

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2017

Public Authority: House of Commons

Address: Westminster

London

SW1A 0AA

Decision (including any steps ordered)

1. The complainant had requested copies of communications between Keith Vaz MP and the Speaker's Office from June 2009 to 14 September 2016.
2. The complainant alleges that the House of Commons breached its duty to him to provide advice and assistance when handling the request.
3. The Commissioner's decision is that House of Commons did not breach its duty to provide advice and assistance within the meaning of section 16 FOIA in its handling of the request.
4. No steps are required.

Request and response

5. On 18 October 2016, the complainant made the following request for information under the FOIA :

- Copies of communications between Keith Vaz MP and the Speaker's Office from June 2009 to 14 September 2016.

6. The House of Commons ("HoC") responded on 18 October 2016 by saying as follows;

"Information relevant to your request of communications between Keith Vaz MP and the Speaker's Office is held by the House of Commons but it is exempted from disclosure in accordance with section 36(2) (c) FOIA.

The Speaker of the House of Commons has formed the reasonable opinion, under the above sections of the Act, that disclosure of these documents would be likely to prejudice the effective conduct of public affairs. In the case of the House of Commons, Section 36 of the FOIA provides an absolute exemption and the public interest test does not apply”.

7. The HoC provided an internal review on 15 November 2016 in which it maintained its position

Scope of the case

8. The complainant contacted the Commissioner, on 16 November 2016, to complain about the way his request for information had been handled.
9. The Commissioner, on 19 December 2016, was given a copy of a certificate signed (pursuant to sections 36(7) and 34 of FOIA) by the Speaker of the House of Commons, dated 3 November 2016, in relation to the above withheld information.
10. The Commissioner informed the complainant that in her view the HoC had legitimately relied on sections 36(7) and 34 of FOIA to withhold the requested information.
11. On 14 February 2017, the complainant informed the Commissioner that whilst he no longer challenged the validity of the HoC reliance on sections 36(7) and 34 of FOIA he felt that it was in breach of the duty to provide advice and assistance pursuant to section 16 of FOIA. He asked the Commissioner to adjudicate on that point in a Decision Notice.
12. The Commissioner agreed to do the same, which is to adjudicate on the section 16 issues only.

Reasons for decision

13. Section 16 of the FOIA states that a public authority has a duty to provide advice and assistance to requesters “so far as it would be reasonable to expect the authority to do so”.

14. Section 16(2) says that if a public authority conforms to the section 45 Code of Practice¹ ("Code") in relation to providing advice and assistance, it will have carried out its duty under section 16(1).
15. The complainant has maintained to the Commissioner, in the context of the alleged breach of section 16, that;
 - The Speaker did not give any specific reason, beyond the general prejudice to the conduct of public affairs, for signing the certificate.
 - It is quite possible that the HoC could have assisted him to reframe his request so that it did not prejudice the conduct of public affairs.
16. The HoC maintained to the Commissioner² that the request was clear and thus obviated the duty to provide assistance to make it "clearer". Such was the nature of the request that it could not be modified so as not to engage section 36.
17. In making her determination as to whether the HoC has complied with section 16, the Commissioner has had regard to the Code. The Code's provisions concerning the giving of advice and assistance make it clear that they are primarily concerned with, inter alia, the duty to assist the applicant, if necessary, to clarify the request (paragraphs 8-11). That is "...authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested" (paragraph 8).
18. That this is the ambit of the duty under section 16 as far as the Code is concerned, is emphasised by paragraph 12 ("Limits to advice and assistance") which provides that if, after the provision of the required advice and assistance, "the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification."
19. There is no difficulty with the complainant's description of the information in his request; he had framed his request clearly.

¹ <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

² Correspondence dated 9 March 2017

20. Once it is found that the request is clear, the Commissioner's guidance, based on Michael King v the Information Commissioner (EA/2010/0126) and Berend v the Information Commissioner and LBRT (EA/2006/0049), is that "there is no need for the authority to exercise its right to seek clarification under section 1(3), and therefore no duty under section 16 to provide advice and assistance to help the requestor provide that clarification...".
21. The Commissioner further notes that it was not the request, or the way in which it was framed, that was likely to prejudice the conduct of public affairs, but, in the opinion of the Speaker, the disclosure of the information requested. Reframing the request could not possibly overcome this prejudice.
22. Accordingly the HoC has complied with the Code as it concerns the provision of advice and assistance under section 16 of the FOIA. In accordance with section 16(2), therefore, the HoC is to be taken to have complied with the duty to provide such advice and assistance.
23. In view of her findings and deliberations above, the Commissioner has concluded that the public authority did not breach its duty to provide advice and assistance to the complainant within the meaning of section 16 in its handling of the request.

Right of appeal

24. 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

25. 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.
26. 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

Gerrard Tracey
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