

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2023

Public Authority: Department for Communities
Address: Information Management Branch
Level 5
Nine Lanyon Place
Belfast
BT1 3LP

Decision (including any steps ordered)

1. The complainant has requested information on how the Housing Regulation Branch undertakes regulatory assessments of registered Housing Associations in Northern Ireland. The Department for Communities ("DfC") refused to disclose the information under section 21 of FOIA.
2. The Commissioner's decision is that section 21 of FOIA was correctly applied in this case. He does not require any further steps to be taken.

Request and response

3. On 26 October 2022, the complainant wrote to DfC and requested information in the following terms:

"Dear Department for Communities (Northern Ireland), Relating [sic] to Radius Housing Association, I would request information on how the Housing Regulation Branch undertakes annual regulatory assessments of Registered Housing Associations in Northern Ireland. During the 2020/2021 regulatory assessment period, I am advised that Radius Housing Association achieved a Level One Regulatory Judgement and met all the standards against which compliance is assessed."

Do, for example, housing associations have to meet the requirements of the Human Rights Act of Northern Ireland in not being discriminatory, and as per the Tenancy Agreement.”

4. DfC responded on 17 November 2022 and refused to disclose the information under section 21 FOIA. On 10 March 2023, the complainant requested an internal review. DfC stated on 4 April 2023 that it was refusing to provide an internal review response on the grounds that the complainant’s request for internal review was made outside 40 working days.

Scope of the case

5. The complainant contacted the Commissioner on 4 April 2023 to complain about the way their request for information had been handled.
6. On 11 April 2023, the Commissioner accepted the case for investigation without an internal review and informed both the complainant and DfC.
7. The Commissioner considers that the scope of his investigation to be as follows:
 - a. to determine whether DfC were correct to withhold the information under section 21 of FOIA.
 - b. to determine whether DfC were correct to refuse to comply with the request for internal review.

Reasons for decision

8. Section 21 of FOIA provides that:
 - (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
 - (2) For the purposes of subsection (1)—
 - (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

- (3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.
9. The purpose of section 21 is to ensure that there is no right of access to information via FOIA if it is available to the complainant by another route.
10. The Commissioner has cogitated whether DfC considered the information requested is reasonably accessible to the complainant.
11. In DfC's response to the complainant's request, it confirmed that the information was already in the public domain and accessible to the complainant. It provided links to the information within scope of the request that covered the following:
- a. How We Regulate. An overview of our Regulatory Framework Standards: Governance, Financial and Consumer-
<https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-ha-advice-overview-regulatory-framework.pdf>
 - b. Radius Housing Association Regulatory Judgement-
<https://www.communities-ni.gov.uk/radius-housing-association>
12. Having considered the information before him, the Commissioner has not seen any evidence indicating that the complainant is unable to access those links, or for instance, has said they do not have reasonable access to the internet or that there may be special circumstances that prevent them from accessing the information from the public source.
13. Having reviewed the links provided, the Commissioner is satisfied that the information is already in the public domain and is reasonably accessible to the complainant via those links.
14. During the Commissioner's investigations, he invited DfC to provide further explanation surrounding housing association's obligations under the Human Rights Act. The public authority explained that it is incumbent on registered housing associations to comply with the regulatory framework for RHA's introduced in 2017 which covers Governance, Finance and Consumer. DfC says that these standards are contained in the "how we regulate" link above. It confirms that whilst the Governance and Financial standards impose a general requirement on RHA's to comply with all legislations relevant to their functions, the

department does not hold any recorded information which directly addresses whether housing associations have to meet the requirements of the Human Rights Act of Northern Ireland.

15. The Commissioner therefore considers that DfC were correct to refuse to disclose the requested information under section 21 of FOIA.
16. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority and is reasonably accessible to the applicant by other means, it is not subject to the public interest test.

Procedural matters

17. Whilst the Commissioner acknowledges that there may be ongoing cases related to this matter with other public authorities or organisations, he does not consider that this aspect of the complaint falls within his remit to comment on.
18. In their complaint to the Commissioner, the complainant explained that DfC had refused the request for information as well as the internal review request. The Commissioner has considered whether DfC were correct to refuse the complainant's request for internal review.
19. Section 17(7) of FOIA explains that a public authority must inform requestors whether it has an internal review procedure and tell them how they can ask for internal review as well as explain their right to complain to the Commissioner under section 50 of FOIA.
20. The Commissioner's guidance states that internal review request should be made within 40 working days of the initial response. A public authority is not obliged to provide a review if it is requested after more than 40 working days.
21. In its submissions to the Commissioner, DfC explained that when it issued its response to the information request, it advised the complainant about their right to request an internal review within two calendar months in line with the Commissioner's guidance. According to DfC, the complainant submitted their request on 10 March 2023, almost four calendar months after receipt of the response.
22. The Commissioner agrees that DfC took the correct steps to inform the complainant of their rights under FOIA and is satisfied that the public authority was under no obligation to consider the complainant's request for internal review as it was out of time.

Right of appeal

23. 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

24. 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.
25. 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

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