

GUIDANCE NOTES FOR INDIVIDUALS REPRESENTING THEMSELVES IN FREEDOM OF INFORMATION APPEALS IN THE GENERAL REGULATORY CHAMBER OF THE FIRST-TIER TRIBUNAL

1. These notes are intended to help individuals who are representing themselves in freedom of information cases in the First-tier Tribunal. People who represent themselves in court or tribunal (rather than using lawyers to represent them) are often known as “litigants in person”.

2. The notes are set out in the form of questions and answers. There is a glossary at the end that is intended to explain the meaning of words and phrases that may not be obvious.

What is the Tribunal’s role in [freedom of information] cases?

4. Under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR), individuals have the right to apply to public authorities for the disclosure of information held by those authorities. If the person making the request thinks that the public authority has not complied with FOIA or EIR, they can complain to the Commissioner. The Commissioner’s decision on the complaint will be set out in a document called a Decision Notice. Once the Commissioner has made a decision, either the person making the request or the public authority can appeal to the Information Tribunal against that decision.

5. The Tribunal’s task is to decide whether the Commissioner’s Decision Notice should be overturned or varied (changed in some way). The Tribunal can consider whether the Commissioner misinterpreted the law, or applied it wrongly; whether the Commissioner made a wrong finding of fact; and, in cases where the Commissioner has a discretion, whether the discretion should have been exercised differently.

6. The Tribunal process is more formal than the stages you have already gone through since making your information request. However, do not be put off - many people have represented themselves before the Tribunal. The Tribunal staff are always willing to help with any queries you may have about the process.]

When and how can I appeal to the Tribunal?

7. Once the Commissioner has made a decision about your complaint and has issued a Decision Notice, you can then appeal to the Tribunal. You should do this within **28 days** of receiving the Commissioner’s Decision Notice. If you put in your appeal any later than this, then you should include an explanation of why the appeal is late. The Tribunal will consider your explanation and decide whether the appeal can be accepted.

8. There is an appeal form on the Tribunal’s website at;

[\[http://www.informationtribunal.gov.uk/Documents/NoticeofAppealformJan07.pdf.\]](http://www.informationtribunal.gov.uk/Documents/NoticeofAppealformJan07.pdf)

You can also get hold of this form by writing to the Tribunal at the address given in the next paragraph. You do not have to use this form, but it is your interests to do so, as it will help you to make sure that you give the Tribunal all the information that it needs.

9. You should send the completed form to:

The First-tier Tribunal (Information Rights)

General Regulatory Chamber

Arnhem House Support Centre

PO Box 9300

Leicester

LE1 6ZX]

What happens after I have submitted my appeal to the Tribunal?

10. The Tribunal will send your appeal to the Commissioner. The Commissioner then has 28 days to put in a written reply to your appeal, and will send you a copy of the reply. His reply will respond to each of your grounds of appeal and will usually set out which grounds he accepts and which he disagrees with.

11. Sometimes the Tribunal will make an order that the public authority to which you made your request for information should also be a party and, in effect, joined to the appeal. Where this happens, the public authority will be asked to put in a written reply to your appeal, and to send you a copy.

12. In a very few cases the appeal/application may be transferred to be heard in the first instance by the Upper Tribunal. This may be because of its complexity or because it is of considerable public interest. For information about the Upper Tribunal see <http://www.osspsc.gov.uk/index.htm>

Apart from myself, who else will take part in the appeal process?

12. The individuals or organisations who take part in the appeal process are referred to as the **parties** to the appeal.

13. The Commissioner will be a party to every appeal – in every case, it is the Commissioner's decision that is being challenged in the appeal. The Commissioner will usually want to explain to the Tribunal why he took the decision that he did, and why he thinks that his decision was right.

14. As explained above, sometimes the public authority to which you made your request for information will also be a party to the appeal. Even if the Commissioner has found that the public authority dealt with your request correctly, the public authority may still wish to give its own explanation to the Tribunal as to why it says that the Commissioner was right. For instance, if the Commissioner has found that

the public authority does not hold the information that you are seeking, the public authority may want to explain to the Tribunal what steps it has taken to try and find that information. Or in a case where the Commissioner has found that information is exempt from disclosure, the public authority may want to give its own explanation as to why it says that the exemption applies.

15. Occasionally, there will be other parties. For example, a commercial organisation that has supplied information to a public authority may apply to be added or joined as a party to an appeal, if the appeal is about whether that information should be disclosed under FOIA or EIR.

Will there be an oral hearing, or will my appeal be dealt with on paper?

16. The Tribunal can choose either to deal with the appeal on paper or to hold an oral hearing. The appeal form includes a box for you to indicate which option you would prefer. The other parties can also express a preference. However, ultimately it is up to the Tribunal, not the parties, to decide whether or not there should be an oral hearing.

17. If the case is dealt with on paper, this means that the members of the Tribunal will meet to consider all the papers, will discuss the case between themselves, and will then make a decision, which they will send to the parties in writing in due course. The meeting between the members of the Tribunal will take place in private, and without the parties being present. Hence the parties will need to put all their arguments in writing in advance of the meeting, so that the Tribunal can consider them.

18. If the case is dealt with at an oral hearing, this means that the parties will attend on a hearing date fixed by the Tribunal. They may call witnesses, who will be questioned both by the parties and by the Tribunal. Before being questioned the witnesses may be required to swear on a holy book or affirm that they will tell the truth to the Tribunal. The parties will be expected to make submissions to the Tribunal: i.e. to explain to the Tribunal what decision they say the Tribunal should reach, and why. At the end of the hearing, the Tribunal may be able to give the parties a decision on the day (with written reasons to follow). More usually, the Tribunal will take more time than this to reach a decision, and will send its decision to the parties in writing in due course.

19. There are no fixed rules as to when the Tribunal will deal with a case on paper and when it will hold an oral hearing. The Tribunal will take into account, for instance, whether there is a disagreement between the parties about the facts of the case. If so, the Tribunal may want to hold an oral hearing so that it hears the different witnesses give evidence, and so that the witnesses can be questioned. Another situation where the Tribunal may choose to hold an oral hearing is where there are complicated legal arguments and the Tribunal thinks that they can be explored in more depth at an oral hearing.

20. You may well have a strong preference as to how your case will be dealt with. Some litigants in person are happier to express themselves on paper; others feel that they will not be able to explain their case properly unless there is an oral hearing. Either way, you should explain what your preference is and why. You can do this both when you put in your appeal and at any directions hearing (see below). The Tribunal will consider carefully what you say, though it will not always give you what you ask for.

Where will the Tribunal hold an oral hearing?

21. The Tribunal usually hears cases in London but is prepared to sit in other locations which are more convenient to the parties. If you wish the case to be heard outside London you should request this in the notice of appeal.

How does the Tribunal decide what needs to be done to prepare a case for hearing?

22. In order to prepare a case for a hearing, there are a number of steps that will need to be taken. This is so whether the case is dealt with at an oral hearing or on paper.

23. The steps that the parties will need to take will usually include the following: They will need to provide one another with copies of any information they hold that is relevant to the appeal. They will need to agree which documents should be put before the Tribunal. Documents will usually be included in files (in this context often referred to as **bundles**). The parties will need to agree the content, order and pagination or page numbering of the bundles. If there is an oral hearing, the parties will need to consider whether they want to call any witnesses (or to give evidence themselves). If the case is to be dealt with on paper, the parties may wish to put in written witness statements for the Tribunal to read. Whether the case is dealt with orally or on paper, the parties will usually provide the Tribunal with a document setting out their arguments in writing. In every case, the Tribunal will issue what are called **directions**. Essentially these are a set of instructions from the Tribunal to the parties as to what needs to be done to prepare the case for a hearing, together with a timetable as to when those steps need to be taken.

25. In most cases the Tribunal will send initial instructions or directions to the parties once the Commissioner has replied to the notice of appeal. These will indicate a date range within which the Tribunal expects to hear the appeal. The Tribunal may send the parties a list of possible directions, and ask them to try to agree which of these directions are appropriate. The final directions will usually include the actual hearing date. In some cases the Tribunal may hold a directions hearing (see below).

What happens at a directions hearing?

26. Directions hearings are usually conducted by the chairman or a deputy chairman, sitting alone. Sometimes the hearing takes place at a venue organised by the Tribunal, with everyone physically present; sometimes it is conducted by telephone. Either way the Tribunal will send the details to the parties in advance. Where there is a telephone hearing, the Tribunal will send out details of the number to call, and a pass-code. The parties join the telephone conference by way of an 0800 number. The cost of the administration of the system is undertaken by the Tribunal.

27. One of the purposes of a directions hearing is to clarify the issues in the case, so that everybody knows what needs to be addressed. For instance, if the public authority has already disclosed some information, the Tribunal may want to know what further information has been withheld, and why. Another purpose is to decide on what needs to be done in order to prepare a case for hearing, and to set a timetable for case preparation. Some of the steps that may need to be taken are summarised above (see paragraph 21). If for any reason you find cannot meet a deadline it is always open to you to apply to the Tribunal for an extension of time to comply. The Tribunal is unlikely to agree to the application if it results in the hearing date needing to be changed. It is a good idea to copy your application to the other parties so they are not taken by surprise.

What should I do to make sure that the Tribunal has all of my documents?

28. The directions given by the Tribunal will usually include directions about who is responsible for preparing the bundle (i.e. the file of documents that will be placed before the Tribunal). Litigants in person will not usually be asked to take on this task. However, it is important for you to make sure that whoever is responsible for preparing the bundle is provided with any documents that you want to include, in good time.

What is a “skeleton argument”, and must I prepare one?

29. A skeleton argument is a written summary or outline of the arguments that a party intends to make at a hearing. The Tribunal will generally expect parties who are legally represented to provide them with a skeleton argument. The document is usually sent to the Tribunal, and to the other parties, in advance of the hearing.

30. The Tribunal’s directions will usually indicate whether skeleton arguments are required, and if so when. Even if you are not ordered to prepare a skeleton argument, it is a good idea to do so if you can. It will help the Tribunal to focus on your main points, and it will also help you make sure that you do not leave anything out.

31. As a very rough guide indeed, skeleton arguments in short cases (lasting ½ day – 1 day) are likely to be between 5 and 15 pages long. Skeleton arguments in longer cases (lasting for 2 days long) may be about 10-30 pages long. They should include

references to any legal materials (i.e. extracts from legislation, or case law) that the party is asking the Tribunal to consider.

How will I know of the hearing date?

32. As already explained above, you will have a very good idea of the date from the directions issued. However you will receive a formal notice of the date of the hearing at least 14 days beforehand. This notice will include the start time and details of the place where it will be held.

What happens at an oral hearing?

33. An oral hearing may last as little as half a day; or it may take several days. Most hearings involving litigants in person are completed within one or two days.

34. The hearing will usually begin with the members of the Tribunal introducing themselves. There may be a short discussion to ensure that everyone agrees what the issues are, and to deal with “housekeeping” issues (e.g. making sure that everyone has all the necessary papers in front of them). In more complex cases, the Tribunal may invite or permit the parties to make a short opening statement explaining what their case is about.

35. The Tribunal will then hear any witness evidence. The usual order (though this is not always the case) would be for the Tribunal to hear any witnesses called by the party bringing the appeal; then to hear any witnesses called by [the Commissioner]; and then to hear any witnesses called by any other party. Each witness will give evidence in turn. The witness will be questioned by the party who called them to give evidence (this is called “examination-in-chief”). The witness will then be questioned by other parties who wish to challenge their evidence (“cross-examination”). The Tribunal will ask questions: usually at the end of cross-examination the Tribunal will have questions to ask, and in addition the Tribunal may intervene in the course of evidence-in-chief or cross-examination with its own questions. Finally, the party that called the witness may ask questions in order to clarify any issues arising from the questions asked by other parties or by the Tribunal. This is called “re-examination”.

36. Very often, the Tribunal directs that written witness statements should be prepared. Where this is done, the written statement will usually be read in advance by the Tribunal: the witness will not usually be asked to read the statement aloud in Tribunal. Where there is a written witness statement, the party calling the witness will often not ask questions by way of examination-in-chief, other than a few short questions to confirm that the contents of the written witness statement are true.

37. Lastly, the Tribunal will hear oral submissions from each party in turn. The usual order (although again this is not always the case) is for the Tribunal to hear submissions from the party bringing the appeal; then from [the Commissioner]; and

then from any other parties. This is the opportunity for each party to explain to the Tribunal what decision they are asking it to reach, and why. This is also the point at which any legal arguments are dealt with. In submissions, parties may ask the Tribunal to look at particular sections of FOIA and EIR; they may also ask the Tribunal to look at earlier decisions of the Tribunal itself, or of the courts.

38. Oral submissions are often made using the skeleton argument as a framework, and then expanding it where necessary. Sometimes, where a point is dealt with in detail in the skeleton argument, a party will not deal with it at length in oral submissions, but will simply refer briefly to the relevant passage in the skeleton argument.

Can I be present throughout the hearing?

39. The general rule is that Tribunal hearings take place in public, and that all the parties (and anyone else who wishes to attend) can be present throughout.

40. There is however an exception to this. Sometimes the Tribunal will need to look at “disputed information”: i.e. information that an individual says ought to be disclosed under FOIA or EIR, but that a public authority says is exempt from disclosure. The Tribunal may need to look at the disputed information, for instance, in order to judge whether it is really within the scope of any exemption claimed by the public authority. When the Tribunal looks at disputed information in this way, it may be necessary for the hearing to take place in private; and it may also be necessary to exclude from the hearing the person who made the request for the information.

41. The reason for the exclusion is that, in a case like this, the purpose of the appeal process is to decide whether a person is entitled to see particular information. If the information were disclosed to that person in the course of the appeal process itself, before the Tribunal had reached its decision, then the appeal process would be rendered pointless.

42. A hearing from which the public and some of the parties are excluded in this way is referred to as a “closed hearing”. This is by contrast with an “open hearing”, where all parties and the public can be present. If you are required to leave the hearing because it goes into closed session you should bear in mind that this will be for an unpredictable period of time and you may wish to bring a newspaper or book with you.

43. Similarly, the Tribunal sometimes directs that written submissions or skeleton arguments that refer to the actual content of the disputed information should be prepared on a “closed” basis: this means that they will not be disclosed to the person who is seeking disclosure of the disputed information.

Will the other parties be represented by lawyers?

44. The Commissioner will usually be represented by a lawyer. This may be someone employed by [the Commissioner's office], or it may be an external barrister or solicitor instructed to represent the Commissioner.

45. If the public authority is a party, then it will usually be represented by a lawyer. Again this may be someone employed by the public authority or it may be an external barrister or solicitor.

How is the Tribunal made up?

46. The Principal Judge for Information Rights cases is Professor John Angel. There are a number of other judges. The judges are lawyers. In addition there are a number of non-lawyer members (sometimes known as "lay members" or "wing members"). The wing members are of two different kinds: some are from a background that reflects the interests of public authorities; others are from a background that reflects the interests of those seeking information from public Authorities.

47. Directions hearings are usually conducted by the judge sitting alone. The hearing itself will be conducted by a full Tribunal of three members, consisting of the judge and two wing members, one of each kind.

How formal is the hearing?

48. Tribunal hearings are less formal than hearings in the High Court or the County Court. For instance, everybody sits down throughout the hearing (though as a courtesy you may be asked to stand when the Tribunal enters the room). The Tribunal and lawyers will wear suits, not wigs and gowns.

49. On the other hand, as compared with (say) an ordinary business meeting, a Tribunal hearing is a fairly formal process. There is a set order of events, as explained above: witnesses are called, the parties and the Tribunal take turns to question them, and then the parties make their submissions in turn. So, if you disagree with something that one of the other parties says in their submissions, you will not be able to make your point straight away; you will need to wait until it is your turn to speak.

Is the Tribunal used to dealing with people who represent themselves?

50. In about 60% of Tribunal cases, the appeal is brought by the person who requested information from a public authority. In the great majority of these cases that person will represent themselves. The Tribunal is therefore very used to dealing with litigants in person. The members of the Tribunal, and in particular the chairman, will do everything possible to make sure that you understand the process and that you have a fair hearing. If at any point you do not understand what is happening, or why, you should say so.

Am I allowed to have a friend to help me at the hearing?

51. Yes. You can have a friend with you who will, for instance, take notes, and give you advice as to how you conduct your case.

Can I be represented by someone who is not a lawyer?

52. In principle the answer is yes.

53. If you are attending the hearing with someone else who is there to help you, then you will need to decide in advance who will present the case. One option will be for you to represent yourself, with the other person giving you advice and support. Alternatively, the other person could present the case.

54. What the Tribunal may resist, however, is a situation where you ask questions of witnesses, or make submissions, and **in addition** somebody else acting on your behalf asks questions or makes submissions. If you particularly want to conduct your case this way, make it clear at the outset that that is what you propose to do, and ask the Tribunal's permission.

55. However you plan to present your case, it is important to decide beforehand what roles you and the person accompanying you propose to play.

I would like to be represented by a lawyer at the hearing but I cannot afford to pay. Is there anything I can do?

56. Legal aid is not available to fund representation in the Tribunal.

57. However, there are organisations which may be able to provide legal representation free of charge, such as the Bar Pro Bono Unit, Caseworks and Friends of the Earth's Rights and Justice Centre. To find out their contact details you should visit the Tribunal's web site at <http://www.informationtribunal.gov.uk/formsguidanceappeal.htm>. These organisations are all independent of the Tribunal, and the Tribunal has no control over whether they will be able to represent you. These organisations have their own rules as to what sorts of case they will take on, and there is no guarantee that they will be able to help you.

What powers does the Tribunal have?

59. The Tribunal's task is to decide [whether the Commissioner's decision was right, or whether it should be overturned or varied (changed in some way)]. That means that the Tribunal is concerned with whether the public authority dealt with your request for information in accordance with FOIA and EIR.

60. Your request for information may be one aspect of a wider dispute between yourself and a public authority. The Tribunal will not be able to decide which of you is right in the wider dispute. For instance, you may be involved in a dispute about whether you owe money to a public authority; and as part of that dispute you may make a FOIA request for information to the authority. The Tribunal can consider whether your request has been properly dealt with, but cannot rule on whether or not you actually owe money to the authority.

Will I have to pay the other parties' legal costs if I lose?

61. The usual rule in the Tribunal is that all parties bear their own legal costs regardless of who wins or loses. If you bring an appeal against the Commissioner's decision, you are unlikely to be ordered to pay any costs unless the Tribunal thinks that your appeal was "manifestly unreasonable", or that you have conducted the appeal unreasonably.

What can I do if I disagree with the Tribunal's decision?

62. There is a right to appeal against the Tribunal's decisions, to the Administrative Appeals Chamber of the Upper Tribunal. However, an appeal is only available on a point of law: in other words, you would need to be able to show that the Tribunal made a mistake of law in reaching its decision. Like a First-tier Tribunal all parties bear their own legal costs.

What is the status of these Guidance Notes?

63. These notes are intended to help people who are representing themselves. They are not an authoritative statement of the law. The provisions that govern the Tribunal's work are set out in FOIA and EIR, together with the Tribunal's rules of procedure and practice notes. These notes are not intended to modify those provisions in any way; rather, they are meant to help you understand how these provisions will operate in practice.

GLOSSARY

This section sets out a short explanation of words and phrases that may cause difficulty, either because they are unfamiliar or because they have a special meaning in the context of the Tribunal's work.

Appellant

The party who appeals against a decision.

Authorities

Cases previously decided by a Court or Tribunal, relied upon by a party in support of its argument.

Cast list

A document listing the individuals who are involved in the facts giving rise to an appeal, and explaining who each one is. Sometimes helpful in cases that are factually complex.

Chronology

A document setting out a list, in date order, of the main events. Sometimes helpful in cases that are factually complex.

Closed hearing

A Tribunal hearing from which the public (and sometimes one or more of the parties) are excluded. Where the Tribunal needs to consider the actual content of the disputed information, it will often do so in a closed hearing.

Cross-examination

Cross-examination is the questioning of a witness in order to challenge or undermine the evidence of that witness. In general, if you call a witness to give evidence then you are not allowed to cross examine that witness: i.e. you cannot usually ask your own witness questions designed to show that what they are saying in evidence is wrong.

Directions

Instructions from the Tribunal to the parties as to the steps they are to take to prepare for a hearing.

Disclosure

The process by which each party informs the others of what documents it has that are relevant to the appeal, and provides copies of them if necessary.

Discretion

Sometimes legislation leaves a decision-maker to make a choice between different courses of action in the light of all the circumstances, rather than setting out a fixed rule about what must happen in particular circumstances. In this situation the decision-maker is said to have a discretion as to how it should act.

Disputed information

In many of the cases that come before the Tribunal, a public authority admits that it holds the information requested (or some of it) but argues that it does not have to disclose the information, e.g. because an exemption applies. The information in question is often referred to, for short, as “the disputed information”.]

Examination-in-chief

At the start of the evidence of a witness, the party who called that witness has the opportunity to ask questions of that witness. This is known as “examination-in-chief”.

Legislation

In general this consists of Acts of Parliament (otherwise referred to as statutes), and regulations (otherwise referred to as statutory instruments).

Open hearing

A Tribunal hearing to which all of the parties, and the public, are admitted.

Party

The persons or organisations who take part in the appeal process are referred to as “the parties”. The parties will always include the [Information Commissioner], and the person bringing the appeal.