

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 11 April 2023

Public Authority: Foreign, Commonwealth & Development Office
Address: King Charles Street
London
SW1A 2AH

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), 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 FOIA.

51. – (1) If the Commissioner –

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

he may serve the authority with a notice (in FOIA 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-184190-N1K1, for a decision whether a request for information made by the complainant to Foreign, Commonwealth & Development Office (FCDO) on 16 February 2022, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. The complainant submitted the following request to the FCDO on 16 February 2022:

'Please provide any type of handbook or forms relating to the award of Queen's Honour's in the Overseas List for which the FCDO is responsible.

This should include forms which Lord Lieutenants or other departments complete to validate honours as well as staff handbook or guidance on processing of these honours.

You will note previous ICO judgements relating to the cabinet office where there is a clear public interest that documents be released relating to honours to allow transparency and confidence in the honours system.

Please also give details of the committee or individuals who sift and validate potential honours nominations which may have come directly from the public.'

3. The FCDO contacted him on 16 March 2022 and confirmed that it held information falling within the scope of the request. However, it considered this to be exempt from disclosure on the basis of section 37(1)(b) (honours) of FOIA and needed additional time to consider the balance of the public interest test. The FCDO issued similar letters on 13 April and 18 May 2022.
4. The FCDO provided the complainant with a substantive response to his request on 17 June 2022. It disclosed some of the information falling within the scope of the request but explained that the remaining information had been withheld on the basis of sections 35(1)(a) (formulation or development of government policy) and 37(1)(b) and the public interest favoured maintaining these exemptions.
5. The complainant contacted the FCDO on 18 June 2022 and asked it to conduct an internal review.
6. The FCDO informed him of the outcome of the internal review on 18 July 2022. The review upheld the application of the exemptions cited in the refusal notice. However, the FCDO noted that the request also sought copies of particular forms and it provided him with online links to those forms.

7. The complainant contacted the Commissioner on 2 August 2022 in order to complain about the FCDO's decision to withhold information falling within the scope of his request.
8. The Commissioner contacted the FCDO on 24 October 2022 and asked the FCDO to provide him with a copy of the withheld information and submissions to support the application of the exemptions cited.
9. The FCDO responded on 8 December 2022 and provided a response to the Commissioner's enquiries. The withheld information provided consisted of a piece of FCDO internal guidance. In its response, the FCDO explained that having considered its position, and given the passage of time, it no longer sought to rely on section 35(1)(a) and was prepared to disclose this information to the complainant. The FCDO explained that it continued to redact information on the basis of sections 37(1)(b) and 40(2). It also noted that it considered parts of the guidance document to be out of scope of the request.
10. The FCDO disclosed the further information to the complainant on 21 December 2022.
11. Having considered the FCDO's response of December 2022, the Commissioner contacted it again on 9 February 2023 and explained that he had a query regarding the scope of the information falling within the scope of the request. The Commissioner noted that the request sought 'any type of handbook' and a 'staff handbook or guidance' on the subject matter in question. The Commissioner also noted that the document located by the FCDO as meeting this description was piece of 'internal guidance'. The Commissioner explained that in his view the entirety of that document fell within the scope of the request, as it was a piece of guidance meeting the description of the request. Therefore, the parts of this document marked as 'out of scope' were, in the Commissioner's view, in the scope of the request.
12. Furthermore, the Commissioner noted that the internal guidance document referred to a number of annexes. The Commissioner explained that in his view an objective reading of an FOI request seeking a piece of guidance or a handbook would capture not only the guidance itself but also any annexes or appendices. Therefore, such information also fell within the scope of the request. The Commissioner therefore asked the FCDO to provide him with a copy of these annexes and in doing so indicate whether the FCDO was content for them to be disclosed under FOIA or whether they were considered to be exempt from disclosure. The Commissioner asked for a response within 10 working days.

13. The FCDO contacted the Commissioner on 22 February 2023 and explained that due to the amount of work involved in examining the annexes and the necessary liaison with relevant stakeholders, it was not yet in a position to respond. It asked the Commissioner for a further 20 working days to do so.
14. The Commissioner responded by agreeing to an extension of a further 10 working days, ie until 9 March 2023.
15. The FCDO contacted the Commissioner on 9 March 2023 and explained that it had been making progress in preparing its response but due to the pressures of other work and demands on resources this was not yet completed. It asked for one further extension until 29 March 2023.
16. The Commissioner contacted the FCDO on 16 March 2023 and agreed to this request.
17. The FCDO contacted the Commissioner on 29 March 2023 and explained that it had made additional further progress and that it was now in the process of liaising with stakeholders in respect of its response. Following this, it would be in a position to finalise its response and send this to the Commissioner. The FCDO asked the Commissioner to agree to a revised deadline to complete this work.

Information required

18. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the FCDO shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
19. A full and complete response to the points set out in the Commissioner's letter of 9 February 2023.

Failure to comply

20. 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 FOIA, and may be dealt with as a contempt of court.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

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

22. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF