

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 29 September 2020

Public Authority: The Information Commissioner's Office (ICO)
Address: Wycliffe House
Water Lane
Wilmslow
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. She is therefore under a duty as regulator to make a formal determination of a complaint made against her 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 has requested the same information as had been requested in several information requests made on the WhatDoTheyKnow website. The ICO has provided the information in relation to the third of the cited requests but has not, to date, provided a substantive response in relation to the other two quoted requests.
2. The Commissioner's decision is that the ICO has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the ICO to take the following steps to ensure compliance with the legislation.
 - Issue a substantive request under the FOIA to the request.

4. 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

5. On 4 March 2020 the complainant made a request to the ICO in the following terms:

"I note the following three requests were recently made on the WhatDoTheyKnow website.

Under the Freedom of Information Act, I would like to request the same information.

In addition, regarding request IRQ0905486, I would like to be provided with a list of all legal services suppliers who have been contracted in the last five years, including whether the contract was tendered or not, and the overall cost of each contract.

IRQ0842630

I would like to know how many times the Information Commissioner's Office has engaged with consultants, companies or other specialists to deliver services to the ICO. This should cover training, consultancy and advice of any kind and include those abroad and within the uk. I am particularly interested in any consultant work connected to Canada.

In addition I wish for my request to include legal advice obtained from external lawyers or acting in a consultancy capacity.

If such work has been commissioned, for each instance, I would like to request the following information

- 1) *The name of the company or individual that was awarded the work*
- 2) *How much they were paid (if any work is currently ongoing, how much the ICO has agreed to pay)*
- 3) *A summary of what work was done, or what services were provided*
- 4) *A copy of the contract involved.*
- 5) *details of the tender process in each case*

IRQ0905486

For each of the past five years please provide:

- 1. the number of legal services contracts you put out to tender;*
- 2. the number of suppliers who submitted bids in respect of each tender;*
- 3. the number of bids submitted in respect of each tender (alternative bids?);*
- 4. a brief description of each tender;*
- 5. the number of suppliers who were unsuccessful in respect of each tender;*
- 6. the number of tenders awarded to suppliers who agreed the lowest price.*

IRQ0891406

I would like copies of all records and correspondence relating to the recruitment and selection of the ICO's Data Ethics Adviser, including but not limited to:

- 1) Records relating to the creation of the role profile and job description for this post, including any defined skills/competencies set for the role*
 - 2) Records relating to the advertising of the post, including details of when and where this post was advertised and the salary scale/civil service grade equivalence for the role*
 - 3) Statistical records relating to the number of applicants for this post, and the breakdown of applicant by sector of origin (e.g. "government", "academia", "industry")"*
6. The ICO acknowledged receipt of this request on 23 March 2020. As no response was received within the statutory 20 day timescale the complainant chased the ICO for a response on 8 June 2020.
 7. The ICO responded on 10 June 2020 stating it was still working on identifying and consolidating the requested information. The ICO confirmed a response to the third WhatDoTheyKnow request referred to was issued on 23 January 2020 and the ICO provided the complainant with the bundle of information that had been disclosed. With regard to the second WhatDoTheyKnow request the ICO stated a response had been sent to that request on 18 March 2020 and suggested the complainant could review this information via the WhatDoTheyKnow site rather than waiting for the ICO response.
 8. To date, the ICO has failed to provide a substantive response to the remaining parts of the request.

Scope of the case

9. The complainant contacted the Commissioner to complain about the failure by the ICO to respond fully to his request.
10. In line with her usual practice, the Commissioner contacted the ICO and the complainant on 24 September 2020 to highlight the outstanding response and request that the ICO respond within 10 working days.
11. The complainant contacted the Commissioner on 24 September 2020 to request a decision notice recording the ICO's failure to comply with the FOIA and requiring that a response is sent.
12. The scope of this notice is to consider whether the ICO has complied with section 10 of the FOIA.

Reasons for decision

13. Section 1(1) of the FOIA states 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."*

14. Section 8(1) of the FOIA states:

"In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested."

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. Section 10 of the FOIA states that responses to requests made under the FOIA must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a full response to this request within 20 working days, the ICO has breached section 10 of the FOIA.

Right of appeal

18. 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@justice.gov.uk

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

19. 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.
20. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF