

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2012

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

Decision (including any steps ordered)

1. The complainant has requested internal information on how the Information Commissioner's Office (the "public authority") handled any complaints it had received in May and July 2011 relating to any decision notices issued which had found that no information was held under section 1 of the FOIA. The public authority disclosed some information to the complainant, and stated that no further information was held.
2. The complainant has complained that further information is held.
3. After investigating the complaint the Commissioner's decision is that no further relevant information is held. However, the Commissioner also finds that the public authority failed to provide advice and assistance under section 16 of the FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - It should now provide the complainant with advice and assistance to enable him to make a new request.
5. 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 FOIA and may be dealt with as a contempt of court.

Request and response

6. On 29 November 2011 the complainant wrote to the public authority and made the following request:

"Please supply any example or instance of any complaint, evidence or complainant that has been ignored in the last 6 months (since 1 June 2011) in relation to complaints and the evidence under the Fraud Response Plan, alleged breaches in Standards in Public Life or its corporate governance arrangements covering integrity, honesty, impropriety, misconduct and criminal issues."

7. The public authority responded on 12 December 2011 and informed the complainant that to respond to this request would cost above the appropriate cost limit, and as such section 12 of the FOIA applied. It invited him to refine his request.

8. On 15 December 2011 the complainant wrote to the public authority again and refined his request as follows:

"Please now only supply internal information relevant to decision notices published in May 2011 and July 2011 that determined 'no information held' on the balance of probabilities under section 1 and any relevant complaint referred to the [public authority] based on alleged misconduct surrounding such 'not upheld' decision notices. I don't require any information of a personal nature and any required redactions will be welcomed."

9. On 9 January 2012 the public authority responded. It disclosed a copy of an internal email to the complainant, which it stated was the only internal information that it held that fell under the scope of the request.

10. The complainant requested an internal review on 20 January 2012. He argued that he was aware that a number of complaints that would fall within the parameters of his request had been made, and questioned the adequacy of the searches that had been carried out to identify relevant information. In particular he wrote,

"...please provide all information pursuant to my request as regards all other complaints made pursuant to the parameters provided with the request."

11. The complainant also argued that the information he had been provided with was inadequate, as it did not show the precise time and date that this internal email had been sent, or who the recipient was. Nor did the disclosed information show how the complaint associated with it had been dealt with.

12. The public authority contacted the complainant on 24 January 2012 and provided additional information in relation to the internal email in question. This showed the time and date on which it was sent, as well as the recipient of the email. It noted that it had redacted the details of the complaint that this internal email was about as this was third party personal information, and as such was exempt under section 40(2) of the FOIA.
13. The public authority contacted the complainant again on 8 February 2012 with the results of the internal review. It upheld its original decision, and stated that it held no further internal information that would fall under the scope of his request.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically he argued that the public authority holds further information that would fall under the scope of his request.
15. The complainant has not made any reference to the use of section 40(2) to withhold some information from that disclosed to him on 24 January 2012. Bearing this in mind, and taking into account his statement when making the request that he did not require information of a 'personal nature', the Commissioner has not considered the use of this exemption in this case. The Commissioner has also considered whether the public authority met the requirements of section 16.
16. Therefore the scope of this case has been to consider whether the public authority holds any further information that would fall within the scope of the request.

Reasons for decision

Is further relevant information held?

17. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled –
 - to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - if that is the case, to have that information communicated to him.

18. The complainant has argued that further relevant information is held by the public authority. In support of this he has stated that:

"...it is proven beyond all reasonable doubt that at least five conduct complaints were made in regard to the [public authority] relevant to decision notices published in May 2011 and July 2011 that determined 'no information held'... I refer you to the email sent to [named employee of the public authority] dated 13 December 2012. However the [public authority] only provided very, very limited and unconvincing material in relation to one of these that was dated 03 November 2011. No information at all has been provided about the nature of the [public authority's] response to this or any of the other complaints, about what happened with the complaints, about who dealt with them and when or anything else. Certainly if information, no matter how scant was provided in relation to 03 November 2011, information related to the other complaints should be provided if held.

This facts appear to show that either:

A/ The [public authority] disregarded and ignored a series of serious and well evidenced conduct complaints and generated no internal information in relation to these (I am not interested in personal data and will accept all reasonable redactions). Or

B/ The [public authority] did investigate the complaints and has not disclosed the required information (I am not interested in personal data and will accept all reasonable redactions)."

19. The key issue in this case is the scope of the request. The request asked for internal information relating to any complaints of a specific nature made in relation to specific types of decision notices issued in specific months. Bearing this in mind, the central question is what is meant by 'internal information'. The complainant has argued that in using this term he intended the request to refer to any information held by the public authority internally that related to complaints about the types of decision notices described in the request. However, the public authority has stated that it interpreted the request to be referring only to information that was generated and sent internally. It did not interpret the request to mean any information held by it.
20. In reaching a view on the scope of the request the Commissioner notes that when the complainant requested an internal review he wrote,

*"I should clarify that from the perspective of my request I intended that "**internal information**" [complainant's emphasis] referred to any information that is stored centrally or at any other location or*

from any source at the Office of the Information Commissioner. I am clarifying this point because I don't want the [public authority] to place excessive emphasis on the phrase "internal information" to assist in their possibly withholding material captured pursuant to this request."

21. The Commissioner accepts that the complainant is clearly referring here to any information held by the public authority that would relate to complaints made about decision notices issued in May or July 2011 which found that no information was held under section 1 of the FOIA (as described in the request).
22. Under the FOIA a public authority has a duty to read a request for information objectively. If more than one objective reading of a request is possible, a public authority is under a duty to clarify with the requestor the scope of their request.
23. In this instance the public authority has confirmed that it read the request for 'internal information' to only relate to information that was generated and sent internally. This obviously excludes information received by the public authority from third parties, or sent by the public authority to third parties.
24. Given the wording of the request – for copies of 'internal information' relating to specific types of complaints about specific types of decision notices – the Commissioner considers that the public authority's reading of this request was an objective one. Additionally, he does not consider that the complainant's argued reading (for all information held by the public authority relating to these types of complaints) offers an alternative objective reading.
25. Therefore the Commissioner is satisfied that the public authority was not under a duty to clarify the meaning of the complainant's request, as its reading of the phrase 'internal information' was the only objective reading of this request.
26. As the Commissioner considers that the public authority interpreted the request correctly he will now go on to consider whether any further information is held that would fall within the scope of the request (as it was interpreted by the public authority).
27. In cases such as this the standard of proof to apply in determining whether a public authority holds requested information is the civil standard of the balance of probabilities. In deciding where the balance lies the Commissioner will consider the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is

not held. The Commissioner will also consider any evidence that further information is held, including whether it is inherently unlikely that the information so far located represents the total information held.

28. Therefore the Commissioner has considered whether, on the balance of probabilities, the public authority holds any additional information that would fall under the request. In doing so he has particularly borne in mind the details of what searches it has carried out.
29. It has explained that in order to identify what relevant information was held it searched its website, where it publishes its decision notices. This identified any decision notices issued in May and July 2011 that found that no information was held under section 1 of the FOIA (as referred to in the request). It also established whether any decision notices had been issued in May and July 2011 (of the type described in the request) which had not been published on its website. Once any decision notice of this type had been identified, a search was then carried out on the case associated with each these decision notices to see if any complaint about 'alleged misconduct' had been received (as a result of the notice). If there were any such complaints, a search was then carried out to establish if any 'internal information' (using the definition set out in paragraph 23 above) had been created as a result of these complaints.
30. In relation to where these searches had been carried out, the public authority explained that all correspondence relating to casework is recorded on its casework management system. Therefore, this was where the searches were carried out. It further explained that all information is held electronically on this system.
31. Finally, it reiterated that all the information that it held that fell under the scope of the request had been provided to the complainant. It also confirmed that no relevant information was deleted or destroyed before or after the processing of this request.
32. The Commissioner notes the complainant's comments as to why he believes that information in relation to this request is held. However, despite the complainant's obvious belief that further relevant information is held, the Commissioner also notes the details of the searches that the public authority has undertaken in order to locate any relevant information.
33. Having considered the details of the searches that have been carried out, together with the objective reading of the request, the Commissioner is satisfied that on a balance of probabilities the public authority does not hold any further information that would fall under the scope of the request.

34. The Commissioner has gone on to consider the application of section 16 in this case.

The duty to provide advice and assistance

35. Section 16 of the FOIA states that,

“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

“(2) Any public authority which in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection(1) in relation to that case.”

36. The provision of advice and assistance to persons who propose to make or have made, requests for information is dealt with in Part II of the section 45 code of practice. Of relevance to this case, this includes providing advice and assistance to those proposing to make requests.
37. Whilst the Commissioner is satisfied that the public authority's reading of the request was correct, he notes that the complainant's comments when he requested an internal review (as quoted at paragraph 21 above) clearly indicated that he intended the scope of his request to be much wider. Whilst (as noted above) he is satisfied that the complainant's intended scope was not an objective reading of the request, the Commissioner considers that the public authority should have engaged with the complainant, in the light of his comments, to explain to him how it had interpreted the request, and provided advice and assistance to enable him to make a new request encompassing 'all' the information it held (of the type referred to in his request). He also considers that it would have been reasonable for the public authority to provide this advice and assistance.

Right of appeal

38. 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

39. 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.
40. 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

Gerrard Tracey
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