

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2013

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information relating to a change to the commutation factors for the Police Pension Scheme. Following the disclosure of the majority of the information that the Home Office confirmed that it held, the complainant maintained that the Home Office had not identified all information it held that fell within the scope of this request.
2. The Commissioner's decision is that the Home Office did identify all relevant information that it held and so the request was handled in line with section 1(1)(a) of the FOIA. The Home Office is not, therefore, required to take any further action in relation to this request.

Request and response

3. On 21 January 2012, the complainant wrote to the Home Office and requested information in the following terms:

"I am currently carrying out research into the upgrading of the Police Commutation factors on the 19th April 2011 and would be obliged if you could forward , under the Freedom of Information Act, ALL documentation you hold in relation to this process.

In particular I would be keen to receive,

- i. Documentation regarding the commissioning of this review with relevant dates.*
- ii. Documentation regarding the delay of the review.*
- iii. Documentation regarding the impact of the SCAPE Discount Rate.*

- iv. Documentation in relation to the suspension of commutation calculations until after the budget on 23/3/2011.*
- v. Documentation regarding the proposed suspension of the previous commutation tables after the budget on 23/3/2011, i.e. between this date and the 19/4/2011."*
4. The Home Office responded on 11 May 2012, well beyond 20 working days from receipt of the request. Some of the information requested was disclosed whilst other information was withheld under the exemptions provided by sections 36(2)(b)(i) (inhibition to the free and frank provision of advice), 36(2)(c) (other prejudice to the effective conduct of public affairs) and 40(2) (personal information). The specific response to each of the five numbered parts of the request was as follows:
- i. Whilst the Home Office stated that it does not have responsibility for commissioning reviews, rather this is the responsibility of the Government Actuary's Department (GAD), some information held by the Home Office was disclosed.
 - ii. *"The April review was not delayed. A review would have been necessary in April in any event."*
 - iii. Information disclosed.
 - iv. *"Factors were not suspended. Old factors were effective to 19 April, then new factors were effective from 20 April."*
 - v. *"Factors were not suspended. Old factors were effective to 19 April, then new factors were effective from 20 April."*
5. The complainant responded on 23 May 2012 and requested an internal review. The complainant indicated at this stage that he did not wish the review to cover the citing of section 40(2). The Home Office responded with the outcome of the internal review on 18 July 2012. The conclusion of the review was that the exemptions provided by sections 36(2)(b)(i) and 36(2)(c) had been applied correctly.

Scope of the case

6. The complainant contacted the Commissioner by letter dated 14 August 2012 to complain about the way his request for information had been handled. At this stage the complainant was primarily concerned with the refusal to disclose some of the information he had requested, but he also raised other concerns, including the time that had been taken in providing a response to his request.
7. Following the ICO having contacted the Home Office for explanations about the citing of section 36, the Home Office amended its stance and

stated that it was now willing to disclose the majority of the information that had previously been withheld. This information was disclosed to the complainant on 28 November 2012.

8. Following this disclosure the complainant was asked to indicate if he was now satisfied and willing for this case to be closed informally, or, if he wished to continue with this case, to specify the grounds for this.
9. The complainant responded on 1 and 2 December 2012 stating that he was not satisfied with the disclosure and setting out his reasoning as to why he believed that the Home Office had not identified all the information it held that fell within the scope of his request. The analysis in this notice concerns whether the Home Office did identify all information that it held that fell within the scope of the complainant's request.

Reasons for decision

Section 1

10. Section 1(1)(a) of the FOIA provides that, upon receipt of an information request, a public authority must respond confirming or denying whether it holds information falling within the scope of the request. This means that a public authority should take steps to identify all relevant information that is held upon receipt of a request.
11. In this case the complainant believes that the Home Office has not identified all relevant information that it holds and has advanced various grounds for this. This analysis covers each of these grounds. If it is the case that the Home Office holds additional information to beyond what it identified previously, the Commissioner will find that the Home Office is in breach of section 1(1)(a) of the FOIA. In line with the practice of the First-tier Tribunal (Information Rights), the test applied by the Commissioner is whether on the balance of probabilities the Home Office holds further information.
12. The majority of the points made by the complainant relate to a letter dated 17 January 2011 from GAD to the Home Office that was provided to the complainant amongst the information disclosed to him. The complainant's first point is that this letter refers to another letter from GAD to the Home Office dated 27 October 2010, which the complainant believes would fall within the scope of his request and should have been disclosed to him.
13. The 17 January 2011 letter refers to the earlier letter in the following terms:

"I wrote to you on 27 October 2010 to discuss in general the impact of this change on the actuarial factors used in the Police schemes."

It then goes on to state that the 17 January 2011 letter would focus specifically on commutation factors.

14. This wording suggests that the earlier letter did not concern commutation factors specifically; instead it was more general than this. The view of the Commissioner is that this wording demonstrates that the earlier letter was not within the scope of the request, which concerns specifically commutation factors. On this point the Commissioner does not, therefore, believe that the Home Office has committed any breach of section 1(1)(a).
15. The second argument advanced by the complainant raised the issue that he had not been supplied with a copy of any reply to the letter of 27 October 2010. In line with the preceding paragraph, the view of the Commissioner is that, if any reply to that letter exists, this would not relate specifically to commutation factors.
16. The 17 January 2011 letter refers to a meeting that took place between representatives of GAD and the Home Office on 23 November 2010 at which commutation factors were discussed. The complainant believed that he should have been provided with a copy of minutes from this meeting.
17. The issue of the possibility of a record of this meeting was raised with the Home Office. It was asked to confirm whether a search had been carried out for such a record, and in relation to any information that had been located, whether this would now be disclosed to the complainant.
18. The response from the Home Office on this point was that a search had been carried out for a record of that meeting and that this search did not locate any relevant information. On the basis that the Home Office took into account that a record of this meeting may have been held and took steps to verify this by carrying out a search for this information, the Commissioner accepts that the Home Office is correct in stating that no information recording this meeting is held.
19. The complainant raised the issue that he had not been provided with a copy of any response made by the Home Office to the 17 January 2011 letter. In response to this point the Commissioner notes only that there appears to be no reason to assume that there was any reply to that letter. Indeed the final sentence of that letter allows for there to be no reply in that it refers to an assumption that will be made if the Home Office chooses to not respond.

20. The complainant referred to a named official within the Home Office and questioned why the information did not include correspondence to or from that individual. The Commissioner notes that this individual does work within an area relevant to police pensions within the Home Office, but short of further explanation from the complainant does not consider that fact alone to constitute evidence that the withheld information should be expected to include correspondence with that individual. Neither does the 17 January 2011 letter make any reference to correspondence with that individual.
21. The complainant referred to the response to part (i) of his request having given the date of 31 March 2011 for the commissioning of the review of commutation factors. The complainant argued that the 17 January 2011 letter showed that discussions of the commissioning of this review had begun earlier than this.
22. The Commissioner notes that the Home Office also stated in its response to this request that it is not responsible for the commissioning of such reviews, rather this would be done by GAD. The view of the Commissioner here is that the Home Office identified what information is held that was relevant to this request and disclosed it to the complainant and he can find no fault through the actions of the Home Office in this regard.
23. In response to point (ii) of the request the Home Office stated that the review of commutation factors had not been delayed. The complainant believed that the 17 January 2011 letter showed that this review had been delayed and so this showed that the response of the Home Office on this point had been "*dishonest*". The view of the Commissioner is that this letter does not include any evidence of a delay to the review of the commutation factors and so he does not find any issue with the response of the Home Office on this point.
24. The complainant referred to the "*SCAPE discount rate*" and appeared to suggest that the content of the letter of 17 January 2011 constituted evidence that the Home Office held additional information about this to that which was disclosed. The Commissioner, however, can see no such evidence in this letter.
25. Finally, the complainant believed that the Home Office had misread point (v) of his request and had searched for information about an *actual* suspension, rather than about a *proposed* suspension. This issue was raised with the Home Office by the Commissioner. The response of the Home Office to this point was that it had read the request correctly and that a search had been carried out for information about a proposed suspension. This search did not locate any information falling within the scope of this request.

26. The conclusion of the Commissioner for the reasons given above is that the Home Office correctly identified all information it held that fell within the scope of the complainant's requests. There was, therefore, no breach of section 1(1)(a) of the FOIA through the handling of these requests and the Home Office is not required to take any further action.

Sections 10 and 17

27. The complainant raised the issue of the time taken by the Home Office to provide a substantive response to these requests. Whilst holding letters were issued to the complainant in the interim stating that extra time was required in order to consider the balance of the public interest, the internal review response acknowledged that the time taken to provide a substantive response to this request was excessive.
28. The Commissioner agrees that the delay in providing a substantive response was excessive; his approach is that, in general, a full response should always be provided within 20 working days, but that any extension to the public interest should be, in any event, for a maximum of a further 20 working days.
29. In failing to respond substantively to this request within a reasonable period the Home Office did not comply with the requirements of sections 10(1) and 17(3) of the FOIA. It should ensure that there is no repetition of the delays in this case in relation to future requests.

Right of appeal

30. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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