

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 June 2015

Public Authority: Information Commissioner's Office

Address: Wycliffe House

Water Lane

Wilmslow

SK9 5AF

Decision (including any steps ordered)

1. The complainant requested information about Privacy and Electronic Communications Regulations complaints received by the Information Commissioner's Office (ICO). In its response, the ICO said that some of the requested information is exempt from disclosure under section 40(2) (personal information) and that some is exempt under section 31 (law enforcement). This is a qualified exemption and on 11 March the ICO told the complainant that it intended to carry out a public interest test in respect of the section 31 exemption. The ICO therefore extended the response time and subsequently said it expected to provide a full and final response by 30 April 2015. It provided a final response on 7 May.
2. The Commissioner has reviewed how this request was handled and his decision is that the ICO has breached section 17(3) of the FOIA.
3. The ICO has now provided a response and the Commissioner does not therefore require it to take the any further steps.

Request and response

4. On 11 February 2015, the complainant wrote to the ICO and requested information in the following terms:

"For those complaints disclosed in the first part of the request (i.e. the complaints received by the Commissioner in respect of various political parties in the UK) could you please now provide the following information:

(a) the full content of the complaint received by the Commissioner.

(b) the full content of any correspondence sent by the Commissioner to the political parties concerned together with the responses received thereto."

5. The ICO responded on 11 March. It said that the information the complainant had requested at part (a) is exempt from disclosure under section 40(2), by virtue of 40(3)(a)(i) as it is the personal data of third persons.
6. It said the information requested at part (b) is exempt from disclosure under section 31 as this information concerns law enforcement. The ICO explained that since this is a qualified exemption, it was in the process of carrying out the public interest test. It extended the time it would need to respond to this part but did not provide a specific date by which it expected to respond.
7. In response to further communication from the complainant, on 16 April the ICO told the complainant that it aimed to provide a full response to his request by 30 April. It apologised for the delay.
8. The ICO provided a response on 1 May 2015. It said that information requested at part (a) that is not exempt under 40(2), is exempt under section 31. It said that some of the information requested at part (b) is also exempt under section 31 because disclosing this information, and information requested at part (a) that it also considers is exempt under section 31, would prejudice the ICO's regulatory function. It had concluded that the public interest favours maintaining this exemption.
9. The ICO said it was disclosing some information requested at (b) - its correspondence to political parties concerned - with information covered by the exemptions under 31 and 40(2) redacted. However, the ICO omitted to attach this information to the email and sent it to the complainant on 7 May.

Scope of the case

10. The complainant contacted the Commissioner on 1 May to complain about the way his request for information had been handled. At that point he was dissatisfied that he had not received a full response from the ICO. The ICO sent its response by email later the same day and sent the disclosed information on 7 May.

11. The ICO provided an initial response within the 20 working days that is a requirement of the FOIA. It said it needed more time to provide a full response because of the public interest test considerations. The Commissioner has therefore focussed his investigation on whether the ICO met its obligations under section 17(3) of the FOIA.

Reasons for decision

12. Section 1(1) of the FOIA provides that 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.'

13. Section 10 of FOIA says that a public authority must respond to a valid request for information within 20 working days of receiving the request.
14. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response including public interest considerations by a maximum of a further 20 working days. This would allow a public authority 40 working days in total to respond.
15. In the circumstances of this case, the ICO contacted the complainant in writing within the standard time for compliance – the request was submitted on 11 February, and the ICO initially responded on 11 March. It told the complainant it was seeking to rely on the section 31 and 40(2) exemptions and that, because section 31 is a qualified exemption, it was extending the time for its full response while it considered the associated public interest test.
16. The ICO's full response was due by 13 April 2015, but was not received by the complainant until 7 May, which meant the ICO took seven weeks to consider the public interest test. The Commissioner's guidance 'Time limits for compliance under the FOIA' explains that that a reasonable extension of time would normally be an additional 20 working days. In the absence of any exceptional circumstances to justify the period of time taken the Commissioner finds that the ICO breached section 17(3) of the FOIA. The ICO also breached section 10(1) of the FOIA.

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: 0870 739 5836

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
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF