

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Enforcement

Section 50: Application for decision by Commissioner

167. This section permits any person to complain to the Commissioner about an authority's compliance with the requirements of the Act in respect of a request for information by that person.
168. The Commissioner is required to make a decision on the authority's compliance unless:
- the complaint has not exhausted the authority's own complaints system;
 - the complainant has delayed too long before complaining;
 - the complaint is vexatious or frivolous; or
 - the complaint is withdrawn or abandoned.
- The Commissioner can in his discretion decide to reach a decision in a case where he is not obliged to do so under the Act.
169. *Subsection (3)* requires the Commissioner either to notify the complainant that he has not made a decision and his grounds for not doing so, or to serve notice of his decision on both the complainant and public authority.
170. *Subsection (4)* states that where the decision is that a public authority has failed in its duty to confirm or deny whether it holds information or its duty to communicate information, or has otherwise failed to comply with the Act as it relates to the means by which information may be communicated or refusal of requests, a decision notice must specify steps the public authority must take to comply with the Act and the time period for doing so. (In respect of a failure to comply with any requirement of Part I of the Act, the Commissioner would have discretion to issue an enforcement notice under section 52 whether or not any application had been made by a complainant.)
171. *Subsection (5)* states that a decision notice must contain information about the right of appeal to the Tribunal against that decision.
172. *Subsection (6)* provides that the time specified in a decision notice for complying with any steps required should not be shorter than the time available for an appeal to the Tribunal to be lodged. It also provides that an appeal shall be suspensory in effect as regards the matters affected by the appeal, and the steps specified in the decision notice would not have to be taken pending the outcome of the appeal.
173. *Subsection (7)* provides that any decision notice has effect subject to the 'accountable person' override provisions set out in section 53 (Exception from duty to comply with decision notice or enforcement notice).