

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2017

Public Authority: Serious Fraud Office
Address: 2-4 Cockspur Street
London
SW1Y 5BS

Decision (including any steps ordered)

1. The complainant requested information relating to the Serious Fraud Office's (SFO) Proceeds of Crime Risk Register.
2. The complainant alleged that the SFO breached its duty to provide advice and assistance to him when handling the request.
3. The Commissioner's decision is that SFO did not breach its duty to provide advice and assistance within the meaning of section 16 of the FOIA in its handling of the request.
4. No steps are required as a result of this decision.

Background

5. The SFO investigates and prosecutes the top level of serious fraud, bribery and corruption, pursues the proceeds of such crimes and assists other states with their similar cases.
6. The Proceeds of Crime (POC) Division conducts domestic and international casework.
7. The POC Risk Register is a Microsoft Excel spreadsheet on the SFO's computer systems.
8. The spreadsheet provides an overview of all cases in the POC Division and contains high level operational information about every live case and some closed cases.

Request and response

9. On 22 July 2016, the complainant wrote to the SFO and requested information in the following terms:

"Please advise under Section 16 of FOIA:

- *The name of the IT system / programming language the Proceeds of Crime Risk Register runs on*
- *All column headings and a description of the type of information held under each heading*
- *The time period covered by the Proceeds of Crime Risk Register*
- *The number of: a) records of data; b) rows of data; and c) columns of data held on the Proceeds of Crime Risk Register*
- *The number of "free text fields" (i.e. columns containing non generic text strings) held on the Proceeds of Crime Risk Register and the number of records (i.e. individual cells) this information is spread over*

Then please disclose:

1. *All previous statistical disclosures under FOIA based on data from the Proceeds of Crime Risk Register*
2. *All non exempt portions of the Proceeds of Crime Risk Register in a machine readable format (as per the dataset provisions of FOIA). Please indicate precisely which records, rows &/or columns of data have been withheld by virtue of which statutory exemption".*

10. The SFO responded on 8 September 2016. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so:

- section 27(1)(a) (international relations);
- section 31(1) (a), (b), (c) (law enforcement).

11. Following an internal review, the SFO wrote to the complainant on 20 December 2016. It revised its position, clarifying that it considered that the exemptions at sections 30(1)(a), (b) and (c) (investigations and proceedings) and section 27(2) of the FOIA were engaged.

Scope of the case

12. The complainant contacted the Commissioner on 4 January 2017 to complain about the way his request for information had been handled. He told the Commissioner that he had requested advice under section 16 of the FOIA about the Proceeds of Crime Risk Register and requested, amongst other things, 'all non-exempt portions' of the register in a machine readable format.
13. He disputed that exemptions apply to the column headings of the register and the description of the type of information held under those headings. He also disputed that the exemptions apply *'in whole'* to the remaining requested information and that the public interest was in favour of withholding the requested information.
14. He told the Commissioner that his request for advice was an attempt to determine what fields of information are genuinely covered by exemptions, and which fields are free to be released, whether in whole or in part.
15. As is her practice, the Commissioner invited the SFO to revisit its handling of the request, including its refusal to disclose the requested column headings, description of the type of information under each heading or any portion of the spreadsheet.
16. Having reconsidered the request, during the course of the Commissioner's investigation the SFO disclosed the column headings to the complainant. The SFO also confirmed that it did not hold a description of the type of information under each column heading.
17. The complainant acknowledged that by disclosing the column headings, the SFO had provided some of the advice and assistance he requested. He told the Commissioner:

"To their credit, the SFO have disclosed the columns headings of the register, as requested. However, that is the only requested advice and assistance they have disclosed. The rest remains outstanding".
18. In light of the above, the analysis below considers whether the SFO fulfilled its duty to provide advice and assistance in accordance with section 16 of the FOIA.

Reasons for decision

Section 16 duty to provide advice and assistance

19. Section 16 of the FOIA states:

"(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 or 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".

20. The complainant maintained to the Commissioner, in the context of the alleged breach of section 16, that the SFO did not provide reasonable advice and assistance to enable him to make a refined request for information.

21. The SFO maintained in its correspondence, both with the Commissioner and the complainant, that, having disclosed column headings, the content of the register was exempt from disclosure:

"...there are no 'non-exempt portions'".

22. In making her determination as to whether the SFO complied with section 16, the Commissioner has had regard to the section 45 Code of Practice ('the Code'). The Code's provisions concerning the giving of advice and assistance make it clear that they are primarily concerned with, inter alia, the duty to assist the applicant, if necessary, to clarify the request (paragraphs 8-11). That is *"...authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested"* (paragraph 8).

23. That this is the ambit of the duty under section 16 as far as the Code is concerned, is emphasised by paragraph 12 ("Limits to advice and assistance") which provides that if, after the provision of the required advice and assistance, *"the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification."*

24. Once it is found that the request is clear, the Commissioner's guidance¹, based on *Michael King v the Information Commissioner* (EA/2010/0126) and *Berend v the Information Commissioner and LBRT* (EA/2006/0049), is that "*there is no need for the authority to exercise its right to seek clarification under section 1(3), and therefore no duty under section 16 to provide advice and assistance to help the requestor provide that clarification...*".
25. The complainant disputed that the SFO had provided him with the minimal requirements for him to make a refined request for information. He told the Commissioner:
- "For example, they did not provide a description of the information held under each column, what exempt information there is in each column, which columns are free text fields and how many rows of data there are, etc. These are the minimal requirements for me to make a refined request for information [sic]"*.
26. However, the Commissioner notes that the SFO confirmed that it did not hold a description of the type of information under each column heading. In correspondence with the complainant, the SFO also explained, for example, that the spreadsheet contains nine tabs of operational information, representing distinct categories of cases and that the number of columns in each tab varies. Furthermore, it provided the complainant with details of the number of rows in the spreadsheet relating both to live cases and closed cases.
27. Regarding the content of the register, the SFO provided arguments in support of its view that exemptions apply to the entire content of the spreadsheet.
28. Accordingly, the SFO complied with the Code as it concerns the provision of advice and assistance under section 16 of the FOIA.
29. In view of her findings and deliberations above, the Commissioner has concluded that the SFO did not breach its duty to provide advice and assistance to the complainant within the meaning of section 16 in its handling of the request.

¹ <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

Right of appeal

30. 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

31. 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.
32. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF