

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 January 2017

**Public Authority:** Information Commissioner's Office

**Address:** Wycliffe House  
Water Lane  
Wilmslow SK95AF

#### **Decision (including any steps ordered)**

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1. This notice relates to a complaint about how the Information Commissioner's Office (ICO) dealt with a request for information. As such the ICO is placed in the unusual position of having to investigate itself. To avoid confusion this notice will refer to the 'ICO' when discussing the Information Commissioner's Office as the subject of the complaint. The term 'Commissioner' will be used to refer to the Information Commissioner as the body undertaking the investigation as the regulator of FOIA.
2. The complainant has requested communications between the ICO and the Royal Borough of Kensington and Chelsea concerning FOI complaints about two individuals. The ICO says it does not hold this information.
3. The Commissioner's decision is that, on the balance of probabilities, the ICO does not hold the requested information and has complied with its obligations under section 1(1) of the FOIA.
4. The Commissioner does not require the ICO to take any steps.

#### **Request and response**

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5. On 13 June 2016, the complainant wrote to the ICO and requested information in the following terms:

*"Following our telephone conversation this afternoon can forward me all email communications between the Information Commissioner Office and Royal Borough of Kensington and Chelsea relating to FOI complaints made about Town Clerk [Individual 1] and Housing Director [Individual 2]."*

6. The ICO responded on 9 July 2016. It said it does not hold the requested information.
7. Following an internal review the ICO wrote to the complainant on 29 July 2016. The ICO explained the process by which complaints are submitted. It confirmed that it does hold two complaint cases that concern the two individuals named in the request but that these are complaints that the complainant had submitted to the ICO himself. The ICO confirmed that the complainant had been advised that he could submit a request for the correspondence held on these two complaints, if he chose. The ICO upheld its original position that it holds no information within the scope of the complainant's request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 11 August 2016 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether the ICO has complied with its obligations under section 1(1) of the FOIA.

### **Reasons for decision**

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10. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled a) to be informed whether the authority holds the information and b) if it does, to have the information communicated to him or her.
11. In its submission, the ICO has told the Commissioner that the complainant had submitted an earlier request on 4 May 2016, namely:  
*"I request all Freedom of Information requests data the ICO holds on Royal Borough of Kensington and Chelsea Town Clerk [Individual 1] and Housing Director [Individual 2] including the number of FOI complaints made to the ICO relating to the same individuals."*

12. On 26 May 2016 the ICO asked the complainant to clarify this request. It explained to the complainant that complaints under the FOIA are applications to the Commissioner, under section 50 of the FOIA, for a decision on whether a request for information the applicant has made to a public authority has been dealt with in accordance with the requirements of Part I of the FOIA. Therefore, a 'submitted about' party would be a public authority and not the individual at the authority who handled the request. In response, the complainant submitted the request that is the subject of this notice.
13. At this point, the ICO says it searched its electronic case management system for complaints under the FOIA where the 'submitted about' party was Individual 1 or Individual 2, referred to in the request. The search returned no complaints. The ICO therefore confirmed to the requestor that it does not hold the information he had requested.
14. In order to assist the complainant, the ICO says it also searched its electronic case management system for all the FOI complaints since April 2014, where the submitted about party was the Royal Borough of Kensington and Chelsea (RBKC). This identified 18 complaints. Out of the 18 completed cases the ICO found two cases where the information requested was about either Individual 1 or Individual 2. Both of these cases had been submitted by the complainant.
15. The ICO advised the complainant that he could make a request for the correspondence on these cases and it would be dealt with as a subject access request under the Data Protection Act. The ICO has confirmed that it has since provided the complainant with copies of this correspondence, as well as correspondence on the other 16 cases referred to above.
16. The ICO has referred the Commissioner to the complainant's request for an internal review. In this correspondence, the complainant writes:

*"The Ombudsman [sic] RBKC reports clearly state from 2014-2016 the public has made over 40 complaints relating to RBKC housing. It will be only normal for the public to also make similar housing complaints to the ICO and since [Individual 1] and [Individual 2] are the executive decision makers their names would appear on these complaints. On that note I'm unsatisfied with the way you have handled my FOI and request a review."*
17. The ICO has observed that it is not clear why the complainant considers that there should be a correlation between the number of complaints received by the ICO and by RBKC, about what are very different issues. It has noted that the complainant's request was for a copy of the

communications with the ICO about FOIA complaints submitted about the two individuals in question.

18. The ICO says it cannot rule out the possibility that it has received complaints concerning these two individuals in the past. It says its casework is, however, only retained on its case management system for two years after the last activity on the case, unless there is a reason to preserve it. This is in-line with its Retention Schedule.
19. The Commissioner has considered the ICO's submission and explanation and is satisfied that, on the balance of probabilities, the ICO does not hold the information that the complainant has requested. She considers that the ICO has handled the complainant's request satisfactorily.

## Right of appeal

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20. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**