

Independent Information Commission
Guidelines and Procedures for the Handling and Determination of FOI Appeals

WHEREAS, the Independent Information Commissioner (“Commission”) has been established under the Freedom of Information Act, as amended, (“FOI Act”) as a self-regulating oversight body responsible to oversee implementation of, and compliance with the FOI Act;

WHEREAS, Chapter 5 of the FOI Act authorizes the Commission to “receive, hear and decide all complaints as well as mediate disputes arising under this Act”, including serving as the sole quasi-judicial forum to hear and decide all appeals from denials, adverse decisions or failure to respond to FOI requests;

WHEREAS, the FOI Act further provides, amongst other things, that the Commission “shall enjoy operational, investigatory and regulatory autonomy, and general independence” in the exercise of its work, and with express authority “to develop access guidelines and procedures” in connection with the discharge of its statutory functions; and

WHEREAS, the Commission has determined the need for establishing requisite guidelines and procedures for the effective and transparent handling of disputes and appeals arising from or in connection with any case in which the FOI requester is dissatisfied by the response or failure to respond by a Public Body or a Private Body performing public functions or providing public service;

NOW THEREFORE, the Independent Information Commission, by the power vested in him by the Freedom of Information Act, does hereby rule, prescribe and regulate as follows:

Chapter 1.0 General Provisions

Section 1.1 Name; Citation: This instrument shall be called “Guidelines and Procedures for the Handling and Determination of FOI Appeals, but may **be cited as IIC Guidelines #1.**

Section 1.2. Scope: These Guidelines shall govern all processes and procedures for investigating, hearing of complaints and appeals, and issuing decision.

Section 1. 3. Purpose: The purpose of these Guidelines is to provide:

- A. Clear, easy and streamlined procedures for filing FOI Appeals with the Commission;
- B. Clear, streamlined and transparent rules and procedures for receiving, investigating, hearing and deciding FOI Appeals filed with the Commission; and

- C. To state clearly the procedures that the Commission shall follow to enforce its final decision made in an FOI appeal, subject to the rights of parties to appeal from any final decision of the Commission.

Section 1.4 Definitions:

Appeal: A request filed with the Commission for a review of an adverse decision or failure to respond in respect to an FOI request

Commission: The Independent Information Commission established by the FOI Act, as amended

Commissioner: The Head of the Commission, as confirmed by the Liberian Senate and appointed and commissioned by the President of Liberia, and/or any additional appointed and commissioner members of the Commission.

Complainant: A person, entity or institution who has filed an Appeal with the Commission, seeking a review/reversal of an adverse decision of the person's FOI request, or related to agency's failure to respond.

Judicial Review: The procedures established by law whereby a final decision of the Commission is reviewed by a Circuit Court of Liberia based upon an appeal taken to the Court by a party not satisfied with a final decision of the Commission

Respondent: A person, authority, entity, agency or institution to which a request for information is made shall be referred to as a respondent.

Head of Secretariat: The highest administrative officer of the Commission other than the Independent Information Commissioner.

Validation Officer: An officer of the Commission having such title and with the responsibilities to receive, record and send out all official communications.

Terms or words not specifically defined herein shall have their plain meaning, or where applicable, the meaning contained in the FOI Act or other applicable law.

Chapter 2.0 Filing, Service and scheduling of Appeals

Section 2.1 Right to File an FOI Appeal: Any party who is not satisfied with the determination of his/her/its FOI request or who does not receive a response within the legally defined time period shall, consistent with the FOI Act, have the right to appeal to the Commission. All appeals shall be filed with the Validation Officer or head of secretariat of the

Commission.

Section 2.2 Form of Appeal: An appeal may be filed with the Commission through any means provided in the FOI Act for the making of an FOI Request.

Section 2.3 Writing Preferred: Without prejudice to the generality of the provisions of Section 2.2, appeals are generally expected to be filed with the Commission in writing; provided that if the Complainant is a natural person who is not able to write, he/she shall request that the appropriate officer of the Commission reduce his/her oral appeal to writing as dictated by the Complainant. Any officer of the Commission requested under this Section shall oblige.

Section 2.4 Content of an Appeal: An appeal shall contain any information reasonably adequate to show that a public body or covered private entity had made an adverse decision or failed to respond in respect of an FOI request made to it by the Complainant. No appeal shall be denied on ground of inadequate information or any other technicality as long as a reasonable person can ascertain from the content of the appeal the name of the public body or private entity complained against and some allegation of an adverse decision by the public body or private entity.

Section 2.5 Registration/Validation of Appeal: An appeal shall be registered and filed upon receipt by the Validation Officer or his/her deputy or designee, and an appropriate mark shall be so impressed on the original of the appeal and the copy retained by the Complaint. If the Complainant mailed or called in the appeal, the Commission shall reduce the appeal to writing and provide a copy of the writing to the Complainant. The Commission may also issue any other additional documentation in evidence of the receipt, registration and filing of each appeal. The Commission shall maintain a book or register in which all Appeals filed shall be entered in the order of the date of filing.

Section 2.6 Receipt of Appeal: The Validation Officer or any person designated by the Independent Information Commissioner to receive Appeal shall issue a receipt acknowledging that an Appeal has been received by the Independent Information Commission and the date on which the appeal was perfected.

Section 2.7 Service of Appeal: Upon receipt of an appeal, the Validation Officer or Head of Secretariat shall within five (5) working days cite/notify the head of the public body or private entity of the public body or private entity whose adverse decision or failure to respond to an FOI request is the basis for the appeal. Each appeal shall be served on the Respondent by the Commission along with a written summary of the Appeal as produced by the Commission. All citations must be served on the person(s) named in the citation or on the person designated to receive papers for the said person or the ministry, agency or entity with which the person is working. In case of public entity or private entity, a citation shall be considered served if

delivered to its national head or regional head (as the situation may warrant) or delivered to a person working in the office of such head and a record of delivery is obtained.

Section 2.8 Content of Citation: The citation/notice shall state the name of the respondent, a concise statement of the appeal, and the time within which the respondent should file and serve his/her or its answer to the issue(s) raised in the appeal. A copy of the appeal shall be attached to said notice in order to provide the respondent with full information on the nature of the appeal.

Section 2.9 Notice of Hearing: Following the filing of an appeal and the answer thereto, a written notice of hearing shall be issued for the hearing of the appeal, stating the place and time where the appeal will be heard. If upon the receipt of a citation to appear a party is absent without an excuse, the hearing of the appeal shall be rescheduled. Except for good cause shown, the Independent Information Commissioner shall proceed to hear an appeal after two citations to appear. If following two citations, the public agency or covered private entity is absent for the third scheduled hearing, the Independent Information Commissioner shall proceed to hear and decide the appeal based on the facts presented and the law applicable thereto. Similarly, the Independent Information Commissioner shall declare an appeal as abandoned if the Complainant fails to appear for hearing after receipt of two citations to appear; provided that a declaration of abandonment shall not be made if the failure to appear is for good cause shown. Good cause may include the arrest and detention of a complainant, accident that causes serious bodily injury or any other serious situation that, in the discretion of the Independent Information Commissioner, is a reasonable excuse for not appearing.

Chapter 3: Time Limitations for Appeals

Section 3.1: Filing Appeal: An appeal from an adverse decision of failure to respond shall be filed with the Independent Commissioner within 30 calendar days of the decision or following the end of the agency deadline, as established in the FOI Act, for responding.

Section 3.2 Notice to Respondent: Within five (5) working days following the filing of an appeal, the Independent Information Commissioner shall send out a formal notice to the respondent informing the said respondent that his/her office has received an appeal from a decision it made or of its failure to have acted or responded to an FOI request.

Section 3.3 Time for Responding: Upon the receipt of a notice of appeal, the Respondent shall file an answer or response in writing to the appeal within ten working days, and have a copy served on the complainant.

Section 3.4 Time for Hearing: Hearing shall commence not less than five working days or more than ten working days following the date set by the Independent Information Commissioner for the filing of an answer. A citation/notice shall be sent out to the parties for the hearing of the appeal in the manner and form described in section 2.8. The Commission shall

serve all citations on the Respondent and Complainant no later than five (5) working days before the hearing of an appeal.

3.5 Postponement: After a citation has been properly served, a scheduled hearing of an appeal may be postponed if a party sends a written excuse to the Independent Information Commissioner stating that (i) she/he is either ill, (ii) scheduled to appear before a circuit court or a higher court on the same date and time, (iii) the citation was received less than five (5) working days before the hearing, or (iv) some other reason which in the sound discretion of the Independent Information Commissioner or any reasonable mind constitutes a valid excuse for the non-appearance of the party concerned.

3.6 Persistent Postponements: No hearing of an appeal should be postponed more than two times, unless a condition that is considered grave by an ordinary person occurs like sudden death of a child, sibling or parent, illness of a party, or any other reason which in the consideration of the Independent Information Commissioner presents a situation beyond the control of the party who is absent.

3.7 Number of Permitted Postponements: If a party does not appear on the day that an appeal is scheduled to be heard, the hearing will be postponed and another citation shall be issued promptly for a new hearing date, provided that no hearing shall be postponed more than two times for the non-appearance of a party without an excuse. For the avoidance of doubt, the Commission shall proceed to hear and decide a complaint notwithstanding the absence of a party if it is established that the absent party has been absent for at least two consecutive times after being duly cited.

3.8 Lateness: All hearings shall be at the time stated in the citation provided that a party that is late shall be given a grace period of fifteen (15) minutes before hearing begins.

3.9 Dismissal of an Appeal: Unless for good cause shown, a failure to comply with the time for filing an appeal shall be a ground for dismissal of an appeal, and a failure to comply with the time for responding to an appeal shall be a ground for denying and/or striking an answer/response.

Chapter 4: Manner of Hearing Appeal

- 4.1 **Order of Presentation:** At the hearing of the appeal, the complainant shall have the first opportunity to present his/her case. During the presentation, the Commissioner may ask as many questions as possible in order to understand the reason or rationale of the appeal. The respondent then shall have the opportunity to respond to the case presented by the complainant. As in the case of the complainant, the Commissioner may ask questions to understand the nature of the response by the respondent.
- 4.2 **Scope of Presentations:** All parties shall confine their presentations to the written Instruments filed before the Commissioner.
- 4.3 **Time for Presentation:** Each party shall be allowed equal time as agreed upon by the parties or as directed by the Commissioner.
- 4.4 **Prompt Decision:** At the close of both presentations, the Commissioner shall immediately make his/her decision or notify the parties on record or inform them that he/she will inform them of the time of his/her decision by a written notice/citation.
- 4.5 **Applicable Laws and Procedures:** All hearings before the Independent Information Commissioner shall be consistent with the FOI Act, the Administrative Procedure Act and the constitution of Liberia. There shall be no requirement for representation by counsel, although each party shall have a right to be assisted or represented by legal counsel.
- 4.6 **Rules of Procedures:** The straight rules of procedure as contained in the Civil Procedure Law of Liberia, particularly, the technical rules of evidence, contained therein, shall not be applicable to hearings before the Independent Information Commissioner.
- 4.7 **Recording of Hearing:** Unless the consent of each party is obtained or otherwise ordered by the Independent Information Commissioner, no hearings before the Commissioner shall be video recorded or photographed. Notwithstanding this rule, audio recording shall

be permitted for accurate recording of proceedings for transcription, in order to shorten the time of hearings or avoid delays due to typographical recordings.

- 4.8 **Decision to be in Writing:** All rulings, orders or decisions of the Independent Information Commissioner shall be provided in writing, and shall be made public.
- 4.9 **Enforcement of Decisions:** All decisions of the Independent Information Commissioner are and shall be binding, subject to the right of any party to seek judicial review. Where a party fails to obey or abide a decision of the Independent Information Commissioner which is not a subject of any appeal, the Commission shall promptly seek an order from the Civil Law Court for the enforcement of its decision. In all cases, the Commission shall within ninety (90) days as of the date of its decision seek an order for enforcement of its decision, which is not a subject of any judicial review or appeal to the Supreme Court.

Chapter 5 Post Decision Procedures

Section 5.1 Judicial Review: After a decision is made by the Commissioner, a party who is not satisfied with the said decision may seek a judicial review of same by doing the following:

- i. inform the Independent Information Commissioner on record that a review of the decision will be sought; or
- ii. send a written notice in the form of a letter or fill a form provided for such and file same with the registrar within five days of the decision of the Independent Information Commissioner; and
- iii. file a petition for judicial review with the nearest circuit court within thirty days.

Section 5.2 Circuit Court Procedures: The procedure for hearing a petition for judicial review of a decision of the Independent Information Commissioner shall be in keeping with the procedure and rules governing the hearing of cases by circuit courts.

Chapter 6.0 Review and Amendment; Effective Date

These Guidelines and Procedures may be reviewed and amended from time to time as deemed necessary by the Commission, provided that every amendment shall be duly notified to the Public.

Section 7. Effective Date

7.1 These Procedures shall become effective as of the date of publication.

ISSUED BY THE AUTHORITY OF THE POWER VESTED IN THE INDEPENDENT
INFORMATION COMMISSION BY THE FREEDOM OF INFORMATION ACT ON THE
___ DAY OF ___ 2015

Signed _____
M Bedor – Wla Freeman (Cllr.)
Independent Information Commissioner