



Right to Information Act 2005: Procedures and Guidelines for Information Commissions

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Session Objectives

- ◆ To understand the procedures developed by other Information Commissions for disposing appeals
- ◆ To agree upon procedures for disposing appeals that are cost-effective and least cumbersome to the requestor



Legislation

- ◆ Section 27(2)(e) allows State Government to notify Info Comms procedures
- ◆ However, international best practice supports IC's themselves developing their procedural rules, within the parameters laid down by the law
 - Need flexibility to deal with day-to-day challenges posed to an IC



Issues at the outset

- ◆ NB: Requires timely appointment of Info Commissioners – so they have time to assess their duties and develop procedures for discharging them



Issues at the outset

- ◆ Legislation also doesn't specify how many ICs – this will impact on procedural approach
 - Mexico: decisions made collectively
 - UK, Canada: decisions made in name of IC
- ◆ India needs to decide how ICs will work together
 - will CIC sign-off all cases?
 - How to ensure consistent decisions?



Issues at the outset

- ◆ How many staff will the IC have?
- ◆ What will staff's responsibilities be?
 - UK and Mexico have specific sections dedicated to promotion and separate sections dedicated to investigations
 - Canada has legal dept + investigators
- ◆ Re investigating / processing complaints:
 - What work do ICs do?
 - What work do their staff do?



Developing procedural rules

- ◆ UK & Canada – note: they both have single Information Commissioners
 - see Schedule C resource pack for more on Canada
 - Receive complaint – are procedural r/q satisfied eg. fees, form, info needed – give receipt
 - Assign to IC? staff member/investigator?
 - Contact complainant if clarification needed
 - Contact dept to notify complaint rec'd (in writing if complicated) – and to request all docs



Developing procedural rules

- ◆ Create a work plan
 - How much time will this complaint take?
 - How much time do you have?
 - Timeline of meetings with department, complainant, provision of additional documents
- ◆ Initial research and analysis – preliminary ideas / decision
- ◆ Contact all parties for representations
 - In India, burden of proof clearly on Govt – arguably only require their arguments in the first instance
 - Mexico advised that they see IC as defender of public info rights so they may arguments for public



Developing procedural rules

- ◆ Meet with the government department and interview relevant personnel
 - In Canada, will often have first informal meeting to understand issues and then another formal meeting
 - Get representations from third parties and other govt departments, if necessary
- ◆ Mediation???? – b/c sometimes can get compromise on doc release



Developing procedural rules

- ◆ If mediation successful, Report of Findings sent to complainant and final letter sent to government department
- ◆ If mediation unsuccessful, then make a formal decision based on law and additional representations
- ◆ Issue decision – sent to all parties in writing
 - Staff member may need approval from senior first – in UK junior staff and/or tough cases are reviewed by senior officers and/or IC
 - NB: Canada only issues recommendations



Developing guidelines

- ◆ IC is key body in access regime in terms of clarifying the application of the law
 - S.19(8)(a) gives ICs broad powers to require compliance with the Act which means the IC has the power to make statements on the content of the provisions of the Act, not only the exemptions



Developing guidelines

- ◆ Useful for IC to proactively issue guidance in some areas to ensuring consistency of application of the law
 - Eg. Meaning of each exemption
 - Meaning of “public interest”
- ◆ See Resource CD for examples of guidance notes from other ICs



Developing guidelines

- ◆ Need to work in collaboration with other States and Central Govt to ensure all guidance notes are consistent
 - same Act in all jurisdictions so must be interpreted in basically the same way

Thank you

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