

Procedures for investigating complaints arising under the Re- use of Public Sector Information Regulations 2005

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Background

1. On 1 July 2005 the Re-use of Public Sector Information Regulations 2005 SI 2005 No. 1515 (the Regulations) came into force. These Regulations set out the conditions for the re-use of public sector information legislation.gov.uk/uksi/2005/1515/contents/made.
2. This document describes the Office of Public Sector Information (OPSI) procedures for investigating complaints and is published in accordance with Regulation 19(1) of the Regulations.
3. Part of The National Archives, OPSI:
 - investigates complaints under the Regulations.
 - administers the Information Fair Trader Scheme (IFTS) which monitors compliance with a set of information re-use principles. Crown bodies in receipt of a licensing delegation from the Controller of Her Majesty's Stationery Office (HMSO), an official of The National Archives, or the Office of the Queen's Printer for Scotland (OQPS), or volunteer members, are required to abide by these principles. OPSI will investigate complaints that IFTS members are not adhering to the requirements of the Scheme.
 - conducts mediations as part of its dispute resolution activity.
 - processes requests to charge above marginal cost from Crown bodies seeking a licensing delegation.

Purpose

4. The overriding aim of these procedures is to provide an effective complaints process, offering a faster and lower cost alternative to action through the courts.

Definitions

5. In these procedures the following terms are used:

- **Complainant:** any re-user or potential re-user that wishes to make a complaint about non-compliance with the Regulations. The complainant may be a public or private sector body or an individual.
- **PSIH:** Public Sector Information Holder. The public sector organisation that has created the information or that has responsibility for allowing its re-use.
- **Recommendation:** OPSI's recommended course of action based on its findings as to whether the Regulations have been breached.
- **Regulations:** the Re-use of Public Sector Information Regulations 2005 SI 2005 No. 1515.
- **APPSI:** The Advisory Panel on Public Sector Information, a non-departmental public body (NDPB) that advises Ministers, the Director of OPSI, the Controller of Her Majesty's Stationery Office (HMSO) and the Queen's Printer for Scotland, on public sector information policy.
- **APPSI Review Board:** a specially constituted board of the Advisory Panel on Public Sector Information (APPSI).
- **TNA:** The National Archives is a government department and an executive agency of the Ministry of Justice. It incorporates the Office of Public Sector Information and Her Majesty's Stationery Office.
- **HMSO:** Part of The National Archives, Her Majesty's Stationery Office, whose responsibilities include the licensing of Crown copyright material produced by public servants employed by United Kingdom, England, Wales and Northern Ireland Crown bodies.
- **OQPS:** The Office of the Queen's Printer for Scotland, whose responsibilities include the licensing of Crown copyright material produced by public servants in the Scottish administration.
- **Working Days:** Monday to Friday, excluding Bank and Public Holidays.

Making a complaint

6. The complainant should make a complaint to the PSIH in the first instance. If, having exhausted the PSIH's complaints process, the complainant is dissatisfied with the outcome and feels that there are grounds for taking the matter further, the complainant may refer the complaint to OPSI.
7. Complaints to OPSI must:
 - be in writing.
 - state the nature of the complaint in no more than 2,000 words.
 - provide OPSI with a copy of the PSIH's written response to the complaint under Regulation 17(3) where this exists.
8. The complainant should also cite the specific provision(s) of the PSI Regulations that the complainant believes the PSIH is not meeting.
9. For a detailed explanation of the coverage of the Regulations see the "The re-use of Public Sector Information, a guide to the regulations and best practice"
nationalarchives.gov.uk/documents/information-management/guide-to-psi-regulations-and-best-practice.pdf
10. OPSI will acknowledge receipt of the complaint in writing within 3 working days.

Initial assessment

11. OPSI will assess whether the complaint is formally within the scope of the Regulations and will notify the complainant whether it will investigate the complaint within 10 working days of receipt.
12. As part of its initial assessment process, OPSI may request information from, or a meeting with, the complainant or the PSIH.
13. OPSI will assess whether the information which is the subject of the complaint falls within the scope of the Regulations. The main exclusions are documents:
 - in which a third party owns relevant intellectual property rights.

- held by PSIHs such as public sector broadcasters, museums, cultural and educational establishments.
- which are produced outside the public task of the PSIH.
- that are exempt under access legislation such as Freedom of Information.

14. If the complaint relates to issues such as Freedom of Information or competition policy, OPSI will notify the complainant whom they should contact about their complaint. OPSI has a Memorandum of Understanding with the Competition and Markets Authority (CMA) <https://www.gov.uk/government/organisations/competition-and-markets-authority>, a working agreement with the Information Commissioner informationcommissioner.gov.uk and a concordat with the Scottish Information Commissioner itspublicknowledge.info. These agreements set out how the various bodies work together in related areas of policy.
15. An important feature of any complaints process is the independence of the person or organisation investigating the complaint. Therefore, if the complaint concerns the licensing of Crown copyright material by TNA or OQPS, the complainant, having first exhausted the internal complaints procedure, will be advised to refer their complaint directly to the APPSI Review Board.

Investigation

16. Having confirmed to the complainant that it will investigate the complaint, OPSI will send the statement of complaint to the PSIH, inviting the PSIH to submit a response to OPSI. The PSIH will be required to send this response to OPSI within 10 working days and it should be no more than 2,000 words. The response will be copied to the complainant.
17. Once the PSIH's response to the statement of complaint has been received, OPSI will commence its investigation. In some cases, OPSI may require further information and supporting evidence from one or both of the parties. Either party may be interviewed by OPSI.
18. OPSI's investigation will be based on an assessment of whether the PSIH has complied with the Regulations. During the investigation OPSI will review the

complaint with reference to “The re-use of Public Sector Information, a guide to the regulations and best practice”.

19. OPSI will assess how long the investigation will take to complete and notify the complainant and the PSIH. This assessment will take into account the complexity of the issues raised. The investigation should take no more than 60 working days.
20. If OPSI is unable to complete the investigation within the estimated timescales, it will notify both parties of the revised timetable.
21. OPSI may consult specialists from other organisations where appropriate. The complainant and the PSIH will be notified if OPSI intends to do this.
22. A complainant may withdraw a complaint at any point by notifying OPSI.

OPSI's recommendations

23. On concluding an investigation, OPSI will prepare a report for publication which will cover the following information:
 - the nature of the complaint.
 - the issues put forward by each side.
 - OPSI's findings on which part of the Regulations, if any, have not been complied with, together with its reasons.
 - OPSI's recommended course of action.
24. If OPSI finds that the PSIH has complied with the PSI Regulations it may nevertheless identify some areas where improvement is possible and make suggestions accordingly.
25. The draft report will be sent to both parties to check for factual accuracy. Each of the parties will have 5 working days in which to respond. A lack of response will be taken by OPSI to indicate that the parties are content as to factual accuracy. OPSI will consider suggested revisions to the report, making any amendments that it considers necessary. The final decision will rest with OPSI.

26. The final version of the report will be issued to each of the parties and published on the OPSI website. Subject to commercial confidentiality, OPSI also reserves the right to publish the statement of complaint and the PSIH's response to it.
27. The complainant and the PSIH will be informed that they have the option of applying to the APPSI Review Board for a review of OPSI's recommendations.

Meeting the recommendations

28. OPSI will require the Accounting Officer for the PSIH to respond with an action plan setting out actions that the PSIH will take to comply with the recommendations, together with a timetable by which these actions will take place.
29. OPSI will publish a progress report on what action the PSIH has taken to address OPSI's recommendations. If the PSIH has not taken sufficient action to comply with the Regulations, OPSI may refer the matter to a Minister within the Ministry of Justice. This could result in the Minister in question writing to the appropriate Minister in a UK government department or devolved administration requesting that the PSIH implement OPSI's recommendations.
30. In exceptional circumstances, and following discussions with the appropriate Ministers, OPSI may consider it necessary to revoke in full or in part a delegation of authority for Crown bodies. Additionally, where there have been flagrant or systematic breaches of the PSI Regulations, OPSI may recommend to the parent department that a PSIH is divested of its refined information operation.
31. Following publication of the complaint report and completion of the appropriate follow up activity, OPSI will notify both parties when it considers the matter to be closed.

Other action

32. The complaints procedure does not prevent either party from having recourse to the courts, or prevent parties from referring issues to other regulatory bodies at any time, although OPSI will not actively investigate a complaint while it is the subject of a current judicial process. OPSI's recommendations may be used as evidence in any subsequent action, including application to the APPSI Review Board or action taken through the courts. OPSI may make available submissions produced by both parties

and notes of any discussions within OPSI as evidence in any subsequent legal proceedings.

Confidentiality

33. OPSI will respect the confidentiality of all supporting papers and documents. OPSI will store all documents in its possession securely and will not divulge the content of any documents identified as confidential to any other party, except where legally obliged to do so or by the express permission of the owner.

APPSI Review Board

34. The APPSI Review Board will consider a request for a review where OPSI has carried out a complaint investigation and made recommendations, but one of the parties is dissatisfied with OPSI's recommendations.

35. The APPSI Review Board will only generally consider investigating a complaint directly where it relates:

- specifically to OPSI.
- to the licensing activity of TNA or OQPS.

Further information

36. Please contact:

Office of Public Sector Information

The National Archives

Kew

Richmond

Surrey TW9 4DU

Email: standards@nationalarchives.gsi.gov.uk

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