

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2023

Public Authority: Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. In this case the Information Commissioner is both the public authority which is the subject of the complaint and the regulator of FOIA responsible for investigating the complaint. The notice will use the term "ICO" (Information Commissioner's Office) when referring to the Information Commissioner as the public authority subject to the complaint, and the term "Commissioner" when referring to him as the regulator.
2. The complainant requested information relating to the number of decision notices issued to parish councils. The ICO withheld the requested information under section 21 of FOIA (information reasonably accessible to the applicant by other means).
3. The Commissioner's decision is that the ICO was entitled to rely on section 21 of FOI to refuse the requested information in this case.
4. The Commissioner does not require the ICO to take further steps.

Request and response

5. On 6 August 2023, the complainant submitted the following request for information to the ICO:

"I wish to request a list, ideally as a spreadsheet in MS Excel format, of the names of all the UK parish councils that have received 20 or more ICO Decision Notices (for FOIA cases only) since 1st January 2014, together with the actual number of Decision Notices received by each of these parish councils."

6. The ICO responded on 7 August 2023. It relied on section 21 to refuse to provide this information under FOIA on the basis that all decision notices are published on its website. It also provided the link to where the information could be accessed.
7. The complainant responded to the ICO on 7 August 2023, requesting that the ICO carry out an internal review of its decision.
8. Following an internal review, the ICO wrote to the complainant on 9 August 2023, maintaining its original position.

Scope of the case

9. The complainant contacted the Commissioner on 7 September 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to consider whether the ICO was entitled to rely on section 21 to withhold the requested information.
11. The Commissioner has not found it necessary to contact the ICO and ask for further arguments. This is due to the nature of the information requested, and the arguments provided by the ICO to the complainant in its initial response to the request and its internal review decision.

Reasons for decision

Section 21 – information accessible to applicant by other means

12. Information is exempt from disclosure if it is accessible to the applicant by other means.
13. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
14. Unlike most exemptions, the circumstances of the applicant can be considered, as the information must be reasonably accessible to the particular applicant.

15. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.
16. In this case, the complainant does not accept that the information is readily available to them through other means. In their internal review request, the complainant indicated their belief that the exercise of searching the decision notices section of the ICO's website would be "...unfeasibly tedious and it could easily extend to several hundreds or perhaps thousands of laborious hours of manual typing work, so S21 cannot be properly engaged".
17. The complainant also referred the ICO to the Information Tribunal's decision in the case of Ames v. Information Commissioner and the Cabinet Office¹, where the Tribunal "...also noted that – even if that had been the case – the authority would not have complied with section 21 because they had not clearly signposted the applicant to where to find the information on the website link they had provided." The complainant argued that the ICO's response "...did not include a 'signposted website link' to each parish council that had 20 or more DNs for FOI requests post 01/01/2014. Accordingly, [he contended] that [the ICO had] not complied with S21, as per the Tribunal's decision, and therefore any such attempt to cite S21 is invalid."
18. In its internal review response, the ICO explained that a search for decision notices issued to parish councils using the search function on the decision notice section of the ICO website returned 415 decision notices falling within the scope of the complainant's request. The ICO went on to explain that it is possible to place the names of the parish councils into an Excel sheet and then establish quickly how many decision notices relate to each individual parish council.
19. The ICO advised the complainant that it carried out a timed dip sample exercise for the first 25 entries that were returned in the search and explained that it took just under three minutes to type the names into Excel. To do this for all 415 entries would therefore take just under one hour, which the ICO considers to be reasonable.
20. The Commissioner also notes that the complainant was provided with a link to the section of the ICO's website where the information could be accessed (i.e., the decision notice search function). The complainant has

¹ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i122/Ames.pdf>

not provided the ICO with any specific circumstances that mean they are unable to access the information using this function.

21. The Commissioner has been able to access the information on the ICO's website and followed its instructions to search for all the parish councils that have received a decision notice since January 2014. He is therefore satisfied that the ICO did appropriately direct the complainant to where the requested information could be accessed.
22. With regard to the matter of the information being tedious to identify, the Commissioner accepts that it may be time consuming to go through the entries listed individually in order to determine which parish councils have received 20 more decision notices and the actual number of decision notices received by each of these parish councils. However, FOIA does not require a public authority to take this into consideration when citing section 21. In addition, he does not consider that the time it would take to complete this exercise is so long that it would render the information not reasonably accessible, particularly in view of the timed dip sample exercise conducted by the ICO.
23. It is therefore the Commissioner's view that the ICO was entitled to rely on section 21 of FOIA to refuse the complainant's 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Pamela Clements
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