

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 7 September 2015

Public Authority: Department of Enterprise, Trade and Investment

Address: Netherleigh
Massey Avenue
Belfast
BT4 2JP

Decision (including any steps ordered)

1. The complainant has requested information relating to the Department for Enterprise, Trade and Investment's legal authority to conduct interviews under caution. The Commissioner's decision is that the Department (DETI) does not hold any recorded information that has not been provided to the complainant. No further steps are required.

Request and response

2. The complainant in this case was assisted by a friend who made the request, and pursued the complaint, on his behalf. For ease of reference this decision notice refers to the complainant throughout. The Commissioner has recently issued a decision notice¹ relating to a substantially similar request submitted by the complainant's friend to another public authority. It is unavoidable that the analysis in this decision notice will be similar to the previous decision notice. Nevertheless the Commissioner would stress that his decision in each case is made on its own merits.
 3. The complainant made the following request to DETI on 13 January 2015:
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¹ Case reference FS50566251, issued on 16 July 2015.

"...it is my contention that DETI staff do not possess the statutory authority to conduct IUC using PACE (NI) 1989. Do you agree? If not, please substantiate your reasoning by citing a piece of legislation, not simply comments which lack any substance whatsoever.

Can you now PROVE to me UNEQUIVOCALLY that DETI staff possess the statutory authority to conduct IUC using PACE(NI) 1989?"

4. "PACE (NI)" means the Police and Criminal Evidence (Northern Ireland) Order 1989.
5. DETI responded to the complainant on 12 February 2015. However the complainant advised DETI on 17 February 2015 that he was not satisfied with this response.
6. DETI advised the complainant on 17 February 2015 that it would conduct an internal review. The complainant pointed out that he had not requested an internal review, but asked whether the internal review would provide him with an answer to his request. DETI explained to the complainant that it was following the Code of Practice issued under section 45 of the FOIA. Paragraph 38 of the Code recommends that any expression of dissatisfaction with a public authority's response should be treated as a request for internal review.
7. DETI provided the complainant with the outcome of the internal review on 10 March 2015. DETI advised that its Trading Standards Service (TSS) had the "statutory authority to investigate alleged breaches of various consumer laws". DETI was of the opinion that it did not require specific statutory authority to conduct interviews under caution, but that it was obliged to have regard to the provisions of PACE (NI) when doing so. Consequently DETI confirmed that it did not hold any recorded information that constituted statutory authority to conduct interviews under caution.

Scope of the case

8. The complainant contacted the Commissioner on 16 April 2015 to complain about DETI's response to his request. The complainant was of the opinion that DETI required statutory authority to conduct interviews under caution; therefore the complainant argued that DETI ought to be able to provide evidence of this authority.
9. Therefore the scope of the case is to determine whether DETI holds recorded information that constitutes the statutory authority to conduct interviews under caution.

Reasons for decision

Is recorded information held by the public authority?

10. The FOIA provides for recorded information to be disclosed into the public domain. This means that a public authority is only required to provide recorded information that it holds at the time of the request. Public authorities are not required to provide commentary or explanations that are not already recorded. The FOIA does not in itself require public authorities to hold information, it merely provides for access to information that is already held. The Commissioner cannot comment on whether a public authority ought to hold certain information, he can only decide whether or not, on the balance of probabilities, it does hold that information.
11. The Commissioner's published guidance states that when considering whether information is held, the Commissioner uses the civil standard of proof, i.e. whether it is likely or unlikely on the balance of probabilities.² In assessing such cases the Commissioner will consider the extent and quality of the authority's search for the requested information, any other explanations provided, and the complainant's reasons for believing that the information is held.
12. DETI's position is that it does not hold any recorded information that constitutes statutory authority to conduct interviews under caution. The Commissioner asked DETI how it satisfied itself that it did not hold any recorded information.
13. DETI confirmed that it had conducted a number of searches for relevant information. These searches were undertaken by staff in TSS as well as DETI's Information Management Branch. DETI was confident that, should relevant information be held, it would have been identified during at least one of these searches.
14. The complainant has not provided the Commissioner with any evidence indicating that DETI does hold the requested information. Rather, the complainant appears to have maintained the view that DETI ought to be able to provide evidence that it is authorised to conduct interviews under caution.

2

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx

15. The Commissioner accepts that DETI has conducted appropriate searches that would reasonably have been expected to identify any relevant information held by the authority. However no such information has been identified. Nor has the Commissioner seen any evidence that might indicate that DETI has sought to conceal any relevant information. The Commissioner has also taken into account DETI's assertion that it does not require statutory authority to conduct interviews under caution.
16. In the Commissioner's opinion this constitutes a reasonable explanation as to why DETI would not hold the requested information. As the Commissioner has commented in the previous decision notice referred to above it is not for him to comment on a public authority's powers. The Commissioner's responsibility is to decide whether or not a particular request has been handled in accordance with the FOIA.
17. For the reasons set out above, and on the balance of probabilities the Commissioner is satisfied that DETI does not hold any recorded information which is relevant to the request. The Commissioner has also considered whether, if he were to uphold the complaint, he could specify any steps that DETI could be required to take. Given the Commissioner's acceptance that DETI has conducted appropriate searches, it follows that there are no further steps the Commissioner can require DETI to take in relation to the complainant's request.

Right of appeal

18. 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 123 4504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
20. 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

**Alexander Ganotis
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Wilmslow
Cheshire
SK9 5AF**