

Complaint Handling Protocol

I. Purpose of the Complaint Handling Protocol

The Review Committee for the Intelligence and Security Services (further: the Committee) has drawn up this complaint handling protocol to provide insight into the way it performs its role in handling complaints about GISS and DISS. The protocol describes the statutory task of the Committee, the composition of the Committee, the powers available to the Committee and the framework for assessing complaints. The following complaint handling protocol serves as guide to the Committee for dealing with complaints.

The complaint handling protocol is a public document. It can be consulted via the Committee's website (www.ctivd.nl) and is actively brought to the attention of all persons involved in the handling of complaints by the Committee.

II. Task

Pursuant to article 64 of the Intelligence and Security Services Act 2002 (ISS Act 2002) the Committee has the task of advising the ministers concerned on complaints about the conduct of GISS and DISS when implementing the ISS Act 2002 or the Security Screening Act. The Committee takes charge of examining and assessing the substance of complaints.

III. Composition

The Committee is composed of three members, including a chairman. The appointment of the Committee's members is provided for in the ISS Act 2002. At least two members, including the chair, hold a university law degree. Members are appointed for a period of six years and may be reappointed once.

The Committee is supported by a secretariat, which is headed by the Committee secretary. The secretariat is further composed of a number of review officers supported by secretarial staff.

Complaints are dealt with in smaller units by so-called investigation groups. An investigation group is composed of one Committee member and at least one review officer. Documents are drafted and adopted by the Committee.

IV. Powers

The Committee has direct and independent access to all data processed in the context of the ISS Act 2002 and the Security Screening Act. The minister concerned, the heads of the services and other persons involved in the implementation of these Acts must give their full cooperation. The Committee has access to all information systems of both GISS and DISS. The Committee itself decides which data and which cooperation it considers necessary.

When dealing with complaints the Committee may interview any and all persons involved in the implementation of the ISS Act 2002 and the Security Screening Act. In the first place these will be employees of GISS and DISS, but the Committee may also interview other persons. If

the Committee considers it necessary, it may hear witnesses under oath. Employees of the services cannot invoke their obligation of secrecy when they are heard by the Committee. The Committee may hear expert witnesses. Experts must perform their task impartially and to the best of their knowledge. When interviewing persons the Committee observes the requirement of source protection, which means that it ensures that nothing stated in its reports can be traced to individual persons interviewed by the Committee.

The Committee is authorised to access all places. The Committee requires the occupant's permission for entering a dwelling.

V. Assessment framework

When handling complaints about GISS or DISS the Committee assesses whether the conduct of the services was proper. The Committee bases its assessment on the standards of proper conduct established by the National Ombudsman.¹ Examples of standards of proper conduct are the standard of decent treatment, the standard of reliability (does the service act within the legal framework and does it fulfil its commitments) and the standard of reasonableness (does the service balance the various interests and is the outcome not unreasonable). Lawfulness of the services' conduct is regarded as an element of the standards of proper conduct. If the service concerned has acted improperly, this will result in an advisory opinion to declare (part of) the complaint well-founded.

The Committee gives an advisory opinion as to whether or not the complaint is well-founded. It is the minister who takes the final decision.

VI. Handling a complaint

a. Lodging a complaint

The Committee acts as an internal complaints advisory committee to the minister for complaints about conduct of GISS and DISS. This means that a person who wants to complain about conduct of GISS or DISS must lodge this complaint with the minister concerned. The Committee itself cannot decide to deal with a complaint. The minister assesses whether the complaint is admissible and must be dealt with. On this point the Committee can also advise the minister to declare the complaint inadmissible. If a complaint is suitable for amicable settlement, the minister may try and find a solution together with the complainant (informal disposal). The Committee is not involved in such informal disposal. If the minister decides to take up the complaint, he is required by law to hand over the complaint to the Committee. The Committee then takes charge of dealing with the substance of the complaint. This includes hearing the complainant, hearing the service

¹ The standards of proper conduct can be consulted at the website of the National ombudsman:
http://www.nationaleombudsman.nl/sites/default/files/behoorlijkheidswijzer_nl_februari_2014.pdf

employee(s) involved and examining the files. The minister cannot give the Committee instructions on how to deal with the complaint. Upon receipt of the complaint notice, a member of the Committee and at least one review officer are instructed to deal with the complaint (the investigation group).

b. First analysis of the complaint

On the basis of the complaint notice the investigation group examines whether the complaint must be considered manifestly ill-founded. A complaint is manifestly ill-founded if in the opinion of the Committee it is immediately clear that there cannot be any reasonable doubt about the finding that the complaint is manifestly ill-founded. This is the case when a complaint concerns matters that cannot reasonably be held to fall within the performance of tasks by the services. If the Committee holds the opinion that a complaint is manifestly ill-founded, it will not hear the complainant.

For reasons of due care the investigation group will check the information systems of the service concerned. If the check likewise does not produce any facts necessitating further investigation, the investigation group will immediately draft the advisory opinion and a report on findings (see below under *f.*).

c. Hearing the complainant

If the complaint is not manifestly ill-founded, the investigation group will invite the complainant to an interview to explain his complaint in greater detail. By speaking with the complainant the investigation group can, if necessary, obtain a better understanding of the complaint notice. The complainant may waive the right to be heard.

A report is prepared of the interview with the complainant. An audio recording is made of the interview for the purpose of preparing the interview report. The recording will be destroyed after the complaint has been dealt with.

The complainant is given the opportunity to inspect the interview report at the Committee's offices. If the complainant holds the opinion that it is not a correct factual record of the interview, a note of his comment is made to the report. The investigation group incorporates such comments in footnotes to the interview report and modifies the report if the comments give reason for doing so.

d. File examination

Based on the complaint and its further explanation by the complainant, the investigation group examines the files at the service concerned. It thus obtains all the information relevant to assessing the complaint. For this purpose the Committee itself has direct access to the digital information systems of the services. The Committee may furthermore require all information from the service which it deems necessary for investigating the complaint.

e. Hearing service employee(s) and any other person involved

According to the principle that both sides must be heard the investigation group gives the service concerned the opportunity to be heard and thus give its reaction to the complainant's allegations. It is for the service to decide whether or not to use the opportunity.

The investigation group may also consider it necessary for its assessment of the complaint the hear one or more of the service's employees. In that case the Committee will of its own initiative proceed to hear one or more employees. Furthermore, the investigation group may come to the conclusion that it is necessary to hear other employees of the service, including former employees.

Interview reports are prepared of the interviews of the persons heard. Audio recordings are made of the interviews for the purpose of preparing the interview reports. The recordings are destroyed after the complaint has been dealt with. Each of the persons who have been heard is given the opportunity to inspect the report of his own interview at the Committee's offices. If the complainant holds the opinion that it is not a correct factual record of the interview, a note of his comment is made to the report. The investigation group incorporates such comments in footnotes to the interview report and modifies the report if the comments give reason for doing so.

f. Documentation

The investigation group documents its findings on the basis of the complaint notice, the interviews and the file examination. Based on these findings the investigation group assesses whether the service concerned acted properly towards the complainant. The propriety or otherwise of the service's conduct leads to an advisory opinion that the complaint is well-founded or ill-founded.

The investigation group lays down its findings as well as the assessment and its conclusions in a report on findings. It sets out the assessment and its conclusions in an advisory opinion. The report on findings and the advisory opinion are submitted to the Committee. The Committee adopts the report on findings and the advisory opinion.

g. Sending advisory opinion, report on findings and interview reports

The Committee sends the adopted report on findings and the advisory opinion to the minister concerned, together with the interview reports. The minister decides on the complaint. The minister notifies the complainant of his decision. If the minister departs from the Committee's advisory opinion, he must send the advisory opinion to the complainant. The complainant is not granted inspection of the report on findings and the interview reports, otherwise than the aforementioned opportunity to inspect the report of his own interview.

h. Handling period

The period between receipt of the complaint by the minister and notification to the complainant of the minister's decision whether or not the complaint is well-founded is ten weeks. This period includes the



assessment of the substance of the complaint by the Committee, which takes six weeks.

The minister may extend the period of ten weeks once by four weeks. Further delay is only permitted with the complainant's written agreement.

i. National Ombudsman

If the complainant disagrees with the minister's decision on the complaint, he can lodge a complaint with the National Ombudsman.