

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 18 January 2024

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

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-255980-K1H4, for a decision whether a request for information made by the complainant to the Home Office on 5 May 2023, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 5 May 2023 the complainant made the following request for information under the FOIA:

"I understand the Home Office has recently produced a document setting out its policy on the use of facial recognition in policing — and that this document was the subject of discussion by a panel of experts last month.

Please provide a copy of this document".
3. On 16 November 2023, the Commissioner wrote to the Home Office raising various queries to assist with his investigation. At the time of writing this notice, he has received no acknowledgement or response.

Information required

4. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish him with a copy of the following information.
5. The Home Office is required to respond to the email which the Commissioner sent to it on 16 November 2023 namely:

"I need the following information from you to reach a decision.

- A copy of the withheld information.

Please answer the following questions

Section 35 – formulation of government policy, etc

Please clarify which government policy or policies you consider this information to relate to.

The Information Tribunal has made it clear that, in cases where section 35(1)(a) applies, central to the consideration of the public interest test is the timing of any request. This is because once the formulation/development of a policy has been completed, the risk of prejudicing the policy process by disclosing information is likely to be reduced and so the public interest in maintaining the exemption deserves less weight. Furthermore, the Tribunal has made it clear that policy formulation and development is **not** one which is a 'seamless

web', i.e. a policy cycle in which a policy is formulated following which any information on its implementation is fed into the further development of that policy or the formulation of a new policy.

It is therefore necessary for the ICO to be able to identify when the policy formulation/development stage to which the withheld information relates ended and the implementation of this policy began. Therefore, please explain when you consider the formulation/development of the policy or policies to which this information relates to have been completed, or indeed confirm why you consider the formulation/development of this particular policy (or policies) to have been ongoing at the time the complainant submitted his request.

Please include any further public interest arguments which you would like to rely on".

Failure to comply

6. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

7. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

8. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

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