

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2012

Public Authority: Office of Communications
Address: Riverside House
2A Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant has requested information referred to in an email from an Enforcement Policy Officer at Ofcom. This included responses to this email and details of Ofcom's disposal schedules if relevant information has been disposed of. Ofcom stated it held no information within the scope of the request.
2. The Commissioner's decision is that Ofcom has complied with section 1(1)(a) of the FOIA and that no relevant information is held.

Request and response

3. On 24 March 2012 the complainant wrote to Ofcom following a response received to a previous request under the FOIA. The previous response had provided the complainant with an internal email and requested information in the following terms:

"Within your case notes for interference case 1-167052247, there was some text included from a member of your staff:-

'Activity ID: 1-2TZ8AU

From: Clive Corrie

Sent: 03 March 2011 15:59

To: Ian Crompton

Cc: [name redacted]; [name redacted]

Subject: RE Letters to consumers

Ian,

Another thought, Comtrend have offered to intervene in any problematic cases involving their equipment, can you send me full details including name, address, email, phone number, etc., of the source.

*Clive Corrie
Enforcement Policy Advisor'*

I formally request all information you hold pertaining to Mr Corrie's request for "name, address, email, phone number, etc.", specifically :-

a) All responses from "[name redacted]", "[name redacted]", "[name redacted]".

b) all onward emails, letter and telephone call logs generated by this exchange.

c) The job titles and department names of all four people on this email.

Please also include as an information source any personal email accounts that were made or may have been used for Ofcom business.

If no information is now held, please provide your 'disposal schedules' covering the disposal of the above information."

4. Ofcom responded on 25 April 2012. It stated that in response to (a) it had searched all accounts used for Ofcom business and no information was held. Similarly no information was held in response to (b). The information requested under (c) was provided and Ofcom also explained its email retention policy.
5. The complainant wrote back to Ofcom on 26 April 2012 and asked for an internal review of this decision. The complainant raised concerns that Ofcom had not specifically included 'Clive Corrie' in its searches for information in response to (a) and (b) and Ofcom did not indicate whether it had searched personal email accounts for information, or telephone logs. With regards to the information on email retention policy, the complainant clarified he had requested disposal schedules and had expected to receive the document(s).
6. Following an internal review Ofcom wrote to the complainant on 28 May 2012. It stated that it did not hold information in response to (a) and (b). Ofcom also confirmed that personal email accounts had not been used for Ofcom business and there was no information to suggest telephone calls had been made in response to the email in question. Ofcom explained as it had provided information in response to (c) it did

not consider that the final part of the request applied as it stated "if no information is now held..."

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular the complainant argued that *"the point at which the email was logged in the interference investigation case ..., the email and any follow-up became business critical and should have been kept and thus should be available."*
8. The Commissioner is satisfied the information requested in (c) has been provided to the complainant, which the complainant does not appear to have disputed, and is therefore not considering this as part of his investigation.
9. The Commissioner considers the scope of his investigation to be to determine whether any information relevant to (a) and (b) of the request is held by Ofcom and whether Ofcom should have supplied further information on its "disposal schedules".

Reasons for decision

10. Section 1(1)(a) 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,"

11. The Commissioner has considered whether Ofcom has complied with this section of the FOIA in stating that no information was held in relation to parts (a) and (b) and it was not required to provide further information on its "disposal schedules".
12. In determining whether a public authority holds the requested information the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:
 - Explanations offered as to why the information is not held; and

- The scope, quality, thoroughness and results of any searches undertaken by the public authority.
13. The Commissioner wrote to Ofcom to ascertain what searches it had carried out to determine that the information requested in (a) and (b) was not held and no further information on disposal schedules was required to be supplied.
 14. Ofcom provided some background to the issue and explained that the issue relating to Comtrend was a very small part of Ofcom's work and it was not expected that the previously disclosed email would result in further correspondence.
 15. In response to the Commissioner's questions Ofcom explained that when determining no information was held in relation to parts (a) and (b) of the request that all colleagues mentioned in the request, including Mr Corrie, searched their email accounts for emails relating to the offer from Comtrend. This included searching in relevant email folders and using search terms such as 'Comtrend' and the names of employees of Comtrend. Ofcom explained that no emails were found following these searches.
 16. Ofcom further explained that it searched all relevant computers, including networked computers, emails and laptops. Ofcom clarified that employees are advised to never use personal email accounts for Ofcom business as set out in its security policy and, following the request each of the relevant individuals confirmed they held no information relevant to the request in their personal email accounts.
 17. Ofcom has stated that it is certain that the only record that ever existed relating to the request was the email already released to the complainant in response to his previous request.
 18. The complainant had raised concerns about the manner of the searches that had been conducted as it appeared Ofcom may have asked the relevant individuals if they held information rather than conducting the searches itself. The Commissioner is satisfied from the explanations provided by Ofcom that appropriate searches were conducted using search terms that were broad enough to have identified any correspondence within the scope of the request.
 19. The complainant had also stated that Mr Corrie had rung him from his home telephone suggesting that personal premises are used by staff to conduct Ofcom business. The Commissioner's view is that whilst this may indicate staff work from home it does not provide evidence that staff use their personal email accounts to conduct Ofcom business.

20. Having taken into account the submissions provided by Ofcom as well as the submissions put forward by the complainant, the Commissioner considers that on the balance of probabilities Ofcom does not hold any information as requested in parts (a) and (b).
21. Finally, the Commissioner has considered the final part of the request: *"If no information is now held, please provide your 'disposal schedules' covering the disposal of the above information."* The complainant has expressed his view that Ofcom wrongly interpreted this to be a request for Ofcom's email retention policies and to only apply "if" information was no longer held.
22. Ofcom asserted that no information had been held and as such it was not required to provide information on its 'disposal schedules' but it did provide the complainant with some information on its email retentions schedules to be of assistance. The Commissioner considers that the wording of this part of the request does make it clear that Ofcom only need provide information on its disposal schedules if information was held but has since been disposed of. As Ofcom has stated no information was held at any point based on the searches it has conducted, the Commissioner accepts that Ofcom were not in breach of the FOIA by not providing this information.
23. Taking into account all of the above, the Commissioner therefore considers that Ofcom complied with section 1(1)(a) of the FOIA.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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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Information Commissioner's Office
Wycliffe House
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SK9 5AF