

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2019

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

Decision (including any steps ordered)

1. The complainant made two information requests ("Request 1" and "Request 2") relating to a Home Office consultation on legislative changes to the licensing of offensive and dangerous weapons. The Home Office disclosed some information and provided a free text explanation in respect of parts of Request 1. It disclosed all the information it said it held in response to Request 2.
2. The Commissioner's decision is that the Home Office failed to properly respond to several parts of Request 1 and that in doing so it breached section 1(1) (general right of access) of the FOIA. The Commissioner also found that by failing to respond within the statutory time for compliance, the Home Office breached section 1 and section 10 of the FOIA. However, she was satisfied that, on the balance of probabilities, the Home Office had disclosed all the information it held with regard to Request 2.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to points (1)-(3) and (5)-(6) of Request 1. For each point, the Home Office should confirm or deny whether the information is held, unless an exception from the duty to confirm or deny applies, in which case this must be specified in a refusal notice which is compliant with section 17(1) of the FOIA. If information is held, the information should either be disclosed to the complainant or a refusal notice should be issued which is compliant with section 17(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 Act and may be dealt with as a contempt of court.

Request and response

5. On 15 October 2017, the complainant submitted Request 1 to the Home Office, requesting information in the following terms:

"1. What was the time-line / timescale / pivotal point or exact event that dictated the inclusion of ".50 calibre and certain rapid firing rifles" in the consultation (separate sub-answers for .50 calibre & rapid firing rifles)?

2. Why were the appropriate shooting organisations (NRA / BASC etc) not consulted before the Home Office announcement?

3. Please provide copies of communication with BASC / NRA (or any such shooting body) for the 6 weeks prior to the announcement of the consultation.

4. What department(s) instigated the process for including these categories of firearms in the consultation?

5. Please provide copies are all related (internal / external) communications with such department(s) as at Question 4 for the 6 weeks prior to the issuance of the consultation.

6. Why have these categories of firearms been included in the consultation (separate sub-answers for .50 calibre & rapid firing rifles)?

7. What is the full statistical data over the last 10 yrs to show any / all aspects of legally owned (i.e. licensed) firearms used for gun crime purposes, to include (but not limited to):

a. Type of firearm.

b. Calibre.

c. Nature of criminal activity.

8. What gun crime has been committed in the last 10 yrs by licensed owners of these specified categories of firearms (separate sub-

answers for .50 calibre & rapid firing rifles)?

9. Please provide copies of ALL minutes of all meetings for the FELWG (Firearms and Explosives Licensing Working Group)."

6. On 16 October 2017, the complainant submitted Request 2, requesting information in the following terms:

"Please provide copies of all emails associated with [name and identifying information redacted] to/from the Home Office for the last 6 months."

7. The Home Office responded to both requests in a single letter on 24 January 2018, as follows:

Request 1

- Points (1)–(6): the Home Office provided a free text explanation, setting out, in general terms, the UK's approach to reviewing the firearms licensing system and referring the complainant to the consultation for more information about its background and aims.
- Points (7) and (8): citing section 21 (information reasonably accessible to the requester) of the FOIA, the Home Office shared a link from the Office of National Statistics' ('ONS') website to a downloadable Excel spreadsheet of statistics for violent offences. It also provided the name of two statistical bulletins which it said could be found online. It said that the available statistics did not break down the information in such a way as to show whether the stolen weapons were also used in crimes.
- Point (9): the Home Office said the FELWG minutes were the responsibility of the National Police Chiefs Council ('the NPCC') and it directed the complainant to the section of the NPCC's website where the minutes could be found.

Request 2

- The Home Office would neither confirm nor deny whether it held the requested information, citing the exemption at section 31(3) (law enforcement) of the FOIA. It provided an outline of the public interest arguments it had considered when reaching this position.
8. The complainant requested an internal review on 23 March 2018, making the following comments:

Request 1

- Describing the free text answer to points (1)-(6) as “waffle”, the complainant said it was important that they be answered individually, and he asked the Home Office to do so.
- With regard to points (7) and (8), the complainant did not ask the Home Office to reconsider its response, merely commenting that the Home Office appeared to be relying on inadequate statistics.
- The complainant said that the web link he was provided with in response to point (9) only contained the minutes for one meeting, and he asked that the minutes for other meetings be disclosed.

Request 2

- The complainant asked the Home Office to reconsider its decision to apply section 31(3) to neither confirm nor deny whether it held the requested information. He said that previous FELWG meeting minutes confirmed that the individual named in the request had an active interest in the matter.

9. The Home Office provided the outcome of the internal review on 8 August 2018. It upheld its handling of the requests as follows:

Request 1

- The Home Office considered it was appropriate to amalgamate the various points of the request “...to enable the Department to answer your questions in the context of the public consultation on this subject.”
- It reiterated that the information requested at point (9) was available from the NPCC. It suggested the complainant make a FOIA request for further relevant information to the NPCC.

Request 2

- The Home Office upheld the decision to apply section 31(3) of the FOIA to neither confirm nor deny holding the requested information, for the reasons set out in its original response.

Scope of the case

10. The complainant contacted the Commissioner on 9 August 2018 to complain about the way his request for information had been handled. The basis for his complaint was that the internal review had not been actioned adequately, FELWG minutes had not been provided and email

correspondence had been incorrectly exempted under section 31(3) of the FOIA.

11. During the course of the Commissioner's investigation, the Home Office disclosed to the complainant the information at point (4) of Request 1, and so the Commissioner has excluded its response to point (4) from the scope of this decision notice. It also withdrew its reliance on section 31(3) in respect of Request 2. It confirmed that it did hold information and it disclosed it to the complainant. However, the complainant told the Commissioner that he did not believe that what was disclosed to him represented the entirety of what the Home Office held with regard to Request 2 and he asked the Commissioner to consider whether it held more information.
12. When requesting an internal review, the complainant did not ask the Home Office to reconsider its response in respect of points (7) and (8) of Request 1, and while he has expressed general dissatisfaction about the statistics on which it relies, he has not complained about this aspect of the response to the Commissioner. The Commissioner has, therefore, excluded the Home Office's response to points (7) and (8) of Request 1 from the scope of this decision notice.
13. The Commissioner notes that the Home Office told the complainant that the NPCC was responsible for producing the minutes requested at point (9) of Request 1. It also explained to the Commissioner that FELWG meetings are not Home Office meetings; Home Office officials attend by invitation, are delegates at the meeting, and the minutes are entirely the responsibility of the NPCC. During the Commissioner's investigation, the complainant notified her that he had since requested the minutes referred to in point (9) from the NPCC, that the NPCC had disclosed them to him and it had also uploaded them to its website. The complainant did not express dissatisfaction with this and so, on the grounds that he now had the information, the Commissioner has excluded the Home Office's response to point (9) of Request 1 from the scope of this decision notice.
14. Taking the above into account, and the correspondence the complainant has had with the Home Office regarding the requests, the Commissioner considers the scope of this decision notice to be:
 - whether the Home Office complied with the statutory timescales for compliance;
 - whether the Home Office complied with section 1 of the FOIA with regard to points (1)-(3) and (5)-(6) of Request 1; and
 - whether, on the balance of probabilities, the Home Office disclosed all the information it held in respect of Request 2.

15. The Commissioner has commented on the way the internal review was conducted in the 'Other matters' section of this decision notice.

Reasons for decision

Section 1 – general right of access

Section 10 - time for compliance

16. Section 1(1) of the FOIA states:

"Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

17. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
18. The Home Office received the requests on 15 and 16 October 2017 respectively. It responded to both requests on 24 January 2018, over 65 working days later.
19. From the information provided to the Commissioner in this case it is evident that the Home Office did not deal with the requests for information in accordance with the FOIA. Although it has apologised to the complainant for the delay in responding, it has offered no explanation for it, merely saying that it *"...is not always possible"* to respond within the statutory time for compliance.
20. The Commissioner is satisfied that in failing to respond within the statutory time for compliance, the Home Office breached sections 1(1) and 10(1) of the FOIA.
21. The Commissioner would remind the Home Office that she uses intelligence gathered from individual cases to inform her insight and compliance function. This aligns with the goal in her draft "Openness by design"¹ strategy to improve standards of accountability, openness and

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"².

Section 1 – general right of access

Points (1)–(3) and (5)–(6) of Request 1

22. When responding to Request 1, the Home Office amalgamated the above points and gave a free text response which explained the UK's approach to regulating and reviewing the firearms licensing system and the aims of the current consultation. It declined to answer each question individually, despite being asked to by the complainant in his internal review request.
23. The Home Office told the Commissioner that taking this approach enabled it to answer the questions in the context of the public consultation on the subject. It also said "*...there is nothing we can usefully add in regard to parts 5 & 6*".
24. The Commissioner told the Home Office that it was not clear from its responses to the complainant precisely what information it did and did not hold in respect of the above points. She asked it to provide to her, point-by-point, confirmation or denial as to whether it held information, together with a copy of any information it held.
25. The Home Office did not provide to the Commissioner the requested clarification and it offered no explanation why it had not done so.
26. As set out in paragraph 16, above, section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
27. The complainant has set out a series of clear questions to the Home Office, two of which asked for copies of any communications with named bodies.
28. Multiple requests for information within a single item of correspondence are considered to be separate requests and each should be responded to in accordance with section 1(1) of the FOIA. The Commissioner does not consider that the free text, narrative response that the Home Office

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

provided to the complainant adequately addresses either the questions asked or, more importantly, the specific requirements of section 1(1).

29. The Commissioner therefore considers that the Home Office failed to comply with section 1(1) with regard to points (1)-(3) and (5)-(6) of Request 1. It must therefore take the action set out in paragraph 3, above.

Section 1 – extent of information held

Request 2

30. As set out at paragraph 16, above, section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
31. In this case, the complainant believes that the Home Office holds more information falling within the scope of Request 2 (emails to and from a named individual) than it has disclosed. The Home Office's position is that it has disclosed all the information it held, which comprised two emails.
32. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
33. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

34. The complainant found it "*impossible*" to believe that there were only two emails falling within scope of the request. He believed that the individual named in the request was a member of FELWG (which exists to consider matters of operational policy with regard to firearms and explosives licensing) and as such would have been actively involved in

liaising with the Home Office about potential changes to firearms legislation.

The Home Office's position

35. The Home Office maintained its position that it had disclosed all the information it held which fell within the scope of Request 2, to the complainant. The Commissioner asked it a series of detailed questions, designed to give her an understanding of its reasons for believing this. The Home Office answered all the questions, providing the Commissioner with information about how the searches were conducted, the locations searched and reasons why this would be expected to have located any further information that it had not already identified and disclosed.
36. The Home Office said that the information, if held, would form part of the Government's consideration for the proposed prohibition of specific firearms which was considered publicly through the consultation on dangerous and offensive weapons and through the Offensive Weapons Bill which was currently going through detailed Parliamentary scrutiny. It explained that all records are stored electronically which it said meant that searches are far easier to conduct and far more comprehensive.
37. The Home Office said that searches were made of its electronic, networked systems (including emails and documents stored on the Home Office IT systems) and were undertaken by relevant members of staff in the policy units involved in the Crime, Policing and Fire Group and the Office for Security and Counter-Terrorism in the Home Office (these being the relevant policy areas that advise Ministers on policy in relation to firearms and firearms controls). Issues relating to firearms controls would have been the subject of sensitive meetings between the Home Office and law enforcement partners, including the police and the National Crime Agency, and it would not have been appropriate, on security grounds, to disclose the details of such meetings more widely, because of the security classification of the issues discussed. It said that as no other policy units within the Home Office were involved in advising Home Office Ministers on the contents of the consultation, or the content of the Offensive Weapons Bill which followed on from the consultation, there were no staff consultations beyond members of these policy teams.
38. The Home Office said that searches were made of its official IT networks, rather than of stand-alone computers, as it would constitute a security breach for any Home Office official to transfer material of the type requested onto their own personal computers. It said that the searches focused on retrieving any emails to and from the individual identified in the request, relating to .50 calibre and MARS rapid fire rifles.

39. When asked about the possibility of information having been held at some point and subsequently deleted, the Home Office said there was no evidence to suggest that any relevant information had been deleted or destroyed. Furthermore, it said the Home Office has had a moratorium on destroying any records, electronic or paper, since October 2014.

The Commissioner's conclusion

40. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 32 and 33, above, the Commissioner is required to make a finding on the balance of probabilities.
41. The Commissioner is satisfied that the Home Office has provided a detailed and cogent explanation for believing that it has disclosed all the information that it holds which falls within the scope of the request. It has described the searches it conducted and why they would be expected to return all relevant information. It has explained that there has been a moratorium on the deletion of information since 2014, and so it is unlikely that the information has been held but deleted.
42. The complainant has not provided any arguments which throw doubt on the Home Office's position. Rather, based on his understanding of the interaction between the Home Office and the named individual, he appears to be relying on a belief that more information *must* be held.
43. Taking all the circumstances of the case into account, the Commissioner is satisfied that, on the balance of probabilities, the Home Office has disclosed to the complainant all the information it holds which falls within the scope of Request 2 and therefore that it complied with section 1 of the FOIA.

Other matters

44. Although they do not form part of this decision notice, the Commissioner wishes to highlight the following matters of concern.

Internal review

45. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.

46. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint: so-called internal reviews. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not.
47. The Commissioner is therefore concerned that it took the Home Office over four months to conduct an internal review in this case, which is compounded by the excessive time period taken to respond to the requests in the first place.
48. Furthermore, she is concerned that the Home Office disregarded the complainant's specific request, when asking for the internal review, that it respond to each point of Request 1 individually.

Right of appeal

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

50. 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.
51. 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

Samantha Bracegirdle
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