

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2022

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information from the ICO regarding action it takes against organisations which fail to meet statutory deadlines. The ICO stated that it does not hold information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the ICO is correct when it says that it does not hold information within the scope of the request, and it has therefore complied with its obligations under section 1 of FOIA.
3. The Commissioner does not require the ICO to take any steps as a result of this notice.

Jurisdiction and Nomenclature

4. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of FOIA and a public authority subject to 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 ("FTT"). 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 dealing with previous complaints brought under FOIA. It uses the term "the Commissioner" when referring to the Information Commissioner dealing with this complaint.

Request and response

5. On 9 March 2022, the complainant wrote to the ICO and requested information in the following terms:

"Your Twitter colleagues tell me they are unable to explain why the ICO is taking no action against the PHSO, which – by its own figures – fails to respond to SAR and FOI requests by the statutory deadlines in about two-thirds of cases.

[1] So, why is the ICO taking no action?

[2] What is the ICO's internal guidance on taking action against any bodies which consistently fail to meet their statutory deadlines?

[3] Why does the ICO not seek to enforce these statutory deadlines?"

6. The ICO responded on 1 April 2022. It stated that it did not hold the specific information sought by part two of the request. It did, however, provide links to the Regulatory Action Policy¹ and the FOIA EIR Casework Service Guide², by way of advice and assistance.
7. Following an internal review the ICO wrote to the complainant on 9 May 2022. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 24 May 2022 to complain about the way their request for information had been handled. In particular, they were dissatisfied that all of the questions in their request had not been answered.

¹ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/4019468/foia-eir-casework-service-guide-v2.pdf>

9. The Commissioner considers the scope of his investigation to be to determine whether the ICO has met its obligations under section 1 of FOIA.

Reasons for decision

10. Section 1(1) of 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.
11. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request; this does not extend to the right to ask questions, explanations, clarification of information or debate the contents of information unless the response to those questions, requests for explanation or clarification is already held by the public authority in recorded form.
12. The Commissioner has first considered parts one and three of the request. He is satisfied that these are clearly requests for explanations rather than recorded information, therefore, the ICO has no obligation to respond to them under FOIA.
13. The Commissioner then went on to consider the ICO's response to part two of the request. He finds that the ICO conducted appropriate and relevant searches to determine if 'internal guidance on taking action against any bodies which consistently fail to meet their statutory deadlines' was held. It consulted both the Public Advice and Data Protection Complaints Service department and the FOIA complaints department, as these departments deal with complaints about how organisations have handled SAR and FOIA requests. It also searched internal document libraries. None of the searches returned any guidance of the specific nature described in part two of the request.
14. The Commissioner is satisfied that, on the balance of probabilities, the ICO is correct when it says it does not hold the requested information. It has, therefore, complied with its obligations under section 1 of FOIA.

Right of appeal

15. 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

16. 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.
17. 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

Catherine Fletcher
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