

# FOI Circular #6

## Transferring Freedom of Information Requests

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# TRANSFERS



INFORMATION  
**FREEDOM**



## **When to Transfer Requests**

Section 8 of the Freedom of Information Law, 2007 details the circumstances in which a public authority can transfer an FOI request to another public authority. You should seek to transfer a request where the record requested is held by another public authority or if the subject matter of the record is more closely related to the functions of the other authority.

When a request is received by your authority, it is to be entered into JADE and then the Information Manager should commence processing the application. Freedom of information is about access to government records. You cannot make a decision to transfer a request without first ensuring that your public authority holds no records in relation to the request. A reasonable search must be conducted.

When transferring a request to another public authority, you must notify the applicant of the new public authority and provide them with the details of the other Information Manager. They should also be advised that your authority holds no records in relation to the request.

*You must correspond with the Information Manager of the public authority that you wish to transfer the request to and ascertain whether they hold the records in question before you make a transfer. This step should be undertaken before you inform the applicant, before you transfer the request in JADE, and before you transfer the actual documentation received by your authority.*

It is critical to communicate with other Information Managers when considering a transfer, especially because as an applicant can make the same request to more than one public authority.

## **The Same Request Sent to More than One Authority**

Use the IM Network to ascertain whether other Information Managers have received the same request and are processing it. If your authority has received a request which was sent to multiple public authorities you do not need to transfer the request in JADE. However, you have to make a decision on every application that is submitted to your public authority, even if the decision is that you hold no records related to the request.

You should follow the normal procedures of formal acknowledgement in ten (10) calendar days and formal decision in thirty (30) calendar days, and remember to always outline the right of appeal in your

response letter. You may also include in your letter to the applicant the fact that the other public authorities which received the request, either from the applicant directly or through a transfer, will be responding separately.

*Each request is a valid request and has to be counted statistically in JADE, as it can relate to different records in the possession of each authority.*

### **Who “Holds” the Records?**

If two or more public authorities hold the same record and there is a dispute as to who should respond to the applicant, the Chief Officers of each public authority may need to be consulted and asked to make a decision on the matter. Relevant factors to consider are:

- Who created the record?
- Why the record was created?
- What are the functions of each authority pertinent to the record?

It is critical to remember that the applicant needs a response and it is for the Government to sort out whose record it is, i.e. to which public authority’s function does the subject matter relate. It is not fair to the applicant if the Cayman Islands Government cannot determine who “holds” the record.

Disagreements over who should respond to a request could possibly result in public authorities continually transferring the request to each other and no one wanting to make the decision. **There should never be “transfer ping-pong”!** The key factor is the subject matter of the records and the functions of the public authority that holds them.

### **Who Has the Records?**

If you receive a request and do not know which public authority holds information which relates to it, you will need to use the IM Network to ask other Information Managers if they hold relevant records. If the request is one that all authorities probably hold, you will need to send the request to all other public authorities (i.e. via email) and indicate this to the applicant in a letter.

## **How to Transfer Requests**

If your public authority holds no records relating to a request, you will need to contact the Information Manager of the authority which you believe holds the records. *You have to wait for them to verify that they hold the record in question and will make a decision on the request before beginning a transfer.*

After confirming that the Information Manager holds the records and will make a decision, you will need to transfer the request in JADE, send the physical file to that Information Manager, and advise the applicant that you do not hold any records in relation to their request but that it has been transferred to another authority which will be responding separately. You also need to advise the applicant of the new Information Manager's contact details.

## **Appeals to the ICO due to Transfers**

The Information Commissioner has issued under her Policy and Procedures that she will accept an appeal from an applicant on the following grounds:

“in relation to their request, a public body has failed to properly... transfer the request in time and/or appropriately transfer the request.”

Improper transfers and taking too long to transfer a request can possibly result in the applicant requesting an internal review or appealing to the Information Commissioner. This is a general procedural issue which should not warrant any sort of appeal, so please transfer only when appropriate and only after communicating with the relevant Information Managers.