

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2015

Public Authority: Information Commissioner
Address: Wycliffe House
Water lane
Wilmslow
Cheshire
SK9 5AF

Decision (including any steps ordered)

1. This notice relates to a complaint about how the Information Commissioner's Office dealt with a request for information. As such the Information Commissioner's Office is placed in the unusual position of having to investigate itself. To avoid confusion this notice will refer to the 'ICO' when discussing the Information Commissioner's Office as the subject of the complaint. The term 'Commissioner' will be used to refer to the Information Commissioner as the body undertaking the investigation as the regulator of FOIA.
2. The complainant has requested information regarding the ICO's investigations of complaints about the Civil Service Commission (CSC).
3. The Commissioner's decision is that the ICO provided the requested information and does not require it to take any further action in this matter.
4. However the Commissioner finds that the ICO failed to provide the requested information within 20 working days. This is a breach of section 10.

Request and response

5. On 12 May 2015, the complainant wrote to the ICO and requested information in the following terms:

"1) Between 2012 and 2015, how many complaints were made against the Civil Service Commission for failure to release information under the Freedom of Information Act?

2) How many times did you find in the CSC's favor (sic) that they did not need to release this information?

3) How many times did you force (sic) the CSC to release this information?

4) If the answer to question 3 is one or more, then please provide the Decision Notice/Notice's showing you forced the CSC to release the information"

6. The ICO responded on 26 May 2015. In response to question 1) it stated that the ICO had received nine complaints about the CSC's compliance with FOIA. In response to question 2) it stated that four complaints were recorded as being 'not upheld' and in response to question 3) it identified one complaint that had been 'upheld'. In response to question 4) the ICO directed the complainant to its website where he could find the one decision notice in which the ICO had upheld a complaint against the CSC. The ICO went on to explain that as this information was already in the public domain it was not required to provide an actual copy of the decision notice under section 21 of FOIA. Section 21 provides that a public authority is not required to provide information in response to a request where that information is already accessible to the applicant by other means. The ICO also provided the complainant with a copy of a spreadsheet which contained the details of the complaints it had received from January 2012 to the date of his request. Finally the response provided some additional information on the range of outcomes that could lead to a complaint being upheld or not upheld. It also explained why not every complaint resulted in a decision notice being served.
7. On 31 May 2013 the complainant contacted the ICO and asked for an internal review of the response he had received. He explained that he had been unable to locate any decision notice which forced the CSC to release information on the ICO's website. He also queried the statistics he had been provided with, asking, if a total of nine requests had been received, four of which had not been upheld and one of which had been upheld, what had been the outcome in respect of the remaining four complaints.
8. The ICO contacted the complainant on 9 June 2015. In respect of the first point raised in his request for an internal review the ICO clarified its earlier response to question 3). It now said that it did not hold any

information on the number of times the CSC was forced to release information. It went onto explain that although it had issued one decision notice which was recorded as upholding a complaint against the CSC, that notice did not actually require the CSC to release any information because by the time the notice was served, the information had already been released.

9. In respect of the second query raised in the complainant's request for a review, the ICO directed him to the notes in its original response. These notes explained the reasons why not every complaint resulted in a decision notice being issued.
10. It is understood that the ICO's letter of 9 June was not intended to be the outcome of an internal review. Rather it was an attempt to provide the complainant with a full and clear response as swiftly as possible. However the complainant responded by making it clear that he still wished the ICO to conduct an internal review of how his request had been dealt with.
11. The ICO acknowledged his request for an internal review on the 22 June 2015 at which time it took the opportunity to provide a further of its response to question 3). It now said that the answer to question 3), 'how many times did the ICO force the CSC to release information' was zero.
12. Following the completion of the internal review the ICO wrote to the complainant on 10 July 2015. The internal review concluded that the request had been dealt with correctly. It also provided further details about the one complaint which had been upheld. The ICO explained that although the notice had found the CSC had failed to fully comply with its obligations under the Act within the prescribed time limit, it had not been required to take any further action because during the ICO's investigation the CSC had complied with those obligations. This will be explained in more detail later.

Scope of the case

13. The complainant contacted the Commissioner on 22 July 2015 to complain about the way his request for information had been handled. His specific concern was that he believed he had not received the information he had asked for.
14. The Commissioner considers that the issue to be determined is whether the ICO provided the complainant with all the information he requested.

15. The Commissioner will also consider whether the ICO complied with its obligations within the time limits set out in the Act.

Reasons for decision

16. Section 1 of FOIA states that any person making a request to a public authority is entitled to be informed by that public authority whether it holds that information and, if so, to have that information communicated to them.
17. In answering the complainant's questions it is understood that the ICO relied on a report supplied by its Business Development Team which is responsible for providing management information to the organisation. This is considered by the ICO to be a reliable means of searching for the information.
18. The ICO provided responses which intended to answer all four questions on the 26 May 2015 and has maintained that its responses to the first question was correct, based on the recorded information it held. It has however altered its position, or at least rephrased its responses, in respect of questions 2), 3) and 4). This notice will consider the responses to each question in turn.
19. The statistics held by the ICO show that nine complaints about the CSC were received over the period covered by the request. Having considered the information on which the ICO based its response to question 1) on the Commissioner is satisfied that it identified nine complaints which, regardless of the outcome of the subsequent investigation, initially raised concerns that the CSC had failed to provide information in response to a request. The Commissioner is therefore satisfied that the ICO provided the information sought by question 1).
20. Turning to questions 2) and 3), it should be recognised that they are based on an over simplification of the range of issues that an investigation, and any subsequent decision notice may address. The complainant's request is not as straight forward to answer as first appears.
21. Question 2) asks "How many times did you [ie the ICO] find in the CSC's favour that they did not need to release this information?" Question 3) asked how many times the ICO had forced the CSC to release information. The ICO only makes formal findings through its issuing of decision notices. Therefore the Commissioner is satisfied that the ICO was correct to focus on the complaints which resulted in

decision notices being served when answering these two questions. There were five such complaints.

22. The Commissioner has viewed the five decision notices on the ICO's website relating to these complaints. The Commissioner is satisfied that they were made between 2012 and the time of the request. He is also satisfied that all these notices are relevant to the request as they relate to complaints about the CSC's failure to provide information that had been requested.
23. In its original response the ICO stated that four of those complaints were recorded as being 'not upheld', ie the ICO found the CSC had not breached the Act. In its response to question 3) the ICO stated that the fifth complaint was 'upheld', ie the ICO had found failings in the CSC's handling of that request. Whilst these answers accurately reflect the management information which the ICO was relying on, it is necessary to consider whether these answers address the specific issues posed by questions 2) and 3). Question 2) is very specific as to what aspect of an ICO decision the complainant is interested in. The focus is clearly on how many times the ICO made a decision which did not require the CSC to disclose information. Similarly the focus of question 3) is on the number of decisions in which the ICO did require the CSC to release information
24. In order to consider the extent to which the ICO answered the specific questions in more detail it is necessary to briefly set out a public authority's main obligations under FOIA.
25. Section 1(1)(a) of FOIA states that upon receipt of a request a public authority is required to confirm whether the requested information is held and, if so, under section 1(1)(b), it is required to communicate that information to the applicant. The Commissioner finds that the correct interpretation of questions 2) and 3) is that the references to the ICO forcing the CSC to release information relates to the ICO finding that the CSC had failed to meet its obligation to communicate information under section 1(1)(b) and therefore serving a decision notice requiring it to do so. FOIA provides exemptions to the obligation to confirm whether the requested information is held as well as the obligation to communicate that information.
26. The one complaint that the ICO had upheld concerned a complaint where the CSC had initially refused to confirm or deny whether it held the requested information. During the course of the ICO's investigation the CSC reconsidered its position and apparently decided that it was not exempt from the duty to confirm whether the information was held. It subsequently informed the applicant that the information was not held. However the duty to confirm or deny whether information is held

is subject to a time limit of 20 working days as set out in section 10 of FOIA. As the confirmation that no information was held was provided after that deadline had passed, the decision notice simply recorded CSC's late compliance with section 1(1)(a) as a breach of section 10. As the requested information was not held, clearly the notice did not and could not require information to be released. Therefore the notice did not make any finding in respect of the CSC's obligation under section 1(1)(b) to communicate the requested information, because that obligation never arose.

27. As a consequence the one decision notice which recorded the CSC had breached the provision of FOIA was not relevant to question 3) as it did not require the release of information. Nor did any of the other five complaints which resulted in notices being issued. Therefore the correct response to question 2) must be that the ICO found the CSC did not need to disclose information on all five occasions that notices were issued. The correct response to question 3) was that the ICO did not issue any notices requiring the CSC to disclose information, or as the ICO ultimately explained the number of occasions was "zero".
28. The Commissioner recognises that in its original response to the complainant the ICO also provided him with further information aimed at helping him interpret its responses to questions 2) and 3) and directed him to where on its website he could locate all the decision notices served in respect of complaints against the CSC, including the one notice that found the CSC had breached section 10. Collectively this would have enabled the complainant to determine the facts as set out in the preceding paragraph, ie that the ICO had in fact not made any formal findings requiring the CSC to disclose information. Indeed it is self-evident that the complainant was able to establish this for himself as he explained to the ICO that he had been unable to find any record of a notice which required the CSC to release information, at the time he requested an internal review on the 31 May 2015 (see paragraph 7).
29. Nevertheless the original response lacked the appropriate clarity. This is particularly the case in respect of its response to question 3). In responding to a request of this nature a public authority is obliged to examine the recorded information it holds and extract from its records the information which accurately answers the questions posed.
30. In respect of question 3) the ICO took the opportunity to clarify its position on the 9 June 2015 when it acknowledged that the ICO did not have any record of a decision requiring the CSC to disclose information and again on the 22 June 2015 when made it clear that its response to the direct question, "How many times did you [the ICO] force the CSC to release this information?" was 'zero'. Therefore the Commissioner is

satisfied that by the 22 June the Commissioner has provided a full response to the questions posed by the complainant.

31. For clarity the Commissioner understands that the ICO's position is as follows. In response to question 1) the ICO received nine complaints about the CSC failing to provide information that had been requested over the specified period. In response to questions 2) and 3) the ICO correctly focussed on only those complaints that had resulted in formal findings being made and decision notices being served. Only five of the nine complaints resulted in the ICO issuing decision notices. The ICO's final position is that none of the five notices issued required the CSC to disclose information. It follows that the answer to question 2) is in effect five and the answer to question 3) is zero.
32. Question 4) asks the ICO to provide copies of those decision notices in which required the CSC to disclose information if there was one or more such notice. As there were in fact no such notices the question does not arise. It should be noted the ICO has dropped any reliance on section 21 in respect of this element of the request.
33. In conclusion the Commissioner finds that following its clarifications of its response to question 3) provided on the 22 June 2015 the ICO had complied with the request. He does not require the ICO to take any further action.

Section 10 – time for compliance

34. As far as is relevant to the complaint section 10 of FOIA requires that a public authority must communicate the requested information, promptly and in any event not later than the twentieth working day following the date of receipt.
35. The request was received on 12 May 2015. The ICO provided its initial response on 26 May 2015 which allowing the late May bank holiday was only 9 working days following its receipt. However Commissioner finds that it was only on the 22 June 2015, when the ICO correctly informed the complainant that the answer to question 3) was zero, that the ICO had fully complied with the request. This was 28 working days after the request was received.
36. The Commissioner finds that by failing to comply with the request within the specified time limit the ICO breached section 10.

Right of appeal

37. 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

38. 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.
39. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF