

Ombudsman's approach to delay complaints

The purpose of this guide is to explain the Ombudsman's approach to complaints received under the OIA and LGOIMA about the failure of an agency or Minister to make and communicate a decision on a request for 'official information' within the maximum statutory time limit.

Introduction

The Chief Ombudsman is taking a new approach to how his Office investigates complaints about delays in making and communicating decisions on requests for official information within the maximum statutory timeframe of 20 working days (or extended timeframe).¹ These are called *delay complaints*.

Over the past few years, the Office of the Ombudsman has been receiving a consistently high number of delay complaints. For example, in 2015/16, delay complaints made up around 23 percent of all the official information complaints we received. Timeliness is a fundamental part of compliance with the Official Information Act 1982 (OIA) and the Local Government Official Information and Meetings Act 1987 (LGOIMA), so this is a worrying trend.

The Office's current approach to the investigation of delay complaints dates back to 2008. It is based on the philosophy that each delay complaint the Ombudsman receives should be formally investigated, an opinion formed about whether there was a delay, and recommendations made where necessary. However, this approach is now at odds with the Office's move towards greater early resolution of complaints, and a refined approach is timely.

Objective

The Chief Ombudsman's intention is to implement an approach to delay complaints that will:

- deter agencies and Ministers from breaching their statutory timeliness obligations through a swift, certain, consistent, robust and proportionate response;
- support the Office's focus on the early resolution of complaints and incentivise agencies and Ministers to acknowledge and resolve delays that do occur as quickly as possible;
- reduce the size of this Office's transaction footprint in our dealings with agencies and Ministers;
- facilitate the identification and tracking of potential systemic issues; and
- align with other Office initiatives, such as the publication of official information complaints data.

Key features of the new approach

- When the Office of the Ombudsman first receives a delay complaint, we will contact the agency or Minister to establish whether there has been a delay in making and communicating a decision on a request within the maximum statutory timeframe of 20

¹ See s 15(1) OIA and s 13(1) LGOIMA.

working days. A response to these preliminary inquiries will be requested within **five working days**.

- If the agency or Minister acknowledges that there was a delay in responding to the request and confirms that it has made and communicated a decision to the requester on or before the **five working day** timeframe expires, then the Ombudsman will decline to investigate the complaint on the basis that an investigation is *'unnecessary'* (in terms of section 17(1)(f)(i) of the Ombudsmen Act 1975).
- If the agency or Minister is unable to make and communicate a decision on the request within the **five working day** timeframe, the Ombudsman will commence a formal investigation and form a provisional opinion on the complaint.
- Once the Ombudsman forms a provisional opinion, the agency or Minister will have **two weeks** to comment.
 - If the agency or Minister acknowledges that there was a delay in responding to the request and makes and communicates a decision to the requester on or before the **two week** timeframe expires, then the Ombudsman will discontinue the investigation on the basis that *'further investigation is unnecessary'* (in terms of section 17(1)(f)(ii) of the Ombudsmen Act).
 - If the agency or Minister is unable to make and communicate a decision on the request within the **two week** timeframe, then the Ombudsman will form a final opinion and consider making recommendations.

The Chief Ombudsman believes that this more agile approach will incentivise agencies and Ministers to quickly resolve delay complaints.

To ensure that repeated non-compliance or any other apparent systemic issues are identified and addressed, all delay complaints will be logged and tracked by the Office of the Ombudsman.

In addition, the number of OIA delay complaints received and completed will be published on a six-monthly basis, as part of our current publication of OIA complaints data project. This approach is consistent with our view that transparency will drive better agency performance and compliance with the official information legislation, and help maintain public trust in government.

Timeframe

The Chief Ombudsman will implement this new approach to delay complaints received by this Office from **1 July 2017**.