

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2023

Public Authority: Investigatory Powers Commissioner's Office

Address: PO Box 29105
London
SW1V 1ZU

Decision (including any steps ordered)

1. The complainant requested information from the Investigatory Powers Commissioner's Office (IPCO) under the FOIA. The IPCO did not comply with the request on the grounds that it did not consider itself a public authority within the meaning of the Act.
2. The Commissioner's decision is that the IPCO is not a public authority as defined within section 3(1). No steps are required.

Request and response

3. On 3 March 2023, the complainant wrote to IPCO and requested information in the following terms:

"This is a request for freedom of information under FOIA 2000. Please provide a response in the form of a PDF document via email.

I request any recorded information you hold which details the selection of Michael Supperstone to become a Judicial Commissioner at the IPCO. His appointment was announced on May 19th 2021 here: <https://www.ipco.org.uk/news/new-judicial-commissioners-appointed/> . I request any recorded information you hold which details why he was selected for the role, and in particular, if Prime Minister Boris Johnson (or his immediate aids) had any involvement in his appointment. I request that you search

IPCO email accounts, printed paper records, and any other records you deem appropriate. Key words to aid you in your search would include Boris Johnson, Michael Supperstone, Prime Minister, Number 10, and etc.”

4. IPCO acknowledged the request on 6 March 2023 stating that, as it is not a public authority under FOIA it was not obliged to respond to the complainant's request.

Scope of the case

5. The complainant contacted the Commissioner on 7 March 2023 to complain about IPCO's refusal to handle their request. They disagreed with IPCO's position that it is not a public authority for the purposes of FOIA.
6. The Commissioner considers the scope of this case to be concerned with the question of whether IPCO is a public authority for the purposes of FOIA.

Reasons for decision

7. The definition of 'public authority' is given in section 3(1) of FOIA. In particular it states that under FOIA a 'public authority' means –
 - “(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or (b) a publicly-owned company as defined by section 6.”
8. Section 5 allows the Secretary of State to designate a public authority by order.
9. Section 6 states that a company is a 'publicly-owned company' for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
10. Irrespective of whether IPCO performs a public function and is dependent on public funding, it is not within the Commissioner's remit to make an order under section 5. Only the Secretary of State can do so. At the time of the complainant's request, and as at the date of this decision notice, IPCO is not listed in Schedule 1 nor has the Secretary of

State made an order under section 5 designating IPCO as a public authority. Accordingly, the Commissioner considers that IPCO is not a public authority by virtue of either section 3(1)(a)(i) or (ii) of the FOIA.

11. According to IPCO's website, its funding is provided by the Home Secretary. Despite this, IPCO is an arm's-length organisation and is not part of the Home Office. It is a separate legal entity.
12. Furthermore, the Investigatory Powers Commissioner is appointed directly by, and reports directly to the Prime Minister. IPCO was created under the Investigatory Powers Act 2016 (IPA), this Act sets out obligations for IPCO to make certain information public – however, IPA also gives the Prime Minister the power to exclude information from release if they consider that information to be prejudicial to:
 - (a) national security,
 - (b) the prevention or detection of serious crime,
 - (c) the economic well-being of the United Kingdom, or
 - (d) the continued discharge of the functions of any public authority whose activities include activities that are subject to review by the Investigatory Powers Commissioner.
13. The Investigatory Powers Commissioner can also publish information at their own discretion, but only where this is appropriate, permitted under IPA and is consistent with the discharge of their statutory responsibilities, including the safeguarding of national security.
14. Before IPA came into force, three precursor organisations were merged to form IPCO in September 2017. The previous organisations were the Office of Surveillance Commissioners (OSC), the Interception of Communications Commissioner's Office (IOCCO) and the Intelligence Service Commissioner's Office (ISComm). None of these organisations were subject to FOIA so it follows that the organisation created by the formation of those precursor organisations would also not be subject to FOIA. This is further confirmed, as mentioned above, by the fact that IPCO is neither listed under Schedule 1 of FOIA, nor has been designated as a public authority by the Secretary of State.
15. Section 3, with reference to sections 5 and 6, lists the categories under which an organisation would be considered a public authority. IPCO does not fall under any of these categories. It is not listed in Schedule 1, designated by an order under section 5 or a publicly owned company as defined in section 6. So, for these reasons, the Commissioner is satisfied that IPCO is not a public authority for the purposes of FOIA as it does not fall within the definition of a public authority as outlined in section 3(1).

16. As it is not a public authority by virtue of either 3(1)(a)(i) or (ii), or by 3(1)(b), the Commissioner therefore finds that IPCO was not required to respond to the complainant's request under 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Samantha Coward
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