

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 1 June 2023

Public Authority: Department for Energy Security & Net Zero ¹

Address: Old Admiralty Building
London
SW1A 2DY

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.

¹ On 7 February 2023, under a Machinery of Government Change, the Department for Business Energy and Industrial Strategy (“BEIS”) began the transition into three separate departments, including the Department for Business and Trade (“DBT”) and the Department for Energy Security & Net Zero (“DESNZ”). The request in this case was made to BEIS, however this notice was initially served on DBT as the appropriate authority albeit that the notice refers to BEIS as it was the body that handled the request and with whom the Commissioner corresponded about this complaint. In August 2023, DESNZ confirmed to the Commissioner that it was the appropriate authority and so the Commissioner notes for the avoidance of doubt that he should have served this notice on DESNZ.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-159680-B5H5, for a decision whether a request for information made by the complainant to the Department for Business, Energy & Industrial Strategy ('BEIS') on 15 November 2021 has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 15 November 2021, the complainant made the following request for information under the FOIA to BEIS as follows:

"1) Details and copies of any formal correspondence between Kwasi Kwarteng MP and representatives of the company Shell which discuss or refer to the proposed relocation of the company's international headquarters to the UK.

2) Details of, and readouts arising from, meetings with staff from Shell by ministers or senior management within BEIS, where the potential relocation of the company's international headquarters to the UK was discussed.

Searches can be limited to the six months prior to the date of this request."

3. BEIS responded on 10 December 2021. It disclosed that a meeting took place but refused to provide the information requested, citing the following section of the FOIA: section 43(2) – prejudice to commercial interests.
4. The complainant requested an internal review on 10 January 2022. BEIS provided an internal review on 8 February 2022 in which it disclosed one email in response to question 1 but maintained its original position in relation to question 2 - section 43(2).
5. The complainant complained to the Commissioner on 8 March 2022 and wishes to challenge the following:
 - a. Section 1 FOIA - given the email that BEIS identified in its internal review, the complainant is concerned that there could be further information within the scope of the request that has also not been disclosed.

- b. Section 43(2) – the complainant believes the weight of the public interest in the requested information means that partial disclosure of any documents should be possible, as opposed to withholding the documents entirely.
6. The Commissioner informed BEIS on 16 March 2022 that he had accepted the complaint, that it would be allocated in due course and that he expected the public authority to use the time prior to allocation to ensure that it was ready for the investigation, once the complaint was allocated.
7. On 23 January 2023, the Commissioner wrote to BEIS asking for a copy of the withheld information, as well as any additional supporting arguments, should BEIS wish to provide them, regarding the application of sections 1 and 43(2) to the request - within 20 working days. This correspondence was neither acknowledged nor responded to.
8. On 28 February 2023, the Commissioner chased the public authority, noting that the response was overdue. This correspondence was neither acknowledged nor responded to.
9. On 20 March 2023, the Commissioner chased the public authority again. The public authority responded on 24 March 2023 and said the case was currently with the relevant policy team, and that a response would be provided as quickly as possible.
10. On 28 March 2023, the public authority contacted the Commissioner to further explain that it had encountered some difficulties in responding to the Commissioner's queries, but that it was addressing the problem.
11. On 11 April 2023, the Commissioner chased the public authority for an update. This correspondence was neither acknowledged nor responded to.
12. To date the withheld information and response remains outstanding. In view of the age of this case, the Commissioner now considers it appropriate to set a hard deadline.

Information required

13. 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 public authority shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - Copies of any information being withheld;
 - A substantive response to his letter of 23 January 2023.

Failure to comply

14. 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

15. 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

16. 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

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