

Complaints investigation protocol

I. Purpose of the complaints protocol

The Complaints Handling Department (hereinafter: Department) of the Review Committee on the Intelligence and Security Services (CTIVD) handles complaints about the conduct of the General Intelligence and Security Service (AIVD) and the Military Intelligence and Security Service (MIVD), the Coordinator of the Intelligence and Security Services and the Minister(s) concerned in implementation of the Intelligence and Security Services Act (ISS Act 2017) or the Security Screening Act. The Department uses this complaints protocol to offer insight into the way in which it implements its task when handling these complaints. Set down in this protocol are the Department's statutory duty, its composition, its investigatory powers and the framework for assessing a complaint. The complaints protocol acts as a guide for the Department to handle the complaint.

The complaints protocol is a public document. It can be accessed through the website of CTIVD (www.ctivd.nl) and is actively brought to the attention of everyone involved in a complaint handled by this Department.

II. Duty

Based on Section 97 of the Intelligence and Security Services Act 2017 (ISS Act 2017), the Department is charged with the investigation and assessment of complaints about the conduct of the AIVD, the MIVD, the Coordinator or the Minister concerned in implementation of the ISS Act 2017 or the Security Screening Act.

III. Composition

The Department consists of at least three members, including the Chair. The Chair of the Department is also a member of the CTIVD. The other members of the Department are not members of the CTIVD. The ISS Act 2017 regulates the appointment of members of the Department. The members of the Department, including the Chair, have a university degree in law. Members are appointed for a period of six years and can be re-elected once.

The Department is supported by the CTIVD's secretariat. The secretariat is led by the general secretary of the CTIVD. The secretariat consists of a number of review officers, an IT unit and secretarial support. Complaints handling is carried out in practice by so-called investigation groups. An investigation group consists of one member of the Department (the rapporteur) and at least one review officer. The investigation group conducts the investigation into the complaint and draws up a report with its findings and an advisory opinion regarding its decision. The report of findings and the decision about the merits of the complaint are adopted by the Chair and two members of the Department, including the rapporteur.

IV. Investigatory powers

The Department has direct and independent access to all data processed in the context of the ISS Act 2017 and the Security Screening Act. The Minister concerned, the heads of the services and others involved in the implementation of this legislation will provide full cooperation to the Department. The Department has direct access to all information systems of both the AIVD and the MIVD and it has the expertise necessary to use those systems. The Department establishes of its own accord which information and which cooperation it deems necessary.

In handling complaints, the Department may interview anyone involved in the implementation of the ISS Act 2017 and the Security Screening Act. In the first place this will concern AIVD and MIVD staff, but it could also concern other individuals. If the Department deems it necessary, it can hold hearings with these individuals under oath. Staff and former staff of the AIVD and the MIVD cannot invoke their duty of confidentiality if they are called to a hearing by the Department. The Department can call experts to hearings. Experts are obliged to perform their duty with impartiality and to the best of their ability. When drawing up its report, the Department will protect its sources; it will ensure that the contents of its reports cannot be traced back to individuals interviewed by the Department.

The Department is authorized to enter any premises. However, the Department must have a resident's consent to enter their home.

V. Assessment framework

In the context of handling complaints about the AIVD and the MIVD, the Department assesses whether the services' conduct was proper. It does so on the basis of the ISS Act 2017, the Security Screening Act and the guidelines of proper conduct used by the National Ombudsman.¹ Examples of proper conduct standards are the standard of decent treatment, the standard of reliability (does the service act within the legal framework, honestly and sincerely, does it do what it says and does it follow court rulings?) and the standard of reasonableness (does the service weigh the different interests and does it avoid coming to an unreasonable outcome?). The lawfulness of the AIVD and the MIVD's conduct is seen as a part of proper conduct.

VI. Handling a complaint

Lodging a complaint

Before a complaint can be filed with the Department, a complainant must first inform the Minister concerned of their complaint. The Minister concerned is the Minister of the Interior and Kingdom Relations (BZK) for the AIVD and the Minister of Defence for the MIVD. The Minister concerned is thus given the opportunity to give their view on the complaint. If the complaint is not handled properly, which the Department also takes to mean not handled within a reasonable time frame, then the complaint may be filed with the Department, if desired and if in the complainant's interest. If a complainant cannot reasonably be expected to first inform the Minister concerned, the complaint may be filed directly with the Department. This situation might arise if the relationship between the complainant and the service in question has been severely damaged. The complainant must substantiate that this situation exists.

The ministries have a complaints regulation describing the procedure that applies to the handling of complaints.

The law stipulates which requirements a notice of complaint must meet.² A notice of complaint must include the following: (i) the name and email or post address of the complainant, (ii) the date, (iii) a description of the complaint (what happened, who was involved and who was the conduct directed at?), (iv) the grounds of the complaint (what is the complaint based on?), and (v) how the internal complaints handling proceeded (how and when was the complaint filed with the Minister concerned,

¹ The proper conduct standards can be inspected through the National Ombudsman's website: <http://www.nationaleombudsman.nl/system/files/infomateriaal/Behoorlijkheidswijzer%20NL%20oktober%202016.pdf>.

² Section 115 of the ISS Act 2017.

what was the result of the complaints handling by the body, what were its conclusions and decision?). We ask every complainant to provide a phone number on which they can be reached.

Assistance and representation

In a complaints procedure, the complainant can be assisted or be represented by an authorized party. The Department may request the authorized party to produce a written authorization.

Interviewing a complainant in hearings

The investigation group can invite a complainant to further explain their complaint in an interview. By interviewing the complainant in a hearing, the wording of the complaint can be clarified if necessary. The complainant may waive the right to a hearing.

A concise report will be drawn up of the hearing with the complainant. A sound recording will be made of the interview with the complainant to aid the drafting of this report. The recording will be destroyed once the complaint has been settled.

Complainants are given the opportunity to inspect the interview report. Complainants can thus include a remark in the report if they feel that the facts of the interview have not been properly represented. The investigation group will incorporate these remarks either in the interview report itself or in the footnotes to the report.

Position of the Minister concerned

The Minister concerned and the individual to whose conduct the request relates are also given the opportunity by the Department to explain their position.

Settlement

After the interview with the complainant and after learning the Minister's position, the Department will decide in which way the complaint is to be settled. The Department can settle the complaint in the following ways:

- *Intervention*

The Department may opt to settle a complaint by an intervention. In that case, the Department will consult with the relevant service to see whether a speedy resolution is possible, for example in the case of complaints about the failure to decide on an application for access to data. If the intervention leads to an outcome that is satisfactory to the complainant, the Chair and two members of the Department will decide that the case is thus settled.

- *Mediation session*

Some complaints are more suited to a mediation session between the complainant and the relevant service. If both parties agree, mediation will be initiated and a mediator from the Department will lead the session. The aim of the session is to restore the rift between the complainant and the service.

- *Investigation concluded with a report*

The Department may opt to settle a complaint with a report. In that case, the complaint handling consists of conducting more detailed investigations and drawing up a report. The investigation may consist of file research and/or calling service staff to hearings and/or calling other individuals involved to hearings. The ways in which the Department conducts its investigation are described in more detail below. These modes of investigation are naturally also open to the Department if the complaint is settled by an intervention or by mediation.

Modes of investigation

In addition to hearing the complainant, an investigation by the Department may consist of the following investigatory actions:

Investigation into systems and archives

On the basis of the complaint, the explanation given accordingly by the complainant and the position of the Minister concerned, the investigation group conducts an investigation into the systems and archives of the service concerned and includes all information necessary to assess the complaint. For this purpose, the Department has direct access to the services' digital information systems. Furthermore, it can request from the services all information it deems necessary to conduct its investigation into the complaint and to further assess it for completeness.

Calling service staff and other individuals involved to hearings

The investigation group can come to the decision that to assess the complaint requires one or more of the service's staff to be interviewed in a hearing. The investigation group can also come to the conclusion that it is appropriate to interview individuals other than service staff, including former staff of the service.

A concise report will be drawn up of the hearing with the individuals involved. A sound recording will be made of the interview with the individuals involved to aid the drafting of this report. The recording will be destroyed once the complaint has been settled. The individuals who have been heard are given the opportunity to inspect the interview report. A note can be made in the report if the interviewee feels that the facts of the interview have not been properly represented. The investigation group will incorporate these remarks either in the interview report itself or in the footnotes to the report.

Hearing both sides of the argument and reporting

Based on the written notice of complaint, the interviews held and the file research, the investigation group sets down its findings in a report of findings. This report is submitted to the Minister concerned. Unless prevented by the security or other compelling interests of the state, the report will also be presented to the complainant. Any state secret information will therefore be removed from the report before it is presented to the complainant. It should be remarked here that not only investigatory powers actually deployed against a person constitute a state secret, but also the fact that investigatory powers were not deployed against a person. In such cases the Department will only be able to give its verdict on the well-foundedness of the complaint but not on the possible deployment of investigatory powers by the AIVD or the MIVD.

Both the complainant and the Minister concerned will be given the opportunity to respond to the report of findings. The investigation group will subsequently draw up a report, consisting of the report of findings and a decision regarding the merits of the complaint. The report is adopted by the Chair and two members of the Department, including the rapporteur.

The decision and measures

The Department assesses whether proper action was taken in the investigated matter. If the service concerned acted improperly, it will lead to the complaint, or an aspect of the complaint, being declared well-founded. That decision is binding on the Minister concerned.

If it finds in the investigated matter that certain conduct has been negligent or improper, the Department may also decide, if and insofar as connected to the conduct in question, that the following measures should be taken: (i) an ongoing investigation be halted, (ii) the use of an investigatory power be ceased, or (iii) data processed by the services be removed or destroyed. These instructions are also binding. The Department informs the complainant in writing of the fact that it has issued instructions to the service. The Department will further monitor whether the service follows these instructions and will inform the complainant accordingly.

Dispatch and publication

The Department sends the adopted report to the Minister concerned. The adopted report will also be sent to the complainant, albeit after state secret information has been removed. Within a fortnight of receiving the report, the Minister concerned will inform the complainant and the Department how the Minister intends to implement the Department's decision and within which time frame. If the complaint is settled by an intervention or by mediation, the Department will share the outcome with the Minister concerned in writing.

The outcome of the intervention or mediation will be published - in anonymous form and with any state secret information removed - on the website of the CTIVD. If the investigation has resulted in a report, it will be published - in anonymous form and with any state secrets removed - on the website of the CTIVD. The outcomes are also reported in the CTIVD annual report.

Time frame

The Department aims to settle a complaint within ten weeks of receipt. If unable to meet this time frame, it will inform the complainant and the Minister concerned in writing and by stating within which time frame it does expect to settle the complaint.

VII. Statutory limits to handling complaints

The ISS Act 2017 stipulates in which cases the Department is not authorized to initiate an investigation into a complaint.³ When it receives a complaint, the Department will first check whether it is authorized. If the Department is not authorized, it will inform the complainant in writing. The letter will further substantiate the Department's decision.

³ See Sections 120-122 of the ISS Act 2017.