

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2019

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the 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 ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested database records associated with the ICO's decision notice process. The ICO has voluntarily released some relevant information and is withholding other relevant information it holds under section 21(1) of the FOIA (information accessible to applicant by other means).
2. The Commissioner's decision is that the ICO has correctly applied section 21(1) to the information it has withheld.
3. The Commissioner does not require the ICO to take any remedial steps.

Request and response

4. On 3 August 2018 the complainant wrote to the ICO and requested information in the following terms:

"When someone reports a concern to the commissioner about accessing or re-using information from a public body, a number of stages are reached before the commissioner issues a decision notice.

If you can, please inform me what standard events are recorded with a date in the commissioner's database during this complete process. The timespan of this process should encompass from when a person first contacts the commissioner to report a concern to when the commissioner sends the decision notice to that person. Please provide a brief description which defines what each of these events means. When I referred to a database I mean a repository which can be conveniently queried to give statistics. This repository would typically be an SQLbased database.

I assume in this database there will be an entry which identifies the public body. Although I suspect there will be a large number of deviant entries for the same public body, please also send to me during the last year the number of submitted cases reaching each recorded event in that database when the public body entry contains 'Plymouth' and 'Hospital' and 'NHS' and 'Trust'.

I have specified 'Hospital' instead of 'Hospitals' so that both terms are caught. Please also make the search case-insensitive. Please repeat this for all entries containing 'Hospital' and 'NHS' and 'Trust'.

I have sent this request to you in the hope that your reply will help me frame a second request specific to Plymouth Hospitals NHS Trust, or NHS hospital trust. I plan to subsequently send to you that second request to ask for aggregates of delays incurred."

5. The ICO responded on 4 September 2018. It said it holds information within the scope of the request and directed the complainant to where its monthly complaints and concerns datasets are published on its website.
6. The ICO explained what 'standard events' (referred to in the complainant's request) are recorded by its electronic case management system and directed the complainant to a published document in which the FOIA casework outcomes (referred to in its published datasets) are defined. The ICO explained to the complainant how to interrogate the datasets in order to access statistics for completed freedom of information cases. The ICO then explained that some information from

November 2017 to date was not yet published and that it was withholding this information under section 22 of the FOIA because it is information intended for future publication.

7. The ICO said that because the complaints and concerns datasets are available online, and available to the public, this information is technically exempt information under section 21 of the FOIA. Finally, the ICO re-stated that the unpublished information is exempt under section 22 and that the public interest favoured maintaining this exemption.
8. The complainant requested an internal review on 6 September 2018; he clarified what he meant by 'event' and that his interest lay in concerns raised about the FOIA and not in any other legislation the ICO regulates.
9. The ICO provided an internal review on 3 October 2018. It provided the complainant with a further explanation as to how it manages FOIA complaint cases and said it considered that, without the complainant's clarification, its earlier interpretation of 'standard events' had been a reasonable interpretation.
10. The ICO went on to say that due to the clarification that the complainant had provided it was able to disclose further information and withdrew its reliance on section 22. The ICO released the following information to the complainant: that the number of FOI complaint cases regarding Plymouth Hospitals NHS Trust it had opened in the period 6 August 2017 - 6 August 2018 is five; and that of these, one was closed as a duplicate of another case, one was a complaint the complainant had raised and two had been closed with decision notices, which were published on its website.
11. Finally, the ICO explained to the complainant how it manages case work using its casework management system: 'CMEH'. The ICO provided the complainant with a link to its service guide, which it considered the complainant might find useful, and advised that he may find other relevant information of interest in its annual report, to which the ICO provided a link.

Scope of the case

12. The complainant contacted the Commissioner on 24 November 2018 to complain about the way his request for information had been handled.
13. The complainant provided a submission to the Commissioner on 15 April 2019. Under the section '*Aspects of the ICO's response which I am dissatisfied with*', in addition to advising how the ICO might better

manage its casework, the complainant advises that he remains unclear how to interpret some of the dates in the datasets to which the ICO referred him. He confirmed that he has asked the ICO what dates are recorded and what each date means.

14. The ICO has withdrawn its reliance on section 22(1) of the FOIA. The Commissioner's investigation has therefore focussed on whether the ICO can rely on section 21(1) to withhold the information the complainant has requested.

Reasons for decision

15. The FOIA concerns information that a public authority holds in recorded form. Under section 1(1)(a) of the FOIA an authority must confirm to an applicant whether it holds information that has been requested and under section 1(1)(b) it must communicate the information to the applicant, if it is held and is not exempt information.
16. Section 21(1) says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
17. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
18. In its submission to the Commissioner the ICO has said that in its response to the complainant of 4 September 2018 it had explained that its interpretation of his reference to dateable 'standard events' was recorded information which was standard to each [FOI complaint] case, such as the dates of its creation and completion. It had confirmed that it held such information about cases relating to Plymouth Hospitals NHS Trust ('the Trust').
19. The ICO says it explained to the complainant that it publishes details of the casework that it administers through proactive disclosures, which are made publicly available on its website. The ICO further explained that it held information regarding casework relating to the Trust, and that details regarding it were available within these published datasets, which meant it was entitled to withhold the information that it held, in reliance on FOIA section 21. The ICO says that this was because the information that it held regarding the cases, and the information it considered to be 'standard events', were contained within the publicly available datasets, and therefore available to the complainant by other means.

20. The ICO notes that the complainant responded by explaining his rationale regarding 'standard events' alongside a request for a review. He also provided other modifications to his original request, such as that his interest was exclusive to complaints regarding FOI requests and not to other casework that it might have handled.
21. The ICO explained to the complainant that each complaint case was assessed on its own merits and that not all of the FOIA complaints it handles would follow the broad pattern that he had described in his explanation of the term 'standard events'.
22. The ICO says that it explained in particular that events such as correspondence with a public authority about which a FOI complaint had been submitted and the issuing of a Decision Notice were not 'standard' to all such cases and, where they did take place, the date they were undertaken would not be recorded in a searchable database of the kind the complainant envisaged.
23. To illustrate its point about not all cases following the pattern the complainant had described, the ICO says it explained that for the previous financial year it had answered 5,705 FOI complaints but issued 1,401 Decision Notices.
24. It also explained that it may correspond on multiple occasions with the relevant public authority, or not at all if it is inherently clear from the information provided by the complainant that a breach of FOIA has or has not taken place. The ICO has confirmed to the Commissioner that, as a result, the only 'standard events recorded with a date' would be the case creation and completion dates, both of which were available on the datasets referred to above, and therefore this information remained subject to the exemption at section 21(1) for the cases of interest.
25. As has been discussed, the ICO says that at this point it disapplied the exemption at FOIA section 22(1), confirmed that it held information in relation to five FOIA complaints relating to the Trust, details of which had not yet been made available through its datasets, and provided information about those five cases.
26. With regard to section 21(1), the ICO has confirmed that because the number of complaints regarding the Trust, and the case creation and closure dates relating to all of them (except for the above five instances) are available on publicly available datasets hosted on its website, this information was reasonably available to the complainant and constitutes exempt information.
27. The ICO further confirmed that the information was available through this route at the time the request was received and no particular

circumstances suggesting this information was not reasonably accessible to the complainant were provided.

28. The ICO has told the Commissioner that it has considered the points the complainant raised in his submission to her (and which she passed to the ICO) but regretted that it could not see what it could add further that would be of use. The ICO confirmed that the case creation date is the date the case was created in its casework management system. It had explained this to the complainant, and had directed him to further explanatory information it holds such as its internal service guide and case closure explanations, which are available on the page of its website that hosts the datasets described above.
29. In his request the complainant has asked what 'standard events' (from when a person contacts the Commissioner to when a decision notice is served) are recorded with a date. And he has asked for a definition of each of the 'events'. The Commissioner questioned the ICO further about what information relating to 'standard events' the ICO might hold.
30. With regard to FOI complaint cases, she asked the ICO whether it is the case that the only standard events/dates that the ICO's case management system can generate into a report are the dates that cases are created and finished.
31. The ICO explained that within its casework management system, CMEH, various 'work items' can be created within the life cycle of a case and it can produce reports on the following 'work items':
 - a) The creation date of a case
 - b) The completion (or 'finish') date of a 'Progress' work item
 - c) The creation and completion/finish date of a 'Reopen' work item
32. By way of clarification, the ICO said that the completion date of a 'Progress' work item is that which it refers to as the date of a case completion within its published datasets that have previously been referred to. It says this information is therefore reportable, but is also information which is publicly available for the past cases, as is the creation date of a case.
33. The ICO has confirmed that it is not currently possible to produce reports on the dates of creation or completion of the other work items, such as 'Prepare' (an early stage of a case when it is being assessed as being eligible for further consideration). This is because there has never been a business need to extract such information. The ICO further clarified to the Commissioner that there has never been a business need to extract such information on the 'Prepare' work item or any other work item, save for the three work items at paragraph 31.

34. Finally, the ICO further explained that the 'Created date' in its published dataset refers to the date on which, having received a complaint, the FOIA complaint case is first opened and given a reference number. The 'Created date' also captures those cases that may have been closed but were subsequently re-opened. As has been discussed, the 'Finished date' in the dataset refers to the date on which an FOI complaint case was completed; as above, some of the cases may have been closed and then re-opened but the 'Finished date' is the date on which all cases were finally closed – either through a decision notice, through having been resolved informally or for another reason.

35. The ICO has noted that it accompanies the datasets on its website with text which explains to users that:

"Some cases may have more than one outcome, for example where we are given additional evidence which requires us to reopen a case and revise our view. However, all outcomes are recorded as related activities on a single case."

36. The Commissioner has considered all the circumstances of this case. As she has noted, the FOIA concerns information a public authority holds in recorded form; the FOIA does not oblige an authority to provide explanations or to answer general queries. The Commissioner notes, however, that the ICO did endeavour to address the complainant's queries and directed him to relevant published information that it considered he might find helpful. She notes that the ICO explained to the complainant what standard casework dates it records and considers that, through its submissions to the Commissioner, it has further clarified what those dates refer to.

37. The Commissioner notes that the ICO does not hold a repository or database of the kind the complainant refers to in his request, in which the information he has requested could be recorded. It is therefore not possible to interrogate such a database for the requested information.

38. As it had advised the complainant, the ICO has confirmed to the Commissioner that the only FOI complaint casework 'standard events recorded with a date' are the case 'created' and 'finished' dates and the Commissioner accepts this. The 'created' and 'finished' dates are available in the published datasets to which the ICO has directed the complainant. The Commissioner is therefore satisfied that this information is exempt from release under section 21(1) of the FOIA. The Commissioner notes that the ICO voluntarily released a small amount of further information about one public authority that was not published at the time of the request, which it originally withheld under section 22(1).

Right of appeal

39. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

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