

Joint Office Note No. 2
General Regulatory Chamber of the First-tier Tribunal
Administrative Appeals Chamber of the Upper Tribunal

DISCRETIONARY TRANSFERS OF INFORMATION RIGHTS APPEALS
On or after 18 January 2010

1. Rules 19(1), (2) and (3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) 2009 apply to an appeal under the Data Protection Act 1998 (“DPA”) or the Freedom of Information Act 2000 (“FOIA”), including DPA and FOIA as applied and modified by the Privacy and Electronic Communications Regulations 2003 and the Environmental Information Regulations 2004. They enable some or all of the questions arising in such appeals (“IR Appeals”) to be dealt with in the Upper Tribunal (“UT”) rather than the First-tier Tribunal (“F-tT”).

2. Rule 19(2) provides that the FTT may refer a case or preliminary issue to the President of the General Regulatory Chamber (“GRC”) with a request that the case or preliminary issue be considered for transfer to the UT. Under Rule 19(3) where such a request has been made the President of the GRC may, with the concurrence of the President of the appropriate chamber of the UT, direct that the case or issue be transferred to and determined by the UT. In IR Appeals the appropriate chamber of the UT will be the Administrative Appeals Chamber (“AAC”).

3. Ordinarily IR Appeals will be dealt with in the GRC, and the AAC will not become involved at the first-level appeal stage. Cases or issues will only be suitable for transfer where some special feature merits this course. Examples may be where a case is of considerable public importance or involves complex, sensitive or unusual issues.

4. *Cases where no request for transfer is made by any party:* If a GRC judge dealing with an IR appeal considers that there is some special feature which may merit transfer, then that judge should advise the Principal Judge of the IR jurisdiction of the GRC and the President of the GRC. If the President of the GRC considers that transfer of the case or a preliminary issue may be appropriate, the next steps will involve the AAC as well as the GRC. First, the President of the GRC will advise the lead judge of the AAC’s Information Rights judicial group (UT Judge Wikeley) (or, if he is unavailable, another judge of that Group) and the President of the AAC. Second, if the President of the AAC agrees that such transfer merits consideration then the GRC President will – unless there is good reason to the contrary - invite observations from all actual or potential parties on the proposed transfer. Third, *either* the GRC president will, if thought appropriate and the AAC President concurs, make a direction that the case or issue be transferred to and determined by the AAC, *or* the parties will be advised that the proposed direction will not be made.

5. *Cases where transfer is requested by one or more of the parties:* Upon receipt of such a request the GRC judge dealing with the case should notify the Principal Judge of the IR jurisdiction of the GRC and the President of the GRC. Unless there is good reason to the contrary the President of the GRC should at this stage invite observations from all actual or potential parties. If in the light of those observations the President of the GRC considers that transfer of the case or a preliminary issue may be appropriate, the next steps will be as set out in the preceding paragraph, modified as appropriate.