
Ymateb i Ymgynghoriad / Consultation Response

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Pwnc / Subject:	ICO consultation on prioritising access to information complaints

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, we are independent of the Welsh Government.

Our principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, we must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Our remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

We may give advice to the Welsh Parliament on any matter connected to education and training in Wales. To achieve excellence for learners, we have set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Response

Introduction

We are firm supporters of 'transparency' and that freedom of information is fundamental to good government.

The consultation identifies the need for all public bodies to do more with less in real terms and the increased need to support stretched public authorities. In this context of reduced resources, we think it is helpful that you refer to the wider initiatives to improve on delivery such as:

- using dispute resolution techniques where possible
- offering more support for public authorities to help them get it right first time
- improving the quality of decision making when requests are first made.

We welcome the Information Commissioner's move to address the delay that has crept into the system for dealing with information complaints and support the idea of working differently and to proactively prioritise those cases with the highest public interest.

As requested, we offer some thoughts on the proposals in the consultation under the questions below.

It would be helpful if the final guidance on the proposed criteria for prioritising cases is succinct, clear and focused, with clear examples where appropriate.

Consultation questions

Q1. Do you agree that, to maximise the benefit from the resources available to the Commissioner for his work on access to information complaints, he should prioritise cases of more significant public interest rather than continuing the 'cab rank' approach of dealing with cases in date order?

- Yes
 No

If no, please explain why.

Q2. Do you agree with the proposed factors that will inform the ICO's decisions on which cases to prioritise?

- Yes
 No

If no, which do you not agree with and why? Are there any additional factors you would include?

No suggested changes.

Regarding prioritisation having operational benefits / support those regulated, we agree it would benefit the complainant and the public body for early resolution where there are clear precedents set and the Information Commissioner has an existing position on the requested information.

Q2(a). In particular, do you agree that prioritising cases based on who has made the request is an appropriate public interest factor?

Yes

No

If yes, are there any other groups or types of requester you think should be covered?

Agreed. No suggested changes. A focus on supporting vulnerable or similar groups is welcomed.

Q3. Do you have any comments on the service standards (or Key Performance Indicators) we should set for dealing with our FOI and EIR complaints?

We agree with the service standards listed and note that you have increased your target regarding 'the completion of cases within six months of receipt'. You may wish to consider a separate completion standard for prioritised cases. Regular reflection on the standards/targets will also ensure they are meaningful and ambitious.

Alongside the standards, you may wish to consider an indicator to measure satisfaction with the service – maybe something around fairness / sound judgements.

Q4. Do you agree that 6 weeks is sufficient time to bring a complaint to the ICO?

Yes

No

If no, please explain why you think additional time is needed or what any exception criteria should include.

We agree that six weeks provides enough time to make a complaint. We note that you will allow for exceptional circumstances such as illness.

Q5. Do you have any comments on the ICO's approach to implementing the Commissioner's statutory right to not make a decision where a complaint is vexatious or frivolous?

We agree with this approach. This supports the objective - to not waste public resources (the Information Commissioner's and the public body's) unnecessarily on vexatious and frivolous requests.

We support the proposal that when it appears that a public body has clearly followed the Commissioner's guidance on vexatious requests, modelled on the tests set out by the Tribunal, you will not make a decision as you will consider the complaint itself vexatious. The guidance on the website in this area is extensive – some practical training (perhaps in network groups) for public authorities in the application of the tests set out by the Tribunal would be very helpful. In fact, some network meetings / training on ICO guidance more generally would be much appreciated.

We would just add, regarding frivolous requests/complaints, that there should be clear and consistent guidelines for determining what constitutes 'a low public interest in the information requested'.

About you

Q7. Are you answering as:

- A representative of a government department
- A representative of a public sector body outside central government
- A journalist or other member of the press
- A representative of 'third sector'/'civil society' body (eg charity, voluntary and community organisation, social enterprise or think tank)
- An academic
- An individual acting in a professional capacity
- An individual acting in a private capacity (eg someone providing their views as a member of the public)
- An ICO employee
- Other

If you state 'Other' please ensure that you specify here.