

The Department of Employment and Workplace Relations is grateful for the opportunity to comment on proposed updates to Part 3 of the FOI Guidelines.

Our primary suggestion is that it would be useful for Part 3 of the FOI Guidelines to clearly and consistently recognise that the statutory timeframe for processing an FOI request commences the day after receiving a valid FOI request i.e. one which satisfies the formal requirements of sections 15(2) and 15(2A) of the *Freedom of Information Act 1982* (FOI Act) except for section 15(2)(b)).

In our view, an invalid request cannot be cured retrospectively, meaning the statutory timeframe does not commence until the requirements of section 15(2) and 15(2A) are met.

We provide suggestions on specific paragraphs of the proposed FOI Guidelines below.

Paragraph	Suggestion
3.31 – 3.33 and 3.39	The paragraphs should clarify when the statutory timeframe commences in circumstances where a request is made and does not comply with the formal requirements of sections 15(2) and 15(2A) of the FOI Act (as outlined at paragraph 3.29).
3.39, 3.226 and 3.41	The paragraphs should clarify when the formal requirements of a request are met and when the statutory processing timeframe commences (i.e. when a request is treated as valid, even if it does not meet the formal requirements of sections 15(2) and 15(2A) of the FOI Act.
3.41, 3.226 and 3.228	<p>The paragraphs should clarify that they only apply to a request that satisfies the requirements of sections 15(2) and 15(2A) of the FOI Act.</p> <p>Such clarification would avoid confusion about how to treat an invalid request, noting that a request for information can be accessed under a different pathway (e.g. APP 12 or administrative access).</p> <p>It would be helpful to ensure consistency between these paragraphs (3.41, 3.226 and 3.228) and paragraphs 3.29 and 3.177 in relation to the formal requirements of a request (see also sections 15(2) and 15(2A) of the FOI Act).</p>
3.42	This paragraph should provide guidance on the circumstances where an agency can treat a request as invalid because it does not satisfy the formal requirements in sections 15(2) and 15(2A) of the FOI Act, noting that information can be accessed under a different pathway (e.g. APP 12 or administrative access).

	<p>We also suggest the below change to align with the Note following section 15(3) of the FOI Act and the wording used in paragraph 3.179:</p> <p><i>Further, the note to s 15(3) states that both an agency or minister may only refuse to deal with a request if satisfied that a practical refusal reason exists, after undertaking a request consultation process.</i></p>
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