

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2018

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint submitted to the Commissioner under section 50 of the FOIA. The Information Commissioner's Office disclosed some information and withheld other information under a range of exemptions.
2. The Commissioner's decision is that the Information Commissioner's Office has failed to respond to the request in time and breached section 10(1) and section 17(3) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 12 January 2018, the complainant wrote to the Information Commissioner's Office (the "ICO") and requested information in the following terms:

"under the FOIA, I would like to request access to:

- the full case file on reference for case ref. FS50688370

- any communications between the ICO and the Department for Education / Government Equalities Office / FCO relating to FS50688370 after the issuing of the Decision Notice in this case (where these are not included in the case file above anyway)

- any internal emails, notes or meeting records or similar of the ICO relating to FS50688370 after the issuing of the Decision Notice in this case (where these are not included in the case file above anyway)"

5. The ICO responded on 9 February 2018 and stated that, as provided under section 10(3), it was extending the time for compliance to consider the public interest in relation to the exemption in section 31 of the FOIA. The ICO confirmed that it would respond to the request by 9 March 2018 at the latest.
6. On 12 March 2018, having not received a further response, the complainant wrote to the ICO and requested an update. On 13 March 2018 the ICO wrote to the complainant and apologised for the delay, stating that it hoped to respond to the request soon.
7. On 16 March 2018 the ICO wrote to the complainant and stated that, as the officer handling the request was due to take annual leave, a response would not be sent until after their return to the office.
8. On 5 April 2018 the complainant wrote to the ICO and requested an update about their request. On 6 April 2018 the complainant sent a further email confirming they wished to submit a complaint under section 50 of the FOIA in relation to the ICO's failure to provide a substantive response.
9. On 10 April 2018 the ICO wrote to the complainant and stated that it hoped to be able to respond to their request soon.
10. On 24 April 2018 the complainant wrote to the ICO and requested an update. On 25 April 2018 the ICO issued a substantive response to the request.

Scope of the case

11. On 6 April 2018 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
12. The Commissioner confirmed with the complainant that her investigation would consider whether the ICO responded to their request in accordance with the statutory timescales.

Reasons for decision

Section 10 - time for compliance

Section 17 – refusal of request

13. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
14. Section 17(1) of the FOIA states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days.
15. Section 17(3) of the FOIA states that, if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is "*reasonable in the circumstances*", and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
16. Although the FOIA does not define what a reasonable time is, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days - which means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances fully justified by the public authority.
17. In this case the request was received on 12 January 2018 and on 9 February 2018 the ICO confirmed that it was extending the time for compliance to consider the public interest in relation to the exemption in section 31 of the FOIA. The ICO issued its final refusal notice in this regard on 25 April 2018, over 70 working days later.

18. The ICO has stated that the additional time taken in this case were due to the circumstances of the case being reasonably complex, requiring both external and internal consultation. The ICO has, however, acknowledged that none of these factors are valid reasons for the delay and has apologised unreservedly to the complainant.
19. In the circumstances of this case, the Commissioner does not consider that the time taken to issue a substantive response was reasonable and, despite the extenuating circumstances, she finds that the ICO has not complied with section 17(3) FOIA.
20. The Commissioner also finds that the ICO has breached section 10(1) of the FOIA.
21. As the ICO has now issued a response to the request she does not require it to take any steps.

Right of appeal

22. 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

23. 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.
24. 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

Andrew White
Group Manager
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF