

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 2015

Public Authority: Information Commissioner's Office

Address: Wycliffe House,
Water Lane,
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information about the use of HM Revenue and Customs funds. The ICO asked the complainant to clarify their request but considered that the clarification the complainant provided did not sufficiently clarify the scope of the request. The ICO has said that under section 1(3) of the FOIA it is not obliged to respond to the request because it did not receive the further information that it had requested from the complainant; that would enable it to do so.
2. The Commissioner's decision is that the ICO has correctly applied section 1(3). In addition he considers that the ICO met its duty under section 16 of the FOIA to provide advice and assistance.
3. The Commissioner does not require the ICO to take any further steps.

Request and response

4. On 10 May 2014, the complainant wrote to the ICO and requested information in the following terms:

'...provide all documents, e-mails, and everything else you have which show HMRC were authorized to use public funds to charge an Asian employee with being an extremist for heckling the British National Party at a peaceful protest in Burnley.'

5. The request referenced a separate decision notice – FS50451470 – that concerned an ongoing grievance the complainant has with the Civil Service Commission regarding a complaint they had submitted to it.
6. The ICO responded on 6 June. The ICO cited section 1(3) of the FOIA which says that a public authority is not obliged to comply with a request in cases where it has told the requester it needs further information to identify and locate the requested information, but has not been supplied with this further information.
7. The ICO also told the complainant that in order to locate information relevant to the very specific and narrow remit of the request, the ICO would need to read and analyse all the information it holds related to HM Revenue and Customs (HMRC). It holds in excess of 360 cases relating to HMRC and to search these would exceed the appropriate limit of 18 hours, provided under section 12 of the FOIA. The ICO asked the complainant to clarify the wording and parameters of the request with a view to then being able to carry out a meaningful and objective search of the related information that it holds.
8. Correspondence between the complainant and the ICO followed. The ICO confirmed it had provided the complainant with all the information they were entitled to with regard to FS50451470. It sought clarification on whether the request related to all the correspondence concerning HMRC that it holds or to FS50451470 only.
9. The ICO again asked the complainant to clarify some of the terms they had used in their request, such as 'peaceful', 'authorised' and 'Asian'. It also gave examples of additional information that could clarify the scope of the request, such as the name of a person the information might relate to and the approximate dates that HMRC used public funds for the purpose the complainant outlined in their request.
10. The ICO said that without clarification, it would have to subjectively interpret whether it holds any information that might fall within the scope of the complainant's request, and make a judgement on whether it is relevant. Since it would not be able to read the request objectively, the ICO would not be able to identify the requested information and could not go on to locate it (if held).
11. The complainant provided some clarification but the ICO told them that it was not sufficient to clarify the scope of the request.

12. Following an internal review on 11 November, the ICO maintained its position that searching to see if it held information the complainant had asked for would involve reading and analysing every piece of HMRC-related information that it holds. This would exceed the appropriate time limit set out in section 12 of the FOIA. The ICO also detailed how it had met its obligation under section 16 to offer advice and assistance (see § 8 and §9).
13. However, the ICO also again referenced section 1(3) of the FOIA, which says that a public authority is not obliged to comply with a request where it has asked the applicant for further information about the request and has not received this. The ICO confirmed that it was not able to read the complainant's request objectively and that as a result, it was not able to identify the requested information and could not therefore go on to find it (if held).

Scope of the case

14. The complainant contacted the Commissioner on 19 November 2014 to complain about the way their request for information had been handled.
15. During the Commissioner's investigation, the ICO confirmed that it is relying exclusively on section 1(3), and not section 12 which it had also mentioned during its correspondence with the complainant. The Commissioner has therefore focussed his investigation on the ICO's application of section 1(3) to the request. He has also considered whether it has complied with its duty under section 16.

Reasons for decision

16. **Section 1(1)** of the FOIA says that an individual who asks for information from a public authority is entitled to (a) be informed whether the authority holds the information and, (b) if the information is held, to have that information communicated to them.
17. **Section 1(3)** of the FOIA says that a public authority is not obliged to comply with section 1(1) of the FOIA where it has asked the applicant to supply further information about the request in order to identify and locate the requested information, and has not received this further information.

18. The Commissioner's guidance on section 1 makes it clear that public authorities must interpret information requests objectively and avoid reading into the request any meanings that are not absolutely clear from the wording.
19. When an authority receives an unclear or ambiguous FOIA request its duty under section 16 of the FOIA to provide advice and assistance will be triggered and it must ask the requester for clarification.
20. As detailed above, the ICO asked the complainant to supply further information about the request, and tried to help the requester clarify the request. The complainant did not provide this information.
21. The Commissioner agrees with the ICO's assessment of the request – as it remains worded - as subjectively phrased. In order to conduct a meaningful search, the ICO would have to place its own interpretation on certain terms in the request, such as 'Asian' and 'peaceful'. The complainant did not provide further information that would enable the ICO to approach the request in an objective way: such as the name of a particular individual or information about a specific protest. He is therefore satisfied that the request is ambiguous and that the ICO is correct to apply section 1(3) to it.
22. **Section 16** of the FOIA places a duty on a public authority to offer advice and assistance to requesters. The Commissioner is satisfied that the ICO met its obligation under section 16 because, as detailed in this notice, it offered the complainant more than adequate advice and assistance in order to help them clarify the parameters of their request.
23. Whilst accepting the ICO's reliance on section 1(3) the Commissioner recognises that the ICO's response to the complainant could have been clearer about which provision of FOIA it was relying on.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Steve Wood
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SK9 5AF