

**Complaints and Appeals Policy for
requests for information under
Freedom of Information Act 2000 ('FOIA')
and Environmental Information
Regulations 2004 ('EIR')**

May 2010

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1. Introduction

- 1.1 This is the process which will be followed by East Coast Mainline Company Limited (“the Company”) when it receives a request to review its response to a request for information made under FOIA or EIR. It is established in accordance with the Code of Practice published by the Department for Constitutional Affairs (now the Ministry of Justice) under section 45 of FOIA and in compliance with section 17 of FOIA and Regulation 11 of the EIR.
- 1.2 The Company should treat any complaint or negative response to, or request for reconsideration or appeal of, an initial response to an information request under FOIA and/or EIR by the relevant requester of information as a complaint triggering a review under this policy.
- 1.3 The Code of Practice requires that a review of a response to a request for information should:
 - 1.3.1 Provide a fair and thorough review of handling issues; decisions taken pursuant to the relevant legislation, and decisions taken about where the public interest lies;
 - 1.3.2 Enable a fresh decision to be taken;
 - 1.3.3 Be a reconsideration of all factors relevant to the issue;
 - 1.3.4 Be as clear and simple as possible
 - 1.3.5 Encourage a prompt determination of the complaint.

The effective management of risk involves us all. We all have a role to play in identifying and managing the key threats and opportunities we face in delivering our business objectives. The East Coast Internal Audit Team is always available for help and advice.

2. Responses to requests for information

- 2.1 Every response to a request for information must inform the person making the request (“the requester”) that he or she has a right to complain about the response and ask for it to be reviewed under this review process. It must also inform the requester that if he or she is not satisfied about the outcome of the review, he or she has a right to appeal to the Information Commissioner.

3. Responsibility for co-ordinating reviews

- 3.1 The Company Secretary shall be responsible for co-ordinating reviews of responses to requests for information. That person is referred to in the following sections of this document as “the review co-ordinator”. The review co-ordinator shall have the following particular responsibilities:
 - 3.1.1 Sending the person who has made the complaint (“the complainant”) an acknowledgement;
 - 3.1.2 Allocating responsibility for undertaking the review;
 - 3.1.3 Receiving the response of the person undertaking the review;
 - 3.1.4 Informing the complainant of the outcome of the review;
 - 3.1.5 If applicable, arranging for the complainant to receive information which the review has established should be disclosed.

4. *Acknowledgement of complaints*

- 4.1 The review co-ordinator must acknowledge any complaint about a response to a request for information no later than five working days after receipt of the complaint. The acknowledgement must confirm that the matter is being treated as a complaint and inform the complainant of the expected date for completion of the review.

5. *Responsibility for undertaking reviews*

- 5.1 Wherever possible the review of the request for information should be undertaken by a suitably senior person who was not involved in considering the original request.

6. *Undertaking the review*

- 6.1 The person undertaking the review should consider all relevant information relating to the complainant's complainant and original request. This should include the following:
 - 6.1.1 Reading the request;
 - 6.1.2 Reading the response;
 - 6.1.3 Establishing what information within the original request is held, what information was disclosed and what information was withheld;
 - 6.1.4 Considering whether the request was considered under the correct legislation;
 - 6.1.5 Considering any exemptions which have been applied or other grounds for non disclosure;
 - 6.1.6 If applicable, considering whether the public interest test has been applied correctly;
 - 6.1.7 Considering any third party consultation undertaken and the views of such third parties;
 - 6.1.8 Considering if there were any procedural irregularities (for example failure to respond within the specified timescale or failure to provide an adequate refusal letter).
- 6.2 The person undertaking the review must reach conclusions as a result of his or her review and must report them to the review co-ordinator. The report to the review co-ordinator must include:
 - 6.2.1 The decision of the person undertaking the review as to whether the response to the request for information was not compliant with the relevant legislation or the Company's own procedures.
 - 6.2.2 The decision of the person undertaking the review as to whether information requested by the complainant should be disclosed.
 - 6.2.3 Comments from the person undertaking the review as to whether there are any general lessons for the Company to learn.

7. *Reporting the outcome of the review*

- 7.1 The review co-ordinator must inform the complainant of the outcome of the review.
- 7.2 If the review has concluded that the response to the request for information was not compliant with the relevant legislation or the Company's own procedures, the response sent by the review co-ordinator to the complainant must include an apology.
- 7.3 The response sent by the review co-ordinator to the complainant must also:
 - 7.3.1 Acknowledge the complaint;
 - 7.3.2 Confirm the date when the complaint was received;
 - 7.3.3 State the timing of the original response and the decision it gave;
 - 7.3.4 Confirm whether or not the requested information is held by the Company;
 - 7.3.5 Inform the complainant of the outcome of the review (whether the original response was correct and if not in what aspects and apologise) and:
 - 7.3.5.1 If the review has concluded that the requested information should be disclosed, send the information to the complainant or inform him or her when it will be sent;
 - 7.3.5.2 If the review has concluded that the requested information should not be disclosed, inform the complainant of:
 - (a) The reason why the information is exempt from disclosure;
 - (b) The exemption which has been applied and why it is applicable;
 - (c) If the exemption is subject to the public interest test, the factors considered and the decision; and
 - 7.3.5.3 The complainant's right to appeal to the Information Commissioner about the outcome of the review.

8. *Timescale for undertaking reviews*

- 8.1 The review co-ordinator and other persons involved in undertaking reviews must complete reviews promptly. The Company should inform the complainant of the outcome of the review:
 - 8.1.1 In respect of requests made under FOIA, as soon as reasonably practicable and in line with the timescale notified to complainants in the Company's publication scheme being 20 Working Days from the date of receipt of the complaint;
 - 8.1.2 In respect of requests made under EIR, as soon as possible and within 20 Working Days from the date of receipt of the complaint.
- 8.2 "Working Day" means a day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales.
- 8.3 In exceptional circumstances it may be necessary for a review to take longer than the maximum periods specified above. In those circumstances, the review co-ordinator must inform the complainant that the review is expected to take longer than the usual maximum period and must inform the complainant of the reasons for that within the original 20 Working Days. The extension should not exceed an additional 20 Working Days.
- 8.4 Complaints must have been made within 2 months of the date of the decision being complained about.

9. *Following up reviews*

- 9.1 If the person who undertakes the review identifies any general lessons to learn, that should be reported to the Board to consider if any changes to policies or procedures need to be made.



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East Coast Main Line Company

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