

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 25 January 2021

Public Authority: Police Federation of England and Wales
Address: Federation House
Highbury Drive
Leatherhead
Surrey
KT22 7UY

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 her with any information she requires to enforce the requirements of the Act.

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, reference IC-47737-D3M3, for a decision whether a request for information made by the complainant to the Police Federation of England and Wales (PFEW) on 17 October 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 17 October 2019, in correspondence about negotiations between Surrey Police Federation, Surrey Police and the Assistant Chief Constable of Surrey Police, on the issue of rest days in lieu (RDIL), the complainant made the following request for information under the FOIA:

*"1) Provide a copy of the minutes of the negotiations meeting or if not, an explanation as to why not.
2) Provide all Federation emails, notes, memos, reports on the issue of RDIL matters.
3) Provide a copy of the legal advice produced for the Federation.
4) Provide a copy of the legal advice produced for Surrey Police or confirm the Federation are not in possession of it.
5) Provide a copy of the stated 'policy' that supposedly said the Fed advice couldn't be shared with members.
6) Confirm the Federation representatives or those people acting on the Federations behalf who attended the negotiations and state whether or not they had read the Federation legal advice prior to those negotiations.
7) Confirm the number of officers affected and the total RDILs owned and whether or not Federation representatives were aware of those numbers when entering negotiations."*
3. PFEW responded on 13 November 2019. It said that the information requested at points 1) and 2) of the request was exempt from disclosure under section 36 (prejudice to effective conduct of public affairs) of the FOIA. It said that the information requested at points 3), 4) and 5) was exempt from disclosure under section 42 (legal professional privilege) of the FOIA. It would neither confirm nor deny whether it held the information requested at part 6) of the request, citing section 40(5B) (personal information) of the FOIA. It said that it did not hold the information requested at part 7) of the request.
4. Following an internal review, PFEW wrote to the complainant on 10 December 2019. It maintained its position in respect of the request.
5. On 21 April 2020, the Commissioner wrote to PFEW, asking a series of questions about its application of the exemptions. PFEW provided its substantive response to the Commissioner on 15 July 2020.
6. The Commissioner wrote to PFEW on 27 July 2020 and asked some further questions. She also asked PFEW to provide a copy of all the information it was withholding under the exemptions cited. The withheld information was required to enable the Commissioner to assess whether the exemptions were engaged.

7. PFEW responded on 14 September 2020. While it answered the questions, it did not forward the withheld information.
8. The Commissioner requested the withheld information again on 10 November 2020. PFEW responded on 23 November 2020. It provided some of the withheld information. It said it would not provide a copy of the legal advice requested in part (3) of the request, stating "*Legal privilege is not waived in relation to the legal advice received by the Federation*".
9. The Commissioner wrote to PFEW on 24 November 2020, asking it to forward a copy of the legal advice. She explained that if it was not provided, an Information Notice would be issued, formally requiring PFEW to provide a copy to her.
10. PFEW replied on 22 December 2020, reiterating that the legal advice requested at part (3) of the request would not be shared with the Commissioner, stating: "*We uphold our right to maintain legal privilege of our own legal advice and therefore we will not provide this information.*"

Information required

11. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Police Federation of England and Wales shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
 - A copy of the information requested at part (3) of the request which is being withheld under section 42 of the FOIA. Namely, the legal advice obtained by PFEW on the issue of RDIL.

Failure to comply

12. 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

13. 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

14. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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