timeframe;
- low cost, offering an alternative to legal action; and
- transparent, publishing a report giving and explaining the recommendations.

These procedures are published in the interests of transparency and will also contribute to the development of best practice.

Initial handling of a complaint

7. The regulations state that where a complaint relates to OPSI, HMSO or OQPS the complainant may complain direct to APPSI.

8. Where a person believes that a PSB has failed to comply with any requirement of the regulations they may complain in writing to the PSB concerned in accordance with its internal complaints procedure. Where a person has exhausted the internal complaints procedure and remains dissatisfied with the PSB's handling of the complaint they may refer that complaint to OPSI. A description of OPSI's role in the process is set out in the *Procedures for investigating complaint arising under the Re-use of Public Sector Information Regulations 2005* at: <http://www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/psi-complaints-procedure.doc>. Where either party is dissatisfied with any recommendations made by OPSI the regulations state that they may request that OPSI's recommendations be reviewed by APPSI.

9. In the normal course of events APPSI will not consider a complaint unless OPSI has undertaken an investigation. If a complainant wishes to bypass OPSI's involvement in the process they must explain in writing to the Chair or Deputy Chair of APPSI why they believe OPSI should not undertake an investigation. It will be for the Chair or Deputy Chair of APPSI to decide whether APPSI is prepared to conduct an investigation without the prior involvement of OPSI.

10. APPSI's consideration of complaints and reviews will be undertaken by a Review Board specially convened by the Chair or Deputy Chair of APPSI. Where there is more than one complaint or request for review that relates to the same subject matter or gives rise to similar issues the Chair/Deputy Chair of APPSI may conclude that they should be combined and considered as one by the Review Board.

Referring a complaint or request for a review

11. Any referral of a complaint or request for a review should be addressed to the APPSI Secretariat (see paragraph 30 below) and must:

- be in writing;
- state the basis for the complaint or request for a review in the form of a summary with a maximum of 2,000 words; and
- where appropriate a copy of the written response made by the PSB concerned and OPSI in relation to a complaint under regulations 17(3) and 19(3).

12. Covering letters will not form part of the complaint or review process. On receipt of a complaint or request for a review the APPSI Secretariat will send an acknowledgement within three working days and refer the matter to the Chair or Deputy Chair in the same timescale. A flowchart setting out the processes described in these procedures is attached. The APPSI Secretariat will remain the point of contact throughout the complaint or review process.

Scope

13. Under these procedures the following will be considered to be within APPSI's remit:

- where a complaint relates to OPSI, HMSO or OQPS;
- where OPSI has investigated a complaint and the person and/or PSB concerned is, with cause or good reason, dissatisfied with OPSI's recommendation; and
- where OPSI has considered the complaint but has felt that the matter raises wide ranging policy implications under the regulations or complex issues that require APPSI's expert view.

14. Consideration of a complaint or the conducting of a review by APPSI under these procedures does not preclude recourse to the courts at any time or to any other form of dispute resolution or regulatory process. APPSI will not, however, consider any complaint or conduct a review where it is the subject of a current judicial process.

Initial assessment by Chair or Deputy Chair

15. The Chair/Deputy Chair of APPSI will assess the complaint or request for a review and decide whether it falls within the remit of APPSI. They may, for example, conclude that the complaint or request for review raises such complex issues that it needs to be considered in a court of law. If it is decided that a complaint should be considered by APPSI or a review conducted, the Secretariat will notify the complainant or the person and/or PSB requesting the review.

16. Where it is a complaint under regulation 18(3) the APPSI Secretariat will notify the PSB concerned enclosing the 2,000 word summary submitted by the complainant. The PSB concerned will be invited to respond within 10 working days to the complaint by providing a summary of its position in a maximum of 2,000 words. This will be copied to the complainant who will have the opportunity to make a response within 10 working days in a maximum of 500 words.

17. Where it is a request for a review under regulation 20(1) the APPSI Secretariat will notify the other party and OPSI enclosing the 2,000 word summary submitted by the applicant for a review. The same principle applies where both parties request a review. The other party (or both parties) and OPSI will be invited to respond within 10 working days by providing a summary of its position in a maximum of 2,000 words. These will be copied to the applicant(s) for a review and OPSI who will have the opportunity to make a response within 10 working days in a maximum of 500 words.

Review Board

18. Once the summaries and responses have been received, the Chair or Deputy Chair of APPSI will convene a specially constituted Review Board to consider the complaint or conduct a review. The Review Board will consist of three members, drawn from APPSI or co-opted experts, who will be chosen for their independence and expertise. It will be normally be chaired by Deputy Chair of APPSI.

19. The Review Board may request, through the APPSI Secretariat, additional detail from one or both parties. In the case of complaints investigated by OPSI, records of any interviews and correspondence may be requested. The Review Board may also invite representatives or specialists from all parties for a personal interview.

20. If the complaint concerns OPSI, HMSO or OQPS they will be subject to the same conditions as any other PSB.

21. The Review Board will consider the complaint or conduct a review in the light of the regulations and *The Re-use of Public Sector Information: A Guide to the Regulations and Best Practice* at: <http://www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/guide-to-psi-regulations-and-best-practice.doc>. The Review Board will set deadlines for its recommendations to be implemented.

22. A complainant or an applicant requesting a review may withdraw the complaint or request for review at any point by notifying the Review Board through the APPSI Secretariat.

Confidentiality

23. APPSI and the Review Board will respect the confidentiality of all supporting material. All material will be stored securely and any documents identified as confidential to one party will not be divulged to any other party, except where there is a legal obligation to do so or with the express permission of the owner.

24. In any subsequent legal proceedings the Review Board reserves the right to give as evidence, to the legal representatives in a court case, the submissions and responses provided by all parties and the notes of any discussion by the Review Board.

Conflict of interest

25. The Chair or Deputy Chair will take full account of any actual or potential conflict of interest when selecting a Review Board. As part of the selection process all candidates will be asked whether they feel that there is a potential conflict of interest. The final decision on the constitution of the Review Board rests with the Chair or Deputy Chair of APPSI.

Publication and timing

26. The Review Board will produce a report giving and explaining their recommendations, which will be published on <http://www.appsi.gov.uk>. Summaries and copies of the responses will also be published, taking into account any legal considerations and aspects of confidentiality. The draft of the final report will be sent by the APPSI Secretariat to both parties and OPSI, where OPSI is not one of the parties, to check for factual accuracy and all parties will have five working days in which to respond. The absence of a response will be taken to indicate that all parties are content as to factual accuracy. The final decision on any changes will rest with the Review Board.

27. The target time period for dealing with a dispute from receipt of a complaint or request for a review to the publication of the Review Board's final report is 60 working days. If it seems likely that the Review Board requires a longer period to agree any recommendations the APPSI Secretariat will notify all parties, with an indication of when the complaint or review process will be completed.

Monitoring Compliance

28. Compliance with recommendations made by the Review Board will be monitored by OPSI, or by APPSI in the case of complaints made about OPSI, HMSO or OQPS. OPSI will provide APPSI with regular reviews of the state of compliance, reporting on the degree to which the regulations are being followed. OPSI will also provide APPSI with a summary of all complaints it has investigated, which will also be published on <http://www.opsi.gov.uk>.

29. Where the complaint is made against OPSI, HMSO or OQPS, APPSI will publish a progress report on what action has been taken to implement the Review Board's recommendations. If the Review Board is not satisfied with the steps taken by OPSI, HMSO or OQPS to implement the recommendations, it may refer the matter to a minister within the Ministry of Justice or to the Secretary for Finance and Sustainable Growth in the Scottish Executive, in the case of OQPS. This may result in the minister in question writing to the Head of OPSI, the Controller of HMSO or the Queen's Printer for Scotland as appropriate.

Further information

30. For more information write to:

Secretariat
Advisory Panel on Public Sector Information
The National Archives
Kew
Richmond
Surrey
TW9 4DU
or e-mail secretariat@appsi.gov.uk.
or telephone 020 8392 5330 ext: 2252

REVIEW BOARD DISPUTES RESOLUTION FLOWCHART

