

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2015

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested statistical information from the Violent and Sex Offender Register (ViSOR). The Home Office stated that, as it managed ViSOR for the police rather than for its own purposes, it did not hold the information on ViSOR for the purposes of the FOIA.
 2. The Commissioner's decision is that at the time of the request the Home Office did hold the information on ViSOR for the purposes of the FOIA and so it was in breach of section 1(1)(a) of the FOIA in stating that this information was not held. It is now required to provide a fresh response to the request on the basis that the requested information is held and either disclose the requested information, or specify the section of the FOIA under which this information is withheld.
 3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Provide a response to the request that is compliant with section 1(1) of the FOIA.
 4. The Home Office 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.
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Request and response

5. On 28 October 2013, the complainant wrote to the Home Office and requested information in the following terms:
 - i. How many Registered Sex Offenders were known to be missing as of the 01.09.2013.*
 - ii. Of these how many have been missing for more than a year.*
 - iii. Please provide a breakdown of these missing RSOs showing in which force area they have gone missing from. Eg: London 40, Sussex 12, Surrey 8 etc."*
6. After an extremely lengthy delay that the Commissioner comments on elsewhere in this notice, the Home Office responded substantively on 16 December 2014. It stated that the requested information was not held by the Home Office as *"whilst the Home Office has overall responsibility for ViSOR, the information on the system is owned by police forces"*.
7. The complainant responded on 18 December 2014 and requested an internal review. The Home Office responded with the outcome of the review on 22 January 2015 and upheld the initial response that the information was not held by the Home Office for the purposes of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 10 February 2015 to complain about the way his request for information had been handled. The complainant disputed that the Home Office does not hold ViSOR for the purposes of the FOIA and argued that this response from the Home Office contradicted its response to an earlier, similar request.

Reasons for decision

Sections 1 and 3

9. Section 1(1)(a) of the FOIA requires public authorities to confirm or deny whether information that has been requested is held. Section 3(2) sets out the circumstances in which information is "held" by a public authority for the purposes of the FOIA as follows:

"(a) it is held by the authority otherwise than on the behalf of another person, or

(b) it is held by another person on behalf of the authority."

10. The position of the Home Office is that it holds ViSOR only on behalf of the police. This would mean that, in accordance with section 3(2)(a), it is not held by the Home Office for the purposes of the FOIA. The complainant disputes this point and argues that the information is held by the Home Office for its own purposes.
11. The task for the Commissioner here is to reach a conclusion on whether the Home Office was correct in stating that it did not hold the requested information for its own purposes. If it stated correctly that this information was not held, it complied with section 1(1)(a) of the FOIA.
12. In reaching a conclusion here the Commissioner has taken the approach set out in his published guidance on this issue¹, which states that:

*"information will be held by the public authority if the authority is holding that information for someone else but also holding it **to any extent** for its own purposes".*
13. The Home Office argued that it manages ViSOR on behalf of the police, but that it does not access the information on the system and does not enter new information on it. It stated that only the police and other external parties could do so. The Commissioner asked the Home Office to confirm whether it could access ViSOR for any of a list of purposes, including monitoring crime rates, or preparing briefings for Ministers. The Home Office stated that it did not.
14. As mentioned above, the complainant made an earlier request for information from ViSOR. In response to that request, on 31 October 2012 the Home Office provided some information to the complainant and stated specifically that the information on ViSOR would be held by the Home Office for the purposes of the FOIA once the process of transferring the database to the Home Office, then underway, was complete. The Commissioner also became aware of other evidence during the investigation of this case that confirmed that the Home Office was previously using ViSOR for its own purposes.

¹ <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

15. The responses from the Home Office to the ICO in this case were on the current arrangements for ViSOR; it stated that its position that it does not hold ViSOR for the purposes of the FOIA had applied since December 2014. However, that there was a very severe delay in responding to the complainant's information request does not alter that this notice concerns the situation at the time of the request, which was made in October 2013.
16. The Commissioner considers it clear that ViSOR was previously held by the Home Office for the purposes of the FOIA. It is only more recently that changes have been made to restrict Home Office access to ViSOR and which culminated in the position that the Home Office states has been in place since December 2014, more than a year after the complainant's information request. As the Home Office has cited December 2014 as the date when the current ownership arrangements for ViSOR were agreed, the evidence available to the Commissioner suggests that it was used by the Home Office to at least some extent for its own purposes at the time of the request.
17. The conclusion of the Commissioner is that, at the time of the complainant's request, ViSOR was held by the Home Office for its own purposes, as well as on behalf of the police. This means that section 3(2) of the FOIA provided that this information was held by the Home Office for the purposes of the FOIA and, in stating that this information was not held, it was in breach of section 1(1)(a) of the FOIA. The Home Office is now required at paragraph 3 above to provide a fresh response to the complainant's request.
18. Whilst the Commissioner's decision in this case is based on the situation that applied at the time of the request, he may have reached a similar conclusion had this notice concerned a request for ViSOR information made since December 2014. In his view a strong argument could be made that the overall responsibility of the Home Office for the police means that ViSOR is held to some extent for its own purposes, and he has not found wholly convincing the reasoning of the Home Office for why the post-December 2014 arrangements mean that ViSOR is not held to any extent for its own purposes. In relation to any future case that concerns a more recent request for information on ViSOR, if the Home Office maintains its position from this case, it should be prepared to provide detailed reasoning and evidence in support of this.

Other matters

19. As noted above, there was a very severe delay in responding to the complainant's request. The delays in responding to this request and to other requests relating to the ViSOR database have been raised with the Home Office by the Commissioner separately from this case and the Home Office has stated that there are no longer any outstanding requests relating to ViSOR.
20. The Commissioner regards a delay of close to 14 months in responding to a request as unacceptable in any circumstances and the Home Office must ensure that this situation does not arise again in relation to requests on any subject matter. The delay has been recorded and will be considered by the ICO's enforcement team alongside other intelligence.

Right of appeal

21. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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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