

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 9 September 2019

Public Authority: Electoral Office for Northern Ireland
Address: St Anne's House
15 Church Street
Belfast
BT1 1ER

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "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 her with any information she requires to enforce the requirements of the FOIA.

"51. – (1) If the Commissioner –

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

she 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, for a decision on whether a request for information made by the complainant to the Electoral Office for Northern Ireland (EONI) on 6 November 2018, has been dealt with in accordance with the requirements of Part I of the FOIA.

Nature of complaint

2. On 6 November 2018 the complainant made the following request for information under the FOIA:

"I am requesting the following details under the Freedom of Information Act 2000 (FOI) following the process (see notes below) as stipulated by the Electoral Office for Northern Ireland website.

- 1) *The breakdown of votes cast (actual number that voted) by each ward for the Recall Petition 2018 to Remove the MP for North Antrim, Ian Paisley.*
 - 2) *The breakdown of voters (potential number of voters) by each ward for the Recall Petition 2018 to Remove the MP for North Antrim, Ian Paisley.*
 - 3) *Confirmation of the wards provided with publicly available ballot boxes used for the Recall Petition 2018 to Remove the MP for North Antrim, Ian Paisley"*
3. EONI responded on 12 November 2018 and denied holding the information requested in parts one and two of the request. It provided information within the scope of part three of the request.
 4. The complainant responded on 12 November 2018, stating that EONI had not provided him with the requested information under the FOIA and asking it to advise him on when it will provide the information.
 5. EONI responded on 15 November 2018, advising the complainant that he could ask for his request to be reviewed if he was dissatisfied with the response.
 6. On 15 November 2018, the complainant requested an internal review of EONI's handling of his request, and in particular that it had not provided the information he had requested in parts one and two of his request. The complainant also stated that since submitting his request, he had discovered that there was information on EONI's website that probably fell within the scope of part two of his request for information. The complainant provided EONI with the following link from it's website -

<http://www.eoni.org.uk/Register-To-Vote/Electorate-Statistics/Electorate-Statistics-by-Ward-2018>
 7. EONI provided the outcome of it internal review on 23 November 2018. It advised the complainant that he appeared to have accessed the total electorate statistics that are published on the first working day of each

month, which it advised was not the number of electors who were eligible to sign the recall petition. EONI stated that *"the eligible electorate and the number of votes cast are not held by ward, the count of petition papers was by constituency rather than ward so the eligible electorate and number of votes cast are only held by constituency."*

8. On 5 March 2019, the Commissioner wrote to EONI, asking it to reconsider the way it had handled the request. She set out the scope of her investigation and asked for submissions in support of EONI's position that it did not hold the information requested in parts one and two of the complainant's request for information.
9. On 29 March 2019, EONI provided its submission in support of its position that it did not hold the information requested in parts one and two of the complainant's request for information.
10. On 30 May 2019, the Commissioner wrote to EONI to explain the complainant's view as follows -

The complainant believes that the information he had requested *"can be derived in summary format from data that is held by the Electoral Office of Northern Ireland."* The complainant understands *"that each voter is registered at an address and each address is within a ward and each ward is within a constituency."* The complainant stated that *"It again seems inexplicable that "Ward" and "Constituency" are not standard dimensions to provide basic metrics on the number of voters registered v the number of votes cast."*

The complainant was also of the view that EONI was likely to hold information that fell within the scope of his request and referred to *"the following link <http://www.eoni.org.uk/Register-To-Vote/About-the-electoral-register-page>."* The complainant had *"specifically highlight[ed] the "Marked Register" details that shows that that the information [they] requested would normally be available as the source to answer [their] request i.e. a list of all register voters by postcode, ward, constituency, etc" that covers both voters available and votes cast."*

The complainant also referred to the following link, <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/2018-recall-petition-in-north-antrim>, which he says *"specifically highlights the difficulties of making the "Marked Register" publicly available so strongly confirms that it exists internally."*

11. In light of the above, the Commissioner asked EONI for its comments on the complainant's view and the evidence he has provided that he believes shows that EONI is likely to hold information that falls within

the scope of parts one and two of his request for information. The Commissioner referred EONI to her guidance note on 'determining whether information is held', and specifically the section on 'extracting and compiling information to meet a request'.

12. On 4 June 2019, EONI wrote to the Commissioner advising that "*the marked Register was not available for the Recall Petition as this would have compromised the integrity of the ballot as it was not an indication of someone going to vote but rather an indication that they had potentially signed the petition - thereby revealing their vote.*" EONI also asked the Commissioner to provide suitable dates and times for the Chief Electoral Officer to speak to her further about the matter.
13. The Commissioner responded to EONI on 5 June 2019, providing dates and time that would be suitable for the rest of that week and the following week.
14. As the Commissioner did not receive a call from EONI or a response to her correspondence of 30 May 2019, she wrote to EONI on 19 June 2019 asking it to provide a response by 28 June 2019. The Commissioner also provided EONI with further suitable dates and times for that week and the following week in case the Chief Electoral Officer still wished to speak to her.
15. On 24 June 2019, the Commissioner received a call from EONI. From the information that has been provided, it would appear to the Commissioner that the information requested would be available by going back through the information that is held. However, EONI is of the view that this would be creating new information.
16. The Commissioner wrote to EONI on 26 June 2019, advising that it would appear EONI does hold the requested information, albeit that it will need to undertake some work to re-present that information in the form the complainant had requested. The Commissioner therefore asked EONI to reconsider its position with regard to it not holding the information requested in parts one and two of the complainant's request for information.
17. On 5 July 2019, EONI wrote to the Commissioner and advised that it held the information for the Clerk of the Crown.
18. On 16 July 2019, the Commissioner wrote to EONI and asked it to explain on what basis it has concluded that although it physically holds the information, this information is not needed for any of EONI's own functions.
19. On the 18 July 2019, EONI provided the Commissioner with information on the Recall Petition legislation and advised her to consider that

legislation. EONI also advised the Commissioner that it had written to the judge advising him that the Commissioner was seeking release of the requested information.

20. The Commissioner wrote to EONI on 19 July 2019 and clarified that she had not at this stage advised that she was seeking the release of the information. She advised EONI of her process for handling complaints. The Commissioner explained her understanding of the communications and evidence and why therefore she is of the view that EONI does hold information falling within the scope of parts one and two of the request for information. The Commissioner asked EONI to confirm whether or not it held the requested information.
21. On 22 July 2019, EONI left a voicemail message regarding the Commissioner's email of 19 July 2019. EONI advised that it was going to re-read the email, but that it didn't think it held the information in the form that was required.
22. As the Commissioner did not receive a response from EONI, she resent her correspondence of the 19 July 2019 on the 9 August 2019. The Commissioner asked EONI to provide a response by 14 August 2019.
23. On 4 September 2019, the Commissioner left a message with EONI's helpline asking for a call back with an update on when it will be responding to the Commissioner's email of 19 July 2019.
24. To date, the Commissioner has still not received EONI's submissions in support of its position that it does not hold the requested information for its own purposes, (and therefore for the purpose of the FOIA).

Information required

25. In view of the matters described above, the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the FOIA she requires that EONI shall, within 30 days of the date of this notice, furnish the Commissioner with the following information.
 - Confirmation of whether or not EONI holds information (or held information at the time of the request) about each voter/signed petitioner and their ward, and therefore holds (or held) the information required to produce the number of votes/voters/signed petitioners by ward.
 - If this information is held (or was held at the time of the request), confirmation of whether it is (or was) held either wholly or partly

for EONI's own purposes, or held exclusively on behalf of the Clerk of the Crown.

- If the information is (or was) held exclusively on behalf of the Clerk to the Crown, an explanation of the basis on which EONI has concluded that although it physically holds (or held) information that falls within the scope of the request, this information is not (or was not) needed for any of EONI's own functions.

Failure to comply

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

Right of appeal

27. 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

28. 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

Pamela Clements
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Wycliffe House
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