

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2012

Public Authority: Government Actuary's Department

Address: Finlaison House
15-17 Furnival Street
London
EC4A 1AB

Decision (including any steps ordered)

1. The complainant has requested information concerning a review of the commutation factors for police pensions carried out by the Government Actuary's Department (GAD). The GAD stated that some of the information requested was not held and cited the exemption provided by section 35(1)(a) (formulation or development of government policy) in relation to other information.
2. The Commissioner's decision is that the GAD was correct in stating that some information was not held, but that in relation to other information it was incorrect and in breach of section 1(1)(a) of the FOIA to state this. In relation to the citing of section 35(1)(a), the Commissioner finds that this exemption was not engaged and so it was cited incorrectly.
3. The Commissioner requires the GAD to take the following steps to ensure compliance with the legislation.
 - In relation to the information covered at paragraph 16 below which the section 1(1)(a) breach concerns, the GAD is now required to either disclose this to the complainant, or issue a refusal notice in line with the requirements of section 17.
 - In relation to the information for which section 35(1)(a) was cited, the GAD is now required to disclose this to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 11 May 2011, the complainant wrote to the Government Actuary's Department (GAD) and requested information in the following terms:

"I refer to the recent circular regarding the Police Pension Scheme 1987, Police Pension Scheme (Northern Ireland) 1988 - Commutation on Retirement, dated 20 April 2011 (authors: Trevor Llanwarne and Sandra Bell).

This is a formal request under the Freedom of Information Act for the following documents and details:

i. All documentation relating to the decision-making process leading to the publication of this circular and related appendices. This should include internal memos, letters, minutes of meetings, and hand written notes, etc.

*ii. (a) Date when decision was made to update the Commutation Tables;
(b) Date work was initiated in updating the previous Commutation Table;
(c) Date work was completed;
(d) Date passed to decision-makers for agreement;
(e) Date stamped/verified by decision-makers;
(f) Date published.*

Where these dates are not verified by open-source documents, please provide documentary evidence.

iii. Details of all external agencies contacted/consulted, again showing dates and copies of correspondence.

iv. Details of all Government Departments which were involved in the process, along with any documentation held and which can be released under FOI. If unable to release due to the fact that the information is held by a third party, please provide sufficient detail to enable an FOI request to be directed to them."

6. The GAD responded on 15 August 2012, outside 20 working days from receipt of the request albeit that there had been a number of interim responses informing the complainant that the substantive response would be delayed. The response to each of the requests was as follows:
- i. Some information was disclosed, but with redactions made under the exemptions provided by sections 35(1)(a)

(information relating to the formulation or development of government policy) and 40(2) (personal information).

- ii. GAD supplied a schedule with the relevant dates and referring the complainant to documentary evidence.
- iii. GAD stated that no external agencies were contacted or consulted, other than those listed in the response to request (iv).
- iv. GAD stated that the:

"only Government Departments which were involved in the process were the three departments responsible for the management of the Police Pension Scheme ('the PPS') in the constituent countries of the United Kingdom. These are:

- *PPS in England and Wales – the Home office*
- *PPS in Scotland – the Scottish Public Pensions Agency*
- *PPS in Northern Ireland – the Department of Justice, Northern Ireland".*

7. The complainant responded to the GAD on 9 September 2011 and requested an internal review. At this stage the complainant stated that he did not object to the withholding of staff names under section 40(2).
8. The GAD wrote to the complainant with the outcome of the internal review on 26 September 2011. It stated that the partial refusal of the request was upheld, but included no reasoning for this outcome.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled on 12 October 2011. The complainant stated at this stage that he believed that the response was inadequate.
10. It was later confirmed that the scope of this case would cover the citing of section 35(1)(a) and whether the public authority had accurately identified all relevant information that it held.

Background

11. The GAD has provided the following background description of the process recorded within the withheld information:

“Regulation B7 of the Police Pension Regulations 1987 governs the payment of commutation lump sums to members of the Police Pension Scheme. Regulation B7(7) states:

‘Where the person retires or has retired and a notice of commutation given by him becomes or has become effective, the police pension authority shall reduce the pension to which the notice relates in accordance with the notice as from the time from which the notice is effective and shall pay him a lump sum of such amount as is the actuarial equivalent of the surrendered portion of the pension at the date of his retirement, calculated from tables prepared by the Scheme actuary.’

This places a statutory duty on the Scheme actuary, a position to which the Government Actuary has been appointed, to update the tables of factors.”

Reasons for decision

Section 1

12. Section 1(1)(a) of the FOIA requires that a public authority shall confirm or deny if it holds requested information. In order to comply with this requirement, a public authority must accurately identify all information it holds that falls within the scope of the request. Where a public authority fails to identify all information it holds that falls within the scope of a request, this will indicate that it is in breach of section 1(1)(a).
13. In this case the complainant has indicated that he is unconvinced that the GAD has identified all relevant information that it holds. He advanced various grounds for this. The first of these was advanced at internal review stage. At this stage the complainant advanced three main reasons for believing that further relevant information would be held by the GAD.
14. The first of these related to an email dated 25 March 2011, which was disclosed to the complainant, and which made reference to a meeting that took place on 24 March 2011. The complainant believed that

information recording this meeting would be within the scope of his request.

15. This issue was raised with the GAD and it supplied to the ICO a copy of the record of this meeting, whilst maintaining that this did not fall within the scope of the request. Having reviewed the GAD email of 25 March 2011, the content of the meeting record and the wording of part (i) of the request, the Commissioner agrees with the complainant.
16. Request (i) is clear that this is a wide ranging request for all information relating to this decision making process. The view of the Commissioner is that the GAD email of 25 March 2011 suggests that this meeting was relevant to this process, and so therefore is the record of this meeting. On this point the Commissioner finds that the GAD did not comply with the requirement of section 1(1)(a) of the FOIA in that it failed to identify this meeting record as within the scope of this request. At paragraph 3 above the GAD is required to take a remedial step.
17. The second ground advanced by the complainant concerned *"a document which makes reference to a proposed review of pensions many months prior"*. The position of the complainant here appeared to be that this document itself would fall within the scope of the request, and possibly also that other information relating to this proposed review would also be within scope.
18. The response of the GAD to this point was that the review of commutation factors referred to in the complainant's request was triggered by an announcement made by the Chancellor in the Budget of 23 March 2011 and that information that pre-dates this would not be within the scope of the request. The Commissioner accepts this explanation from the GAD and so finds no breach of section 1(1)(a) here.
19. Thirdly, the complainant referred to a document relating to a different public service pension scheme that stated:

"as a consequence of the Chancellor's announcement of the new SCAPE discount rate, GAD has informed us that they are no longer able to confirm that the actuarial factors currently in use are appropriate and consistent with legislation and scheme regulations"

The complainant questioned why there was no similar documentation relating to the police pension scheme.

20. In response to this point the GAD argued that the request related only to the review of commutation factors and that the document referred to by the complainant related to different factors, or to a general review of factors. Any similar documentation relating to the police scheme would

not, therefore, be within the scope of the request. The view of the Commissioner is that the scope of the request is indeed restricted only to information relating to the review of commutation factors. In the absence of evidence otherwise the Commissioner accepts that information of the kind that the complainant referred to here would not be within the scope of the request. His conclusion here is, therefore, that there is no breach of section 1(1)(a) of the FOIA.

21. The issue of there being no recorded information falling within the scope of request (iii) was also raised with the GAD. In response to this the GAD reiterated that no external bodies had been consulted other than those listed in response to request (iv). The Commissioner notes that information was disclosed to the complainant in response to request (iv) and is aware of no evidence on which to question the response from the GAD as to which external bodies were consulted. He therefore finds no breach through the response to request (iv).

Section 35

22. The GAD has cited the exemption provided by section 35(1)(a). This provides that information that relates to the formulation or development of government policy is exempt. Consideration of this exemption is a two-stage process; first, the information in question must fall within the class specified in the exemption. Secondly, this exemption is qualified by the public interest. This means that for the exemption to be upheld, the public interest in the maintenance of the exemption must outweigh the public interest in disclosure.
23. Turning first to whether this exemption is engaged, the GAD has argued that in updating the factors relating to the commutation of police pensions, it is formulating and / or developing government policy. In support of this argument it has cited that this responsibility is delegated to it from the Home Secretary, whereas in relation to other public service pension schemes similar decisions are made by Ministers. Whilst the GAD has acknowledged that it works *"...within the already existing policy requiring actuarial equivalence"*, it has a *"...choice of methodology and assumptions that will lead to materially different results"*.
24. The Commissioner has considered here whether the information records a process that could be more accurately characterised as the implementation of an existing policy. On this point the Commissioner notes that the policy of allowing the commutation of part of a police pension into a lump sum was set in the Police Pension Regulations 1987, and around the same time in other regulations covering the various parts of the UK. If it is the case that the information in question records a process that concerns the implementation of that policy, this information would relate to the implementation of government policy,

rather than formulation and development, and so the exemption would not be engaged.

25. The GAD has argued that responsibility for reviewing commutation factors having been delegated to it from the Home Secretary indicates that this is a government policy. The Commissioner agrees that the involvement of a Minister in a process is an indicator that the process should be considered government policy. However, the Commissioner also considers that an alternative reading of the delegation of responsibility for reviewing commutation factors is that it was no longer considered necessary for there to be Ministerial involvement in that process, possibly because this process is the implementation of an existing policy, rather than the formulation or development of new policy.
26. In response to being asked to give a chronology of the policy process in question here, the GAD stated that this process is ongoing in that the factors can be amended at any time. The view of the Commissioner is that a process that constitutes the formulation and / or development of government policy will be finite; it will have a defined end point. This end point may be, for example, legislation or an announcement in Parliament.
27. That, according to the GAD, the process in question here is not finite may suggest that it is a process of implementation. Whilst the policy was fixed previously, the exact means of implementing this policy are flexible.
28. Finally, the Commissioner has taken into account the content of the information in question here with a view to whether this can clarify the situation regarding whether this records formulation and development or implementation of policy. This information primarily consists of exchanges between officials within the GAD and with officials in other public authorities concerning the approach to be taken to this review of commutation factors. The view of the Commissioner is that this content does not mitigate against either conclusion as to whether this exemption is engaged and so is not of particular significance here.
29. The conclusion of the Commissioner is that the information in question relates to the implementation of an existing policy, rather than the formulation or development of policy. Whilst the Commissioner recognises that the GAD is a part of government and that the responsibility to carry out this process was delegated to it from a government Minister, the view of the Commissioner is that the policy was set some time ago in the police pension regulations referred to above. The issuing of these regulations marked the completion of the formulation and development stage and the process recorded within the

information in question is an administrative process carried out as part of the implementation of this previously set policy.

30. The exemption provided by section 35(1)(a) is not, therefore, engaged. As this conclusion has been reached it has not been necessary to go on to consider the balance of the public interest and at paragraph 3 above the GAD is required to disclose this information.

Other matters

31. The internal review response provided by the public authority gave no indication of the reasoning for the conclusion of the review. The GAD should ensure that internal review responses set out the findings fully, including the reasoning of the reviewer.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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

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