

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2019

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested information associated with an appeal to the First Tier Tribunal (Information Rights) and information on the ICO's complaints process. The Information Commissioner's Office ('ICO') says it does not hold some of the information requested and has directed him to where the remaining information he requested is published.
2. The Commissioner's decision is as follows:

- On the balance of probabilities, the ICO does not hold the information requested in parts 1 and 2 of the request and has complied with section 1(1)(a) of the FOIA.
 - The ICO has complied with section 1(1) with regard to part 3 of the request.
 - The ICO breached section 10(1) with regard to part 3 of the request as it did not communicate the relevant information it holds to the complainant within 20 working days.
3. The Commissioner does not require the ICO to take any remedial steps.

Request and response

4. On 6 May 2018 the complainant wrote to the ICO and requested information in the following terms:

"Please inform me whether or not you hold the information specified below and if you do please provide me with a copy of all information you hold fitting the scope of my request.

I am requesting a copy of all information you hold that you processed from, and on, the 12 June 2017 onwards and which;

1). The [public authority redacted] failed to send to the appellant by the 2 September 2016 even though it fell within the scope of information specified in the Tribunal's [date redacted] decision which stated; 'Action Required. The Public Authority must by 2 September 2016 disclose to the Complainant the minutes of all practice meetings for the period 2009 to 1 September 2015 redacted to remove any commercially sensitive or personal data.

2). Evidences, on the balance of probabilities, that [public authority redacted] made a false statement when they informed the appellant and the Commissioner that they had, by 2 September 2016, provided the appellant with all the information they held that fell within the scope of that specified in the Tribunal's [date redacted] decision (in Appeal No:[number redacted]).

[3] Also, please provide the, summary of the Information Commissioner's Enforcement Powers and Appeal procedures, which your document, ico_review_procedure' stated, are available on request."

5. The Commissioner has redacted elements of the request in order to protect the complainant's identity.
6. The ICO provided a response on 5 June 2018. It said it does not hold information within the scope of parts one and two of the request. The ICO said it does hold information dated from 12 June 2017 onwards associated with the First Tier Tribunal (Information Rights) (FTT) decision in question and asked the complainant to let it know if he wanted this information sent to him.
7. The ICO explained that a particular document to which the complainant had referred in his request at [3] had now been superseded and it provided him with a link to where the new document is available online.
8. The complainant requested an internal review on 8 July 2018. He said that he had not been able to access the particular information to which the ICO had provided a link. He disputed that the ICO does not hold the specific information he has requested in two parts of his request. Finally, he confirmed that he is only seeking information that falls within the scope of his request ie he did not want the ICO to send him the broader information it holds about the FTT decision in question.
9. The ICO provided a review on 6 August 2018. It maintained its original position with regard to parts 1 and 2 of the request. In further correspondence on 6 August 2018 the ICO provided an alternative web link to the document the complainant had not been able to access.

Scope of the case

10. The complainant contacted the Commissioner on 2 November 2018 to complain about the way his request for information had been handled.
11. On 5 April 2019 the complainant confirmed to the Commissioner that he was dissatisfied with the ICO's response to all three parts of his request.
12. He has mentioned that he considers that the ICO did not issue him with an appropriate refusal notice. Issuing a refusal notice under section 17 of the FOIA only comes into play if an authority is relying on a Part II exemption or on section 12 (cost) or section 14 (vexatious/repeat request) of the FOIA. In this case the ICO is not relying on any exemptions, or sections 12 or 14 and so the matter of whether the ICO did or did not comply with section 17 is not relevant.
13. The Commissioner's investigation has focussed on whether the ICO has complied with section 1(1) and section 10(1) with regards to the complainant's request.

Reasons for decision

Section 1 – right of access to information held by public authorities

14. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held and is not exempt information.
15. The complainant disputes that the ICO does not hold information within the scope of parts 1 and 2 of the request. The Commissioner has considered these two parts. They are for:

I am requesting a copy of all information you hold that you processed from, and on, the 12 June 2017 onwards and which;

1). The [public authority redacted] failed to send to the appellant by the 2 September 2016 even though it fell within the scope of information specified in the Tribunal's [date redacted] decision which stated; 'Action Required. The Public Authority must by 2 September 2016 disclose to the Complainant the minutes of all practice meetings for the period 2009 to 1 September 2015 redacted to remove any commercially sensitive or personal data.

2). Evidences, on the balance of probabilities, that [public authority redacted] made a false statement when they informed the appellant and the Commissioner that they had, by 2 September 2016, provided the appellant with all the information they held that fell within the scope of that specified in the Tribunal's [date redacted] decision (in Appeal No:[number redacted]).

16. Part 1 is not quite clear but the Commissioner's interpretation is that the complainant is requesting any recorded information the ICO might hold that evidences that a public authority did not send particular information to a particular requester by a deadline that the FTT had instructed ie 2 September 2016.
17. In part 2 the complainant is requesting any recorded information the ICO might hold that evidences that the public authority had made a false statement when it advised that it had provided the requester with the above information by the FTT's deadline.
18. In its submission to the Commissioner, the ICO has confirmed that the request relates to a particular FTT case and that in that case the FTT had required the public authority to disclose information by a specific date.

19. The ICO has provided the Commissioner with further detail on the background to the request but she does not intend to detail this here.
20. In its submission the ICO has gone on to confirm that searches of its electronic documents and record management system and casework management system were conducted to locate any relevant information.
21. From these searches the ICO established that the case file set up to handle the requester's complaint about the response from the public authority in question was no longer held within its casework management system. That case had closed with a decision notice in 2015, and the ICO says that such cases are normally not retained longer than two years after the conclusion of a complaint.
22. The ICO explained that cases regarding appeals to the FTT have a longer retention period. It was therefore able to locate the appropriate appeal file and it considered whether any of the information contained within it fell within the scope of the complainant's request.
23. The ICO says it also consulted colleagues within its FOIA appeals team with knowledge of the case and its previous correspondence with the requester. This helped to confirm that no information within the scope of the requester's request was held.
24. Finally, the ICO has confirmed that: once the appeals file was located it was manually checked; that any information would be held electronically; that there is no evidence to suggest that information of the kind the complainant is seeking was ever held and that the complainant has not provided evidence that the public authority failed to meet the requirements of the FTT.
25. The complainant has sent the Commissioner extracts from email correspondence that he says supports his position that the ICO holds information falling within the scope of the two parts in question. The first is an extract from an email the requester sent to the ICO on 12 June 2017 in which he advises the ICO that he has received the information in question from the public authority and is not satisfied with it. The second is an extract from an email from the ICO to the requester sent on 16 January 2017 which discusses the information more broadly. The Commissioner understands the complainant to be suggesting that these emails are evidence that the requester had not received information from the public authority by 2 September 2016 and that the ICO holds copies of these emails. As such, it would hold information falling within the scope of his request.

26. However, the Commissioner does not agree that this email correspondence is evidence that the ICO holds information relevant to parts 1 and 2 of his request. This is because in her view neither email is compelling evidence that the public authority had not provided the requester in question with particular information by the date required by the FTT or that it had made a false statement to the ICO. The emails simply indicate that by 12 June 2017 the requester had received information from the public authority, not that the information had not been received at 2 September 2016. As such, the Commissioner is satisfied that these emails do not fall within the scope of the two parts.
27. Even if these two emails were to fall within the scope of parts 1 and 2 – and, for clarity, the Commissioner finds that they do not – if the ICO still held copies of these emails they would be exempt information under section 40 of the FOIA as they constitute the personal data of the requester.
28. The Commissioner has considered the circumstances of this case, the background, the specific nature of the information requested, the complainant's submission and the searches for relevant information that the ICO has carried out. On the balance of probabilities, she is satisfied that the ICO does not hold information falling within the scope of part 1 and part 2 and has complied with section 1(1)(a) with regard to these parts.
29. The Commissioner also finds that the ICO has complied with section 1(1) with regard to part 3. On 6 August 2018 it sent the complainant a link to where its complaints guidance is published. The Commissioner has tested the link provided in the ICO's email to the complainant and finds that it opens the relevant document.

Section 10 – time for compliance

30. Section 10(1) says a public authority must comply with section 1(1) promptly and no later than 20 working days following the date of receipt of the request.
31. The complainant submitted his request on 6 May 2018 (a Sunday) and received a response on 5 June 2018. Given the two bank holidays in May this was within the 20 working day requirement. However, the complainant advised the ICO on 8 July 2018 that the link it had sent with regard to part 3 of his request did not work. The ICO provided the functioning link on 6 August 2018. As such the Commissioner must find that the ICO breached section 10(1) with regard to part 3 of the request as it did not communicate relevant information to him within 20 working days.

Right of appeal

32. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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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