

Decision Notice template – How to Guide

Introduction

The Decision Notice template should always be used when drafting a Decision Notice. It has been formatted in a way that is easy to use and provide a clear narrative account of the investigation, decision and reasons for it.

The template will open from ICON in a read-only version; use the Save As function in the file menu to place in the relevant folder on your personal drive. Then add the document to CMEH before you start drafting it, using the name "Decision Notice".

The first part of this Guide describes how the template is formatted and should be used. The second part follows the structure of the DN template explaining what goes where.

Part 1

The template uses styles in Word to define what each paragraph is, and how it looks. This means that there is no need to apply any formatting to the document – select a style for each paragraph and the formatting will happen automatically. The following styles for paragraphs are available:

Heading 1	The main title of the Decision Notice use this style
<i>Heading 2</i>	The additional title for EIR cases uses this style
Heading 3	date at the top of the Decision Notice
Address	party details
1. Numbered paragraph	Use this style for each paragraph that should be numbered. Numbering will be automatically applied. Every paragraph apart from the summary, lists and quotes should be numbered
Section heading <hr/>	Use for the headings of the main sections of the Decision Notice

Sub section heading	Use for headings within a section heading (e.g. Scope of the case)
Sub sub section heading	Use for headings within sub-sections - optional (e.g. Was the information covered)
<ul style="list-style-type: none"> Unordered list 	All lists must be set to this style (e.g. Breaches of the Act in the Decision section)
<i>Italicised quotes</i>	To be used for quotes
Tribunal address	First Tier Information Tribunal address in the Right of Appeal section
Normal	ICO corporate style. Text that does not go in a numbered paragraph e.g. Summary should be formatted 'normal'.
<i>Annotation</i>	this identifies parts of the template that are optional and are for information only – these must be removed before publication
Header	includes the case reference number and the ICO logo
Footer	includes the page number

Styles in Word

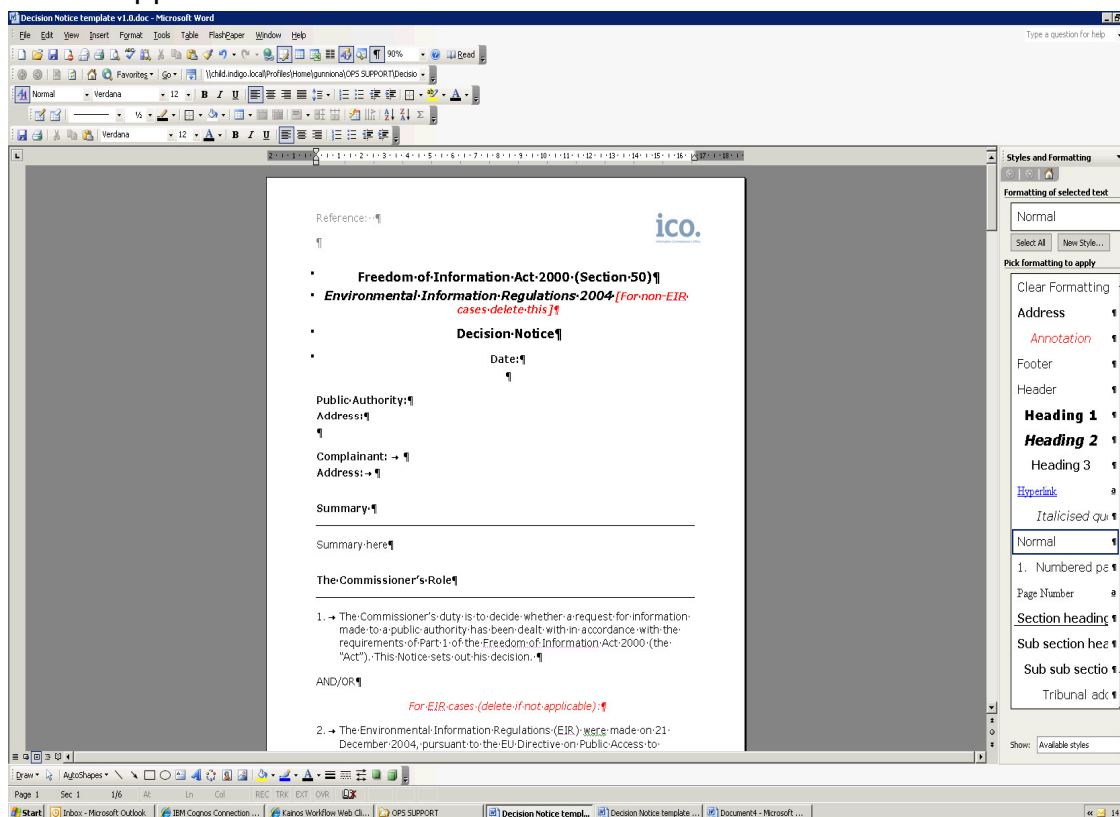
Styles in Word are accessed via the Styles and Formatting sidebar. You must use styles in the document, and not the format buttons in the top toolbar (with the exception of bold for emphasis).

Accessing the Styles and Formatting sidebar

To access the styles and formats within the template:

- Go to the Format menu
- Select "Styles and formatting"
- The Styles and Formatting sidebar will then appear in a right hand pane in the Word document

- Click on the drop down box at the bottom of the pane labelled 'show', and select 'Available styles'
- All the formatting and styles for the template will then appear in the sidebar.



Altering the format

The template has been set up so that the template will automatically use the correct format for each section of the Decision Notice. For example, you do not need to manually add numbering for paragraph's; simply hit the enter key after the first paragraph and the next paragraph will appear. If you delete a paragraph from the document, it will automatically update the numbering.

Paragraph spacing is automatic – you only need to hit enter once to start a new paragraph.

If you wish to alter the style - for example from normal text to a sub-sub-heading - click anywhere in the paragraph and select the sub-sub-section heading from the styles and formatting sidebar. The text will then change to this style, with the correct format.

Dates

Dates on the Decision Notice need to be written in the following way:-

Top of the Decision Notice – **Date: 30 September 2010**

Bottom of the Decision Notice - **Dated the 30th day of September 2010**

Names and Addresses

Names and addresses of public authorities and complainants should **not** appear in bold type.

Terminology

'Decision Notice' should be capitalised.

The words 'public authority' and 'complainant' should not be capitalised.

Complainants should be referred to as 'the complainant' or 'he' or 'she'.

Text spacing

Only one space should be used after full stops and commas.

Do not leave the last line or word of a paragraph appearing at the top of a page, with the remainder on the preceding page.

Do not leave the first line of a paragraph at the bottom of a page, with the remainder overleaf, e.g.

Ensure addresses are not split between pages (e.g. the Information Tribunal address).

Part 2

The first section to be completed is the PA name and address, just make sure you check that the officer at the PA you have been dealing with is based at the same offices as the head of the PA (not always the case, especially with central government departments).

If the decision relates to an executive agency, the agency should be named as the public authority at the head of the Decision Notice and the name of the government department should follow in brackets e.g.

Public Authority: Child Support Agency (an executive agency of the Department for Work and Pensions)

Then complete the complainant's name and address. You should ensure that you use the name and address from the original request unless the complainant has asked you not to. For older cases or in ones where you have not heard from the complainant for several months, it would be worthwhile contacting the complainant in order to confirm their contact details.

Summary

The purpose of this section is to provide both the complainant and the public authority with an overview of what the Commissioner's actual decision is with regard to the complaint in question.

This summary should be brief – no more than a paragraph - and should be clear and easy to understand. The summary should contain an outline of the request and details of the findings of the DN, including whether we have ordered information to be disclosed. The summary does not need to list every individual procedural breach that may have been found but should note that the PA's handling of the request did result in breaches of certain procedural requirements of the Act.

This synopsis will be reproduced on the ICO website.

The Commissioner's Role

This section simply describes the Commissioner's duty in relation to complaints under the FOIA and EIR. Choose the appropriate paragraph and delete the other one. For hybrid cases, you need both paragraphs.

(NB at the head of the DN you will need to delete the '*Environmental Information Regulations 2004*' text if the DN does not deal with environmental information).

Background

This section is optional but can be used to provide any information which may prove useful to the reader before they get to the substantive parts of the DN. For example, if the DN is being served on a PA whose functions are not immediately obvious e.g. The Export Credits Guarantee Department, this section could be used to explain the remit of that PA. Equally, if the request focuses on a particularly specialised topic, e.g. Gateway Reviews, then the background section could be used to provide a brief definition of what these are.

This section should be kept brief; no more than a couple of paragraphs. See the comments regarding the Findings of Fact section below for the difference between what should be included in the Background section and what should be included in the Findings of Fact section.

The Request

This section should detail the chronology of events prior to our intervention, from the date of the original request to the events leading up to the complaint.

This section should include, where relevant:

- The request quoted in full and its date;
- The date of refusal notice and summary;
- Date of request of internal review;
- Date and summary of response to internal review;
- Date of response to request and summary of what information was given or withheld.

Also add any other relevant information related to the request, e.g. chaser letters the complainant may have sent to the PA if he had not received a response to his request or any correspondence which may have been exchanged between the complainant and the PA clarifying the nature of a request.

If the complainant has submitted numerous and/or lengthy requests it may be impractical to include the full text of the request(s) in the main body of the DN itself. In such a scenario caseworkers should consider including the full text of the request(s) in an annex

appended to the DN. For an example of such an approach see Annex A in DN [FS50110741](#).

You should **not** include any details of your action in this section unless there was ICO involvement, e.g. chasing the PA to complete an internal review.

If the request was submitted to an executive agency rather than the public authority itself, caseworkers should use the standard wording in the 'Request' section of template which clarifies why the DN refers to the agency as if it was the PA.

The Investigation

This Investigation section should contain the following subsections:

Scope of the case

Summary of the key points of the investigation i.e. what were the issues that the caseworker set out to investigate and what were the issues which the caseworker chose not to investigate, and if not clear, an explanation of why these decisions were made. If the scope of the case changed during the course of the investigation, e.g. if the PA disclosed some information, this should be noted in the Scope section.

Chronology of the case

This section should include a chronology of the **relevant** steps taken by the caseworker; an action will be relevant if it forms the basis of any findings in the Analysis section. Therefore this section is likely to include dates of significant letters, meetings, important telephone conversations etc. If an Information Notice was issued this should be recorded here.

It is not necessary to record every single step taken during the course of the investigation, for example if a PA contacts the caseworker to apologise for the delay in responding to a letter, this does not need to be recorded.

Furthermore, if an issue has been scoped out of the investigation, either at the start or during the investigation, then the DN does not need to record the details of correspondence covering such issues.

In describing the nature of these exchanges the details included in the Chronology section should be brief – i.e. in most cases it is only necessary to set out in 2 or 3 sentences the nature of the correspondence.

For example:

'On 1 January 2009 the Commissioner contacted the PA and asked it to clarify a number of issues in relation to its reliance on section 35(1)(a) of the Act. In particular the Commissioner asked the PA to clarify the weight the PA had given to certain public interest arguments.'

And:

'On 20 January 2009 the PA provided the Commissioner with further arguments in relation to the public interest test under section 35(1)(a).'

The Chronology section should **not** replicate in detail the submissions made by the PA. Rather the submissions made by the PA should be set out in detail in the Analysis section because this is where the PA's position will be subjected to detailed scrutiny by the Commissioner. It is therefore unnecessary for both the Chronology and Analysis section to include a detailed explanation of either the PA or Commissioner's position as this will lead to the DN being repetitive.

Findings of fact

This section is not compulsory, but can be used to set out key facts which the investigation established (though not, of course, the actual decision itself). This can be useful if any facts central to the case are in some dispute.

However, if the caseworker believes that it would be useful to provide some factual background to the DN, for example, in case [FS50180545](#), rather than to clarify particular facts which are in dispute, then such information should be included in the Background section at the beginning of the DN.

Analysis

This section is the part of the DN where the relevant law is applied to the facts. The Analysis section does not need to include the full legal provisions of the Act – these should be included in the legal annex – but it can include brief extracts from the Act if appropriate, for example the exemption contained at section 35(1)(a) could be quoted in its entirety as it very brief. If the DN does not quote directly from the Act it should include a Plain English summary of the relevant sections Caseworkers should ensure that any summary included accurately reflects how the Act is drafted.

The Analysis section should be separated into three separate parts:

The first part is headed 'Substantive Procedural Matters' which will deal with any fundamental issues regarding Part I of the Act, e.g. held/not held, section 12 or section 14.

The second part is headed 'Exemptions' and deals with the application of exemptions contained in Part II of the Act.

The third part is headed 'Procedural Requirements' and deals with whether the PA dealt with the technical procedural requirements of the Act, i.e. sections 1, 10 and 17.

Although not all DNs will need to include all three headings, their order should not be amended. For example, if there are no substantive procedural matters which to be covered, the analysis of the Procedural Requirements should still follow the Exemptions analysis.

Exemptions

To ensure clear presentation, use a separate subheading for each exemption.

As a general rule the exemptions analysis should begin by setting out in Plain English the relevant exemptions, PA's position on the application of the exemption; the complainant's submissions on the application of the exemption (if any) before moving on to setting out the Commissioner's opinion on the application of the exemption.

For an example of how this structure would look for a class based, absolute exemption, see the DN [FS50181641](#).

What to do for prejudice based exemptions:

If the DN includes an analysis of whether a prejudice based exemption is engaged, the DN needs to follow the three stage process set out in the revised version of [LTT13](#). This involves:

- Firstly, identifying the applicable interests within the relevant exemption;
- Then, addressing the nature of the prejudice;
- And finally, considering the likelihood of the prejudice.

The DN should be careful not to conflate the different steps in assessing whether a prejudice based exemption is engaged.

Structuring the public interest test

Following this, if the exemption is engaged and subject to the public interest test, you will need to include your analysis of the public interest arguments. Previously the DN template did not provide a rigid structure for how the public interest analysis should be set out. However, under the revised template the public interest analysis should be set out under the following three headings:

- Public interest arguments in favour of disclosing the requested information;
- Public interest arguments in favour of maintaining the exemption;
- Balance of the public interest arguments.

The aim of this change is to make the public interest analysis easier to follow and in particular make it clear to the reader the weight placed by the Commissioner on each particular public interest argument.

An example of a DN structured in this way is [FS50176388](#) at paragraphs 83 to 100.

Procedural breaches

List here the procedural matters that you considered in arriving at a decision.

If you are considering more than one procedural breach ensure that this is clearly presented in your draft by including a separate subheading for each breach.

Also remember to specify breaches down to the relevant subsection, e.g. 17(1)(c), not just 17, or 17(1).

Decision

This section should set out the Commissioner's decision in light of the findings and analysis made in the case. The three basic possibilities here are:

- The PA dealt with the request in accordance with the Act;
- The PA failed to deal with the request in accordance with the Act; and
- The PA dealt with some elements of the request in accordance with the Act but failed to deal with other aspects in accordance with the Act.

There are three standard paragraphs contained in the template which reflect these potential different findings. The caseworker should delete the two paragraphs which are not applicable. If the decision concludes that PA has only partially dealt with the request in accordance with the Act – i.e. the third option – then the *italics* in the template should be replaced with a list of those sections to which the decision relates.

For example, it may be that a complaint is upheld in relation to section 10(1) but not in relation to section 40(2), the caseworker

should highlight this showing which part of the varied decision relates to which section.

The DN should ensure that all breaches are cited in full. For example, if a PA incorrectly relied on the trade secrets exemption to withhold information the DN should make it clear that this was an incorrect reliance not simply on section 43, but specifically on section 43(1).

Steps Required

This section should detail any steps which need to be carried out following the decision including the timescale. A PA will have 35 days to carry out any steps.

The steps required should be clear and specific in order to ensure that there is no confusion as to the action a public authority needs to take in order to comply with the DN. Caseworkers should also consider whether to use a schedule and/or confidential annex in line with the procedure set out [here](#) so that there is no confusion as to the nature of information which needs to be disclosed.

Other matters

This section is an opportunity to raise issues in the DN which may not constitute a breach of the Act but which deserve recognition. Generally these will be criticisms of a public authority although occasionally they will be recognition for a job well done.

For example, an internal review which took a public authority 12 months to complete may well warrant a mention, or a public authority which has dealt with a messy or complex set of requests particularly well may deserve recognition.

Caseworkers should liaise with Enforcement over the wording of the Other Matters section if it covers issues falling within their remit, i.e. issues covered by the section 45 and 46 Codes of Practice. Caseworkers do not need to wait until the DN is drafted to consult Enforcement; they can be contacted as the case is being investigated.

Right of Appeal

This section should detail how either party may appeal the decision to the Information Tribunal.

Legal Annex

The sections of the FOI Act relevant to the case need to be included in the Legal Annex. Sections of any other relevant legislation, e.g. DPA, Fees Regulations should also be included. Caseworkers can access Word versions of the FOI Act and EIR [here](#).