



Scrutiny Management  
Committee

# **A Guide to Freedom of Information Appeals in Guernsey**

**Version 1: January 2022**

This guide aims to answer questions you may have about how to appeal a decision made regarding a Freedom of Information request.

**The guide must be read in conjunction with the relevant Guernsey Freedom of Information guidance and related legislation:**

Freedom of Information Code - <https://www.gov.gg/information>

Administrative Decisions (Review) (Guernsey) Law, 1986 – [Guernsey Legal Resources.gg](https://www.gov.gg/legal-resources)

**This guide represents the Freedom of Information Appeals Panel procedures as at January 2022 and its content may be subject to amendment.**

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## 1. Introduction

The Freedom of Information Panel (the Panel) is an appeal body, independent of the States of Guernsey, which was established on 1<sup>st</sup> January 2022<sup>1</sup>. It was agreed by Resolution<sup>2</sup> of the States of Guernsey at its meeting held 16<sup>th</sup> June 2021. The purpose of the Panel is to determine appeals against decisions made by a Principal Committee, or other States Body against the release of information made on the application of exemptions under the Freedom of Information Code (the Code).

The Freedom of Information Panel is a sub-committee of the Scrutiny Management Committee with a Secretariat provided by its Office. The Panel aims to provide an independent appeals process which is accessible to all and offers a fair and transparent determination of an appeal on the application of exemptions under the existing Freedom of Information Code.

The purpose of a submission to the Panel is to allow an independent review of a decision made by the relevant States Committee. All appeals will be determined on the basis of a review of the relevant States Committee's decision. A merits review will involve a full reconsideration of the facts of the decision on the application of exemptions under the existing Code which is the subject of the appeal.

There are two grounds for appeal:

1. That an exemption has been wrongly applied.
2. That the exemption is correctly applied but that the public interest overrides its use.

However, the Panel:

- a. cannot act as a mediator between the appellant and the relevant States Committee;
- b. cannot consider the merits of the original information request made to the relevant States Committee. The Panel will provide its judgement only on the application of the legitimacy of the exemption applied; and
- c. cannot consider matters which are not relevant to the exemption applied.

### **Background**

The States agreed at their meeting held 16<sup>th</sup> June 2021 after consideration of the Scrutiny Management Committee's Policy Letter to implement a strengthened Freedom of Information Code with the addition of an independent appeals mechanism as contained in the Resolution detailed below:

*(b) that the current Code of Practice on Access to Public Information should be strengthened by means of the addition of an independent process for appeals against the application of exemptions, and the current Code of Practice on Access to Public Information should be renamed the Freedom of Information Code and to direct the Scrutiny Management*

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<sup>1</sup> [Billet d'Etat XIII Volume 3 - SMC Policy Letter - Freedom of Information - June 21](#)

<sup>2</sup> [Billet d'État No XIII - Resolutions](#)

*Committee and the Policy & Resources Committee to implement this change not later than 1 January 2022.*

## 2. The Appeals Process

The Scrutiny Management Committee has therefore implemented an independent process for appeals against the application of exemptions within the Code. This appeals process will be engaged when a Freedom of Information application under the existing Code has been refused by a Principal Committee, or other States Body on the basis of specific exemptions within the existing Code.

All appeals against decisions made under the existing Code where an application has been refused on the basis of specific exemptions must be made in writing to the Chair of the Panel, via the Office of the Scrutiny Management Committee and should be made within 28 days of the original decision.

The initial step will be for the full panel to adjudicate on the validity of the appeal. If the validity is accepted, then the appeal will move to the next stage. A Panel will then be formed within 30 days of submission of an appeal, subject to an adjudication being completed to confirm that the lodged appeal is valid in that all the necessary conditions have been met.

If the appeal is judged to be valid then a formal panel will be established to evaluate the merits of the appeal.

The Panel will consider the information and documentation provided with the appeal and may wish to request additional evidence from the appellant or the relevant States Committee or Body who have applied the exemption(s).

Once all the relevant information has been considered the Panel will make a determination on the merits of the appeal. The Panel's decision is final.

## 3. The Panel

The Panel comprises a Chair, a Deputy Chair and three ordinary members, all of whom were appointed by the Scrutiny Management Committee for a period of four years. When a panel is required to be formed to hear any specific appeal it comprises a quorum of three members, one of whom will be identified as the Chair of the Panel. In order to ensure the Panel's independence, sitting members of the States or Alderney Representatives are not eligible to serve on the Panel.

The organisation of any Panel hearing and the production of any relevant correspondence is undertaken by the existing Office of the Scrutiny Management Committee.

## 4. Who, How, When and Where to Appeal?

Only the person who made the original application for information can appeal the decision, this must be made in writing to the Panel through the Office of the Scrutiny Management Committee

using the Appeals Form [here](#). This should be submitted within 28 days of the decision. There is no cost in the submission of an appeal.

## 5. What Must I Include with the Appeal Form?

Within 'section F' of the Appeal Form (Appendix 1) there is an area to explain the grounds of appeal. Information should be clearly presented and easy to read. Adherence to the following guidance would be useful to the Panel:

- be concise, accurate and focus on the matter concerned;
- explain any jargon that you use;
- include any relevant factual information that may be helpful to the Panel and
- refer to or include relevant policy and any other key documents.

## 6. The Appeal Decision

The Panel's decision will be issued in writing, generally within seven working days<sup>3</sup> of the Panel meeting and will include the reasons for their decision. It will be sent in the first instance to the appellant and the relevant States Committee or Body. The decision will then also be publicly available on the Freedom of Information page on gov.gg<sup>4</sup>.

## 7. Appeal Outcomes

Where an appeal is upheld by the Panel, the relevant States Committee or Body will be directed to release the information. If the relevant States Committee or Body subsequently refuses to comply with the direction of the Panel, the relevant States Committee or Body will in effect be exercising its right to a veto, which the Panel does not hold legal powers to challenge.

Mindful of this, the Scrutiny Management Committee intends to publish the number of cases, if any, where such refusals have occurred in its Annual Report. Where an appeal is not upheld by the Panel, the original decision of the relevant Committee or Body has been confirmed.

It should be noted that any decision of the Panel does not preclude a potential application under s1 of the Administrative Decisions (Review) (Guernsey) Law, 1986<sup>5</sup> against the original decision by a Principal Committee or other States Body not to release the information requested under the Code.

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<sup>3</sup> Monday to Friday excluding Public Holidays

<sup>4</sup> <https://www.gov.gg/information>

<sup>5</sup> <https://www.gov.gg/article/171430/Administrative-Decisions-Review-Guernsey-Law-1986>

## 8. Contacting the Panel

The Panel can be contacted through the Office of the Scrutiny Management Committee;

Office of the Scrutiny Management Committee  
Edward T Wheadon House  
Le Truchot,  
St Peter Port  
GY1 3WH

Email: [scrutiny@gov.gg](mailto:scrutiny@gov.gg)

Telephone: 01481 220410

Website: [www.gov.gg/scrutiny](http://www.gov.gg/scrutiny)

### **Panel Members**

Advocate Chris Green

Advocate Simon Howitt

Advocate Ian Kirk

Susan Gordon Hardy

Rachel Masterton

### **Scrutiny Management Committee Staff**

Principal Scrutiny Officer – Mark Huntington

Scrutiny Officer – Lisa Wonnacott

Scrutiny Officer – Suzanne Randle

Scrutiny Officer – Ian Le Page

Scrutiny Officer – Julie Brown

Executive Assistant – Keith Russell