

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2021

Public Authority: The Information Commissioner
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant requested a copy of the Investigation Manual. The Information Commissioner ("the ICO") eventually disclosed most of the requested information.
2. The Commissioner's decision is that the ICO failed to disclose the information it held, that was not exempt, within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 14 June 2021, the complainant wrote to the ICO and requested information in the following terms:

"Hi – please may I have a copy of the ICO's Investigations Manual?"

5. After numerous chasers and holding responses, the ICO finally responded on 30 September 2021. It disclosed the document with minor redactions.

Jurisdiction and Nomenclature

6. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. He is therefore under a duty, as regulator, to make a formal determination of a complaint made against him in his capacity as a public authority – a duty confirmed by the First Tier Tribunal. It should be noted however that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. This notice uses the term "the ICO" to refer to the Information Commissioner dealing with the request, and the term "the Commissioner" when referring to the Information Commissioner dealing with the complaint.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he was concerned about the length of time that it had taken the ICO to disclose the information.
8. The Commissioner considers that the scope of his investigation is to determine whether or not the ICO complied with section 10 of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

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.

10. Section 10 of the FOIA requires a public authority to comply with its section 1 duty "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

11. On the evidence available to the Commissioner, it is apparent that, in failing to communicate the information within 20 working days, the ICO breached section 10 of the FOIA.

Other matters

12. The Commissioner notes that this is not the first decision notice that he has been required to issue this year because the ICO has failed to issue a timely response to an information request.
13. The Commissioner has a responsibility, as the regulator, to highlight poor practice on behalf of a public authority – even when that public authority is the ICO.
14. As the organisation responsible for regulating the FOIA, the ICO should set the standard for compliance with both the letter and the spirit of the legislation. The Commissioner will therefore be writing separately to the ICO about the plans they have in place to ensure these issues do not get repeated.
15. The content of the ICO's holding responses to the complainant indicate that, on this occasion, the process of internal consultation took considerably longer than the statutory timeframe. The Commissioner recognises that public authorities often will need to consult both internally and externally when information is sensitive. However, they should have robust systems in place to ensure that those consultations do not prevent the public authority from complying with its statutory obligations.

Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

17. 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.
18. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF