

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2014

Public Authority: Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner (the Commissioner). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. He is therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant made a freedom of Information request to the ICO for information regarding the number of times it had given a Civil Service Department or Non-Departmental Public Body "permission" not to disclose details of the number of complaints which have been made to them under the Public Interest Disclosure Act 1998. The ICO refused the request under the exemption in section 21 of the Act (information accessible by other means).
2. The Commissioner has decided that the section 21 exemption was correctly applied. He requires no steps to be taken.

Request and response

3. On 14 January 2014 the complainant made a freedom of information request to the ICO which read as follows:

1) The number of times you have given any Civil Service department or Non-Departmental Public Body permission not to release information under the Freedom of Information Act regarding the number of complaints which have been made to them under the Public Interest Disclosure Act 1998 (for example you have agreed with them the request was vexatious) Please provide the information for the years 2007 – 2013 only.

2) Please tell me what department or Non-Departmental Public Body it related too.

3) Please tell me what the matter was, that had been raised with them under the Public Interest Disclosure Act, that you agreed with them did not need to be released."

4. The ICO responded on 24 January 2012 when it asked the complainant to clarify the information he was seeking. It also explained that it does not give "permission" to public authorities to withhold information but instead issues decisions on whether a public authority has dealt with a request for information in accordance with FOIA.
5. The complainant declined to clarify his request further and the ICO issued its substantive response on 6 February 2014 at which point it said that, if the request was for information on the number of decisions which involved requests for information about complaints made under the Public Interest Disclosure Act (PIDA), then this information was exempt under the section 21 exemption as it was available on the ICO's website. The complainant was directed to the ICO's website and shown how he could search for the information he wanted. He was also directed to 3 particular decision notices which involved requests for information about the PIDA.
6. The complainant subsequently asked the ICO to carry out an internal review of its handling of his request although he did not say why he disagreed with its initial response. The ICO presented the findings of the review on 6 March 2014. The review upheld the decision to apply the section 21 exemption, however, it also said that it was also relying on section 12 of FOIA because it was not possible to provide any further

information to the complainant without exceeding the appropriate limit.

Scope of the case

7. On 14 March 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner agreed that the scope of his investigation would be to consider whether the ICO is entitled to rely on the exemptions cited as a basis for refusing his request.

Reasons for decision

Interpretation of the request

8. In its response to the Commissioner the ICO explained that its initial interpretation of the request was that the complainant was only interested in formal outcomes provided in decision notices issued under section 50 of FOIA. It said that it reasonably believed that only a formal decision could be described as the ICO giving a public body permission to rely on a given exemption but that it also wanted to clarify if the complainant was also interested in complaints received about the Public Interest Disclosure Act, but which did not lead to a formal decision. No clarification was provided, so therefore it continued to deal with the request as it stood based on what it believed to be a reasonable interpretation. The refusal notice explained that decision notices are available on the ICO website and therefore exempt under section 21 FOIA.
9. At the internal review stage the ICO also explained to the complainant how there could have been complaints made which fell into the scope of the request but were informally resolved and so there would be no decision notice. This wider reading of the request was intended, it said, to provide some assistance to the complainant, offering a broader view of the casework information it holds. Although the complainant had initially refused to clarify the scope of the request it said that it wanted to include the potentially broader scope in its internal review for the sake of completeness.
10. However, it now said that it considers that a request which asks about instances where the ICO has given "permission" or "agreed" something could reasonably be limited to the cases where decision notices have

been served and that it would base its response to the Commissioner on its original interpretation of the request. With that in mind, it maintained its reliance on section 21 and withdrew its reliance on section 12 Of FOIA.

11. The Commissioner considers that in the absence of any clarification from the complainant the ICO was correct to interpret the request in the way it did. The Commissioner's view is that public authorities should interpret requests objectively and avoid reading into the request any meanings that are not clear from the wording. Therefore, the Commissioner has gone on to consider whether the section 21 exemption was correctly applied to the complainant's request as interpreted by the ICO.

Section 21 – Information accessible by other means

12. Section 21 provides that information which is reasonably accessible to the applicant by other means is exempt.
13. In order for section 21 to apply the information must be accessible to the particular applicant who requested the information. Therefore a public authority will need to take into consideration the particular circumstances of the applicant when deciding to apply the exemption.
14. The Commissioner had asked the ICO to explain why the requested information was reasonably accessible to the complainant specifically.
15. In response the ICO explained that its decision notices are available on the ICO website via a search engine. It said that it appeared that the complainant has internet access as his request was made via email and he has not indicated that accessibility [to the internet] is an issue. In its response to the complainant it highlighted three specific decision notices which relate to what it understood the complainant was looking for. This being, information about complaints made to the ICO concerning requests made to 'civil service departments' about the Public Interest Disclosure Act. It explained to the complainant how it found these particular decision notices.
16. The Commissioner has considered the ICO's response and is satisfied that the requested information can be found on the ICO website and is readily available using the search engine. In any event the ICO actually provided the complainant with links to 3 decision notices which involved requests for information on complaints made under the Public Interest Disclosure Act. The information was sent via email to the complainant

which it appears he received. In light of this the Commissioner is satisfied that the requested information is accessible to the complainant by other means and that therefore the section 21 exemption is engaged. Section 21 provides for an absolute exemption from disclosure, therefore there is no public interest test to apply.

Right of appeal

17. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Steve Wood
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