



Protocol between the Office of Public Sector Information and the Information Commissioner

Introduction

1. This protocol describes the basis on which the Office of Public Sector Information (OPSI) and the Information Commissioner (ICO) will co-operate in the provision of guidance and the handling of complaints relating to public sector information.
2. This protocol is consistent with our responsibilities as set out in the Freedom of Information Act 2000 (FOI Act) http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_1, the Environmental Information Regulations 2004 <http://www.opsi.gov.uk/si/si2004/20043391.htm>, the Data Protection Act 1998 http://www.opsi.gov.uk/acts/acts1998/ukpga_19980029_en_1 and the Regulations on Re-use of Public Sector Information – SI 2005 No. 1515 (the PSI Regulations) <http://www.opsi.gov.uk/si/si2005/20051515.htm>.
3. We acknowledge that this Protocol may require amendment in the light of experience and evolving practice. It will, therefore, be subject to annual review. This is an open document published on our respective websites. We will also publish the minutes of the six-monthly meetings between OPSI and ICO.

Legal Framework

4. ICO has responsibilities for promoting good practice by public authorities on access to information under the FOI Act. One of the key responsibilities set out in the Act is considering complaints under the FOI Act. The ICO also has responsibility for the Environmental Information Regulations (EIR), which came into force on the same day as the FOI Act.
5. ICO also has responsibilities for handling complaints under the Data Protection Act 1998 (DP Act).
6. Under the PSI Regulations OPSI has responsibility for handling complaints in connection with the re-use of public sector information. It also has a central policy role in promoting best practice and in the provision of guidance and advice to the public sector on compliance with the Regulations.

Purpose of the Protocol

7. In broad terms ICO's responsibilities under the FOI Act, the EIR and the DP Act focus on access to information, whereas OPSI's responsibilities under the Regulations relate to the re-use of information once access has been granted under

information access legislation or because information is already accessible. The boundaries between access and re-use are not, however, always clear cut. It is important, therefore, that there is an understanding between us concerning our respective responsibilities. It is particularly important that complaints received are handled by the appropriate organisation, but with the benefit of advice from the other.

ICO Responsibilities

8. ICO is responsible for:

- promoting good practice arising from the FOI Act, the EIR and the DP Act;
- responding to requests for advice and guidance on access to information under the FOI Act, the EIR and the DP Act;
- enforcement of the FOI Act, the EIR and the DP Act dealing with complaints relating to access to public sector information;
- reporting to Parliament on the exercise of his functions under the FOI Act, the EIR and the DP Act.

OPSI Responsibilities

9. OPSI is responsible for:

- establishing and publishing best practice guidance on the re-use of public sector information;
- responding to requests for advice and guidance on the re-use of public sector information;
- reporting to Ministers and Parliament on issues relating to the re-use of public sector information;
- operating a complaints and mediation process for the resolution of disputes relating to re-use of public sector information.

Process

10. Where OPSI receives a request for policy guidance that raises issues under the FOI Act, the EIR and/or the DP Act, it will consult ICO.
11. Where ICO receives a request for policy guidance that raises issues under the PSI Regulations, it will consult OPSI.
12. In producing guidance for publication, we will consult and share information with each other as appropriate.
13. When a complaint is received that touches on the policy responsibilities of the other body we will seek advice from each other and share information where appropriate i.e. acting within the constraints of the DP Act and any other applicable law e.g. confidentiality. The complainant will be informed of any such action taken.
14. We shall carry out an assessment of each complaint that we receive and assess whether it has any implications for the other party. The following factors will be taken into account and these will inform the decision on how the complaint will be handled and by whom:

- whether the main focus of the complaint is freedom of information, data protection or the re-use of public sector information. Following discussion between us, it may be suggested to the complainant that the complaint is more relevant to OPSI/ICO, whichever is appropriate;
- in some cases it may be more relevant to another organisation. For example, a complaint that raises competition issues may be more appropriate to the Office of Fair Trading. See the memorandum of understanding between OPSI and the Office of Fair Trading at <http://www.opsi.gov.uk/advice/psi-regulations/disputes-resolution/opsi-oft-memorandum-of-understanding-2005-08.pdf> ;
- some complaints may touch on freedom of information issues, for example, but the main focus of the complaint will be the re-use of public sector information. In such cases OPSI will seek the views of ICO but continue to deal with the management of the complaint itself. In other cases however, the subject of the complaint may be divided equally between access and re-use. In these circumstances we may decide that we should each consider the elements of the complaint that are relevant to us.

Regular Liaison

15. It is important that OPSI and ICO maintain regular contact for regular review of the protocol to ensure that it provides an effective framework for the provision of policy guidance and the handling of complaints. A consistent point of contact in each organisation will be established for any contact required between the six-monthly meetings.

Related Protocols

16. OPSI has agreed a similar protocol with the Scottish Information Commissioner <http://www.opsi.gov.uk/advice/psi-regulations/disputes-resolution/opsi-sic-protocol-2005-08.pdf> .