

HEARING BUNDLES – 2020

A party to whom a document has been provided in an appeal (or application) to the First-tier Tribunal (including those in bundles) may use that document only for the purpose of the proceedings in which it is disclosed, except where the Tribunal gives permission or the party who disclosed the document and the person to whom the document belongs agree – see the Upper Tribunal’s ruling in *DVLA v Information Commissioner and Williams (Rule 14 Order)* [2020] UKUT 310 (AAC)¹.

The Tribunal strongly suggests that the party preparing the bundles includes the above (or words which give the same information) on the front sheet of each bundle.

GOOD PRACTICE FOR BUNDLE PREPARATION AND PROVISION

“FOIA” means the Freedom of Information Act 2000

“EIR means the Environmental Information Regulations 2004

“disputed information” means the information requested from a public authority and withheld from the requester

The overriding objective

The overriding objective of the Tribunal is that cases are dealt with fairly and justly.

Dealing with a case fairly and justly includes: avoiding unnecessary formality and doing what is possible to enable a party to participate fully in the proceedings:

The parties will work together to ensure that all relevant documents are before the Tribunal².

Bundles in FOIA and EIR appeals

1. It is important that the Tribunal understands each party’s arguments in an appeal. To enable this to happen the Tribunal needs to have a bundle of papers showing the documents on which each party relies in support of their case.
2. For a bundle to help the Tribunal to identify relevant issues, parties need to carefully consider what needs to be in the bundle.
3. This Guide should be read alongside the Guidance on Electronic Bundles.

Who should prepare the bundle?

4. The Tribunal’s approach is that the starting point is that the Regulator (for these appeals the ICO³) will prepare the bundle.

¹ <https://www.gov.uk/administrative-appeals-tribunal-decisions/dvla-v-information-commissioner-and-williams-rule-14-order-2020-ukut-310-aac>

² The ICO is of course aware of their duty to put before the Tribunal all relevant evidence regardless of whether it is favourable to their own case or not – CIS/0473/2007 paras 36-37, a decision of Judge Jacobs, when a Social Security Commissioner

³ The ICO is the “Information Commissioner’s Office”

5. When a public authority has joined the proceedings as a second respondent, the Tribunal asks that they prepare any closed bundle.
6. When the appellant is a public authority, a commercial entity or legally represented it may be that they should prepare the bundle instead of the ICO – in these cases the parties should agree between themselves who will prepare/provide the bundles and inform the Tribunal of their agreement at the time the appellant is due to lodge their reply, if agreement cannot be reached by the date the Appellant's reply is due the parties must ask the Tribunal to decide.

Open bundle, closed bundle, general points about bundles

7. If the Tribunal needs to see the information in dispute, this will need to be placed in a separate bundle marked "closed" – see below for what can (and what should not) be in a "closed bundle".
8. If a document to be included in the bundle is illegible a typed copy, to be provided by the party relying on that document, must be included in the bundle next to it, suitably cross-referenced.
9. The bundle should be kept as relevant and compact as possible and avoid duplication of documents.
10. The bundle must contain an index with a description of each document and the page number.
11. The bundle must be paginated, clearly marked with the case name and appeal reference and, unless provided electronically, it must be bound⁴.

What should be in the open bundle?

12. The open bundle should usually include a copy of:
 - 12.1. the disputed Decision Notice
 - 12.2. the Notice of Appeal and Grounds of Appeal
 - 12.3. the Respondent's Response (and any Response by Additional Parties)
 - 12.4. the Appellant's Reply/Replies (and any Reply submitted by Additional Parties)
 - 12.5. copies of all orders and directions made by the Tribunal including any requests for directions made by any party to the proceedings
 - 12.6. the document requesting the information, the Public Authority's response (i.e. s.17 letter) and any document from the applicant requesting an internal review of the decision and the Public Authority's response to that request
 - 12.7. a written statement⁵ from any person on whose evidence a party relies; this will be their "evidence in chief" and therefore must be complete

⁴ Due to the risk of ring binders getting damaged in the post, the Tribunal does not require the party preparing the bundles to place them in ring binders prior to posting. If the bundles are not placed in a ring binder or lever arch file, the party should use treasury tags (or similar) to keep the bundles in order

- 12.8. any other necessary and relevant documents
13. The documents should be filed chronologically in the sequence listed above.
14. If parties cannot agree what is “necessary and relevant”, they can apply to the Tribunal for a decision whether a document can, or cannot, be in the bundle. It should be a joint application which includes the document(s) in question and each party’s submissions. The Tribunal will then be able to determine the issue.

Closed bundles – general points and what must not be in them

15. The closed bundle must clearly state the case name and number; it must be clearly marked: **“CLOSED Not to be disclosed to [name of relevant party] or to the public”**.
16. It must have its own index and, when there are closed versions of open documents, the closed index should include that information (e.g. “Closed copy of open bundle pages xx to yy”).
17. It must be paginated and, to ensure security of the closed bundle, each page should include the words “closed bundle” as header/footer, or the page numbers can be preceded by CB or CL.
18. During the course of the ICO investigation, correspondence usually takes place between the Public Authority and the ICO. If personal details such as name, email address, telephone numbers of the correspondents need to be kept out of the open bundle it is very unlikely that they need to go into the closed bundle. If a party asks that those sorts of details are in a closed bundle and kept from the open bundle they will need to make an application under rule 14(2) explaining why that party says the information is needed by the Panel and why serious harm would be caused to the person if the detail was in the open bundle.
19. If a *rule 14* application has been determined prior to the bundles being lodged, any application or correspondence about that application should not be included in the closed bundle (it may be included in the open bundle but only if it is relevant to an issue the Tribunal Panel is to decide). If the *rule 14* application is made at the lodging of the bundles, the open bundle should include the formal request – for example at the end of the Index.

What can be in a closed bundle?

20. The disputed information – if it is necessary for the Tribunal to consider the disputed information to fairly determine the appeal (see the [Practice Note – Closed Material in Information Rights Cases](#) dated May 2012).
21. Any documents (e.g. witness statements, submissions, correspondence) that, if disclosed (or if disclosed without edits being made), would reveal the nature or content of the disputed information.

⁵ The proceedings are civil, use of any witness statement form which refers to “section 9 of the Criminal Justice Act” must be avoided; on request the Tribunal will provide a suitable witness statement form

Documents for the bundle (including witness statements) and timing of the bundle

22. The Tribunal will give instructions to the parties about the bundles in correspondence or formal Case Management Directions; parties are expected to comply with the instructions given.
23. If the bundle is not provided electronically, the party preparing the bundle should ask the Tribunal how many copies the Tribunal requires, the minimum would be 2.

Bundles of Authorities⁶

24. If a party wishes to rely on a court or tribunal decision that party will provide an electronic copy of the authority to the other party/parties and the Tribunal.
25. If there are several authorities, a separate “Authorities Bundle” must be provided which is paginated and has an index.

What happens after the bundles are received?

26. If a closed bundle is received, it is checked by a Registrar to ensure compliance with the legal and procedural requirements of *rule 14*.
27. The Tribunal usually sends the bundles to the Judge/Panel about 2 weeks prior to the hearing; once the bundles are sent the Tribunal office will only send further documents to the Panel by electronic means.
28. If the matter is being dealt with at an oral hearing, the Tribunal will not always give parties a date for providing further submissions as the hearing is the time for submissions to be made. In absence of any direction about “skeleton arguments”, a party who intends to provide one should ensure it is with the Tribunal no later than **6 clear days** before the hearing date – this allows the Tribunal Panel to use it in their preparation for the hearing.
29. If the matter is a paper consideration:
 - 29.1. The Tribunal office will give parties 14 days to “add anything” to the bundles, this is the time for each party to provide any final written submissions about their case.
 - 29.2. If bundles are provided with the Information Commissioner’s response, the appellant’s opportunity to reply to the response is their opportunity to make final submissions about their case in general and, if necessary, provide additional documents for the bundle.
30. The Tribunal does not tell parties the date of a paper consideration, this enables the Tribunal to list cases more flexibly.
31. If a party seeks to rely on anything other than a document in the bundle or their skeleton argument / final written submissions (which should refer to the bundle pages where relevant), they must paginate the document(s) so they can be added to the current bundle and must provide an updated index to the bundle.

⁶ It may help to know that a decision of the Upper Tribunal or Court of Higher Authority binds the First-tier Tribunal; decisions made by other First-tier Tribunals may be of assistance as the Tribunal seeks to be consistent in its approach to legal principles.

Bundles at a hearing

32. Each party should bring their own copy of the bundle to the hearing as the Tribunal will not have a spare copy for them to use.
33. If witness evidence is relied upon:
 - 33.1. If the hearing is “in person”: the party who is calling the witness must ensure a spare and unmarked copy of the bundle is at the hearing for the witness(es) to use or that the witness(es) have an electronic copy of the bundle.
 - 33.2. If the hearing is being conducted by remote means, each party calling a witness must ensure each witness has a copy of the electronic bundle.