

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 September 2023

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

Note: 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 as a public authority. It should be noted, however, that the complainant has a right of appeal against the Information Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the Information Commissioner dealing with the request, and the term 'Commissioner' denotes the Information Commissioner dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested information on Human Rights Impact Assessments conducted by the ICO. The ICO stated no information was held.
2. The Commissioner's decision is that the ICO does not hold the requested information. He does not require any steps.

Request and response

3. On 10 January 2023, the complainant wrote to the ICO and requested information in the following terms:

"The Human Rights act received royal assent on 9 November 1998 and came into forces on 2 October 2000 more than 20 years.

I would like to know how many human right impact assessment have been carried out over this period for each year, in respect of ensuring ico policies and procedures to ensure due diligence and information use to support any ico decision is supported by legislation. I would also like to a copy of all impact assessments."

4. The ICO responded on 6 February 2023. It stated that it understood the request was asking for the number of Human Rights Impact Assessments (HRIA's) carried out by the ICO and copies of those assessments. The ICO confirmed it did not carry out formal HRIA's and the information was therefore not held.
5. The complainant requested an internal review on 8 February 2023. They stated they were aware the ICO did not undertake HRIA's in isolation and the request therefore asked for ICO policies and procedures ensuring due diligence, as well as information to support ICO decisions being made under proper legislation. The complainant stated they had been told by the ICO in a previous request that HRIA's could not be provided under section 22 of FOIA as they would be published in the future.
6. Following an internal review the ICO wrote to the complainant on 8 March 2023. The ICO maintained it does not carry out formal HRIA's and as such the information requested was not held. The ICO confirmed it did not consider this contradicted the response to a previous information request as this asked for different information.

Scope of the case

7. The complainant contacted the Commissioner on 19 April 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if the ICO holds any information in scope of the complainant's request.

Reasons for decision

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.

10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
12. In explaining its position further, the ICO looked at its response to the earlier request that the complainant believed contradicted its position in this case. The ICO when handling the earlier request asked the complainant for clarification of the scope of this request and asked:

"You appear in your email of 23 November to be referring to equality impact assessments carried in relation to our regulatory functions. Is this the information you are requesting?"
13. A response was given indicating this was the case and the ICO therefore stated the information was exempt under section 22 as Equality Impact Assessments would be published. The ICO does not therefore consider the two requests are for the same information or that the earlier response contradicts the statement that no information is held in relation to this request.
14. The current request very specifically asks to know about how many HRIA's have been carried out and to have copies of them if they have been done. The earlier request was confirmed to relate to Equality Impact Assessments (EIA's). The Commissioner appreciates that the complainant is arguing that it was an oversight to confirm the scope in the previous request was limited to EIA's but nevertheless the two request are distinct and the Commissioner's role here is to determine whether the ICO holds the requested information related to HRIA's.
15. On this point the Commissioner is clear, the ICO has stated it does not carry out formal HRIA's and the Commissioner has no reason to dispute this position. The ICO has consulted with relevant business areas and provided the complainant with a list of the impact assessments it does carry out across various different business areas, including Data Protection Impact Assessments and EIA's, but HRIA's are not conducted by the ICO.
16. The complainant had argued that their request also asked for ICO policies and procedures used to ensure due diligence and to ensure ICO decisions are supported by legislation. The Commissioner does not agree that this is covered by the request as it specifically asked how many HRIA's had been carried out "in respect of ensuring ico policies and

procedures to ensure due diligence and information use to support any ico decision is supported by legislation.” The Commissioner considers this to be an explanatory statement as to why HRIA’s should be done and held by the ICO rather than a request for policies and procedures ensuring due diligence.

17. The Commissioner does not consider there is anything further to add to this as the response is clear and he has no reason to question the ICO any further on this point. He considers the ICO has conducted an adequate investigation in the circumstances to identify if any relevant information is held and as such the Commissioner is satisfied that no information is held within the scope of the request.

Right of appeal

18. 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

19. 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.
20. 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

Jill Hulley
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SK9 5AF