

Freedom of Information Act 2000

Decision notice

Date: 2 April 2013

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

Decision (including any steps ordered)

1. The complainant requested information about compensation payments made to organisations who comply with the Regulation of Investigatory Powers Act 2000. The Home Office stated that it does not hold the information. The Commissioner's decision is that the Home Office does hold some relevant information within the scope of the request.
2. The Commissioner therefore requires the public authority to issue a fresh response to the complainant.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 10 April 2012, the complainant wrote to the Home Office and requested information in the following terms (numbers added later by the complainant for reference):

"I would like to receive details of payments made by the government to the holders of communications data in order to compensate for the costs involved in complying with notices under the Regulation of Investigatory Powers Act 2000, Section 24.

For each financial year since the payments commenced, please provide

- 1) *a list of all the communication service providers or other bodies who received payments that year,*
 - 2) *along with the total payments received by that body in that year.*
 - 3) *Please also provide the annual total of payments made.*
 - 4) *Please also provide a brief description of how the payment to each communication service provider was calculated, for example distinguishing between a payment for capital equipment from a payment calculated on the basis of a fee per data request.*
 - 5) *For each financial year please also provide any reports or other commentary by internal or external auditors into the accuracy of the records used for calculating payments."*
5. The Home Office responded on 10 May 2012. It stated that it held relevant information but that it was exempt from disclosure under sections 24(1) (National Security), 43(2) (Commercial Interests) and 31(1)(a), (b) and (e) (Law Enforcement).
 6. Following an internal review the Home Office wrote to the complainant on 17 August 2012. It stated that the exemptions applied, but it also stated that the information requested for item 3 was not held by the Home Office.
 7. To support this view, in its internal review the Home Office stated that it "only holds a record of payments this Department makes, it does not hold a central record of all payments made by the Government to [communication service providers]."
 8. In its submissions to the Commissioner this argument was expanded to also include item 4 of the request. For both items the complainant has requested details of payments made "by the government". The Home Office has argued that it only holds information about its own payments, which is considered to be a "partial account" of the requested information. As such, the Home Office's view is that the information sought by the complainant is substantively different from the information held. This led it to conclude that under the terms of the Act it does not hold the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 22 October 2012 to complain about the way his request for information had been handled. He specified that his appeal to the Commissioner concerns only items 3 and 4 of the request.

10. The Commissioner considers the scope of the case to be whether, under the terms of the Act, the Home Office holds information relevant to items 3 and 4 of the complainant's request.

Reasons for decision

11. Section 1 of the Act states that:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. The Commissioner has considered whether it can be said that the Home Office holds "information of the description specified in the request". If this is so, then section 1 applies and the Home Office would be obliged to act accordingly; if not, then the Home Office is correct to say that no information is held.
13. The request concerns payments made by "the government". The Home Office has confirmed to the Commissioner that it does hold relevant information about its own payments. It also provided the Commissioner with examples of where this information has been disclosed in the public realm.^{1 2}
14. However, the Home Office stated that whilst it holds total payments made to communication service providers by the government for capital payments (i.e. equipment), it only holds operational payments (i.e. provision of data from provider) made by the Home Office. It contends that this is a partial account of the information sought and could not

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<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/txt/91012w0131.htm> Under 'Internet' (n.b. reference for footnote 2 is on page 4)

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<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130128/txt/130128w0001.htm> Under 'Data Protection'

provide the "total" amounts for item 3. This led the Home Office to argue that the requested information was distinctly different from the recorded information held. The Home Office concluded that this difference was such that it can say that no information is held.

15. With respect to item 4 of the request, the complainant informed the Commissioner that the "brief description" sought would only need to be in general terms such as a percentage for the different types of payments made to a communication service provider. The Commissioner expressed this view to the Home Office during his investigation to help clarify the scope of the complainant's request.
16. In its response to the Commissioner the Home Office provided two responses based on different interpretations of the request. Firstly, it addressed the request as if it asked for a general description of how the payments are calculated without any of the specified detail passed on by the Commissioner. Secondly, it addressed the request as one for information about payments that have already been made to communication service providers.
17. With regard to the first interpretation, the Commissioner considers that the description provided is of use to the complainant. However, whilst it might be possible to interpret the request in this way it is clearly at odds with the specification provided by the complainant.
18. With regard to the second interpretation, the Home Office stated to the Commissioner that the smallest disaggregated costs it could provide was the same as for item 3. That is, a total of payments made to communication service providers by the government for capital payments, but only operational payments made by the Home Office. It again concluded that no information was held, as the level of detail specified within the request could not be provided.
19. The Commissioner considers the Home Office's view for items 3 and 4 is incorrect. Whilst he accepts that the Home Office does not hold all of the information relevant to the complainant's request, it is inaccurate to say that no relevant information is held. If the Home Office contends that it only holds a partial account then it clearly holds parts of the whole that the complainant requested. These component pieces of information about payments are relevant to the description specified in the request.
20. In the First-Tier Information Rights Tribunal case of Johnson and IC v the Ministry of Justice there was consideration of when a public authority can be said to hold information:

*"The focus of the Act is on the content of the information...when considering whether information is "held", the focus must be on the information itself, rather than on where or how it is recorded."*³

21. The Commissioner considers this to be applicable in this case. The content of the partial information held by the Home Office is relevant to the request and so comes within the scope of the request. Merely because the relevant information is not held in its entirety does not justify the Home Office's conclusions that no relevant information is held at all.

Summary

22. The Commissioner's decision is that the Home Office holds information relevant to the complainant's request and was incorrect to state that no information is held. As such, the Home Office is obliged under the terms of the Act to issue a fresh response to the complainant.

³ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i90/Johnson.pdf>
paragraph 42

Right of appeal

23. 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

24. 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.
25. 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

Alexander Ganotis
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