

Section 38 Request for Assessment

How the Supervisor deals with an assessment

The requirements for instigating an assessment

The Data Protection Act provides that where an individual believes they have been affected by the processing of their personal data, or if the Supervisor believes that a data controller is not complying with the requirements of the Act, an assessment may be undertaken.

When a request is made by an individual, this must be in writing sent with evidence supporting the complaint, including correspondence relating to the individual's attempt to achieve satisfaction from the data controller prior to making the complaint.

A complaint form is available online and from the Office if required, or alternatively details may be included in a letter to the Supervisor.

Outcome achievement times vary, but the Supervisor expects complaints to be finalised within 6 months. If there is likely to be any undue delay, this will be communicated to the complainant.

Action on receipt of a complaint

On the day of receipt, or as soon after as practicable:

- Complaint number is allocated
- An acknowledgment letter is sent to complainant
- Dialogue is opened with the data controller

How an assessment is undertaken

The Supervisor decides on the appropriate manner for undertaking an assessment, depending on the nature of the complaint and the damage that is likely to be caused to an individual(s).

These methods include, but are not limited to:

- Contacting the data controller to request that information relevant to the assessment is provided, either informally or through the issue of an Information Notice;
- A mutually convenient visit to the premises of the data controller, either by consent or where necessary, by Court Order
- Combination of both

Information obtained by the Supervisor in connection with an assessment is confidential.

The view of the Supervisor

Having taken into consideration all the evidence provided by the complainant, the data controller and any obtained, or observations made, through visiting the data controller's premises, or through other means, the Supervisor will form a view as to whether "it is likely or unlikely that the processing has been, or is being, carried out in compliance with the provisions of th[e] Act".

This view will be communicated to both the complainant and the data controller, together with details of any action that is required or which has been taken as a result.

The Supervisor is only empowered to form a view. Where either the applicant or the data controller opposes the view formed by the Supervisor, the party may take further action through the Court.

Further action by the Supervisor

Where the Supervisor considers it appropriate, he may serve the data controller with an Enforcement Notice under section 36 of the Act, requiring the data controller to take certain steps to ensure that the processing of personal data accords with the requirements of the Act. Failure to comply with an Enforcement Notice is an offence.

In circumstances that the Supervisor considers appropriate for negotiation and mediation, the data controller may be asked to sign an Undertaking as an alternative to the issue of an Enforcement Notice. However, failure to comply with the terms of the Undertaking is likely to result in the issue of an Enforcement Notice.

For further information and advice please contact the ODPS:

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