

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2025

Public Authority: Ministry of Housing, Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information held by the Department for Levelling Up, Housing and Communities (DLUHC), now the Ministry of Housing, Communities and Local Government (MHCLG), about its meetings with the Property Redress Scheme (PRS).
2. The MHCLG initially refused the request, citing the exemption at section 43(2) (commercial interests) of FOIA. At the internal review stage, the MHCLG confirmed that it was also relying upon the exemption at section 40(2) (third party personal information) of FOIA to withhold the requested information.
3. During the Commissioner's investigation the MHCLG revised its position, stating that it was now relying on the exemption at section 14 (vexatious requests), on the basis that compliance would cause an unreasonable burden.
4. The Commissioner's decision is that the terms set out within the complainant's request do not meet the criteria of 8(1)(c) (request for information) of FOIA, and as a result, it is not a valid request. Whilst the MHCLG is therefore not obliged to comply with the request, the Commissioner finds that it has not met its obligation under section 16 as it failed to offer reasonable advice and assistance to the complainant about how to make a valid request.

5. The Commissioner requires the MHCLG to take the following step to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help bring their request within technical compliance of FOIA.
6. The MHCLG must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

7. On 27 March 2024, the MHCLG wrote to the complainant in response to concerns that they had raised with ministers about the PRS. The MHCLG's correspondence included details which confirmed that it monitors the performance of each of the redress schemes through monthly data returns and regular meetings.
8. On 29 March 2024, the complainant wrote to the MHCLG and requested information in the following terms:

"I would like electronic copies of the unredacted minutes of these regular meetings to which you refer, going back as long as practicable."
9. On 29 April 2024, the MHCLG issued a refusal notice, citing the exemption at section 43(2) of FOIA as its basis for withholding all of the requested information. The MHCLG also confirmed that it considered that it was not in the public interest to disclose the information at that time.
10. On 30 April 2024, the complainant requested an internal review, and on 21 May 2024, the MHCLG provided its response, upholding its previous decision to withhold the requested information under section 43(2) of FOIA. The MHCLG said that it was now also relying on the exemption at section 40(2) of FOIA in respect of some of the withheld information.

Scope of the case

11. The complainant raised concerns with the Commissioner about the MHCLG's decision to refuse to provide information in response to their

request of 29 March 2024. They have argued that there is a strong public interest in the disclosure of this information.

12. During the Commissioner's investigation the MHCLG advised that, upon further review, it wished to revise its position. The MHCLG confirmed that it was now relying on the exemption at section 14 to refuse the complainant's request, on the basis that compliance would cause a disproportionate and unreasonable burden.
13. The Commissioner considers it appropriate in the circumstances of this case to firstly consider whether the complainant's request of 29 March 2024, is a valid request under FOIA. If necessary, he will then go on to consider whether the MHCLG is entitled to rely on section 14 of FOIA as its basis for refusing the request.

Reasons for decision

Section 8 – request for information

14. Section 8(1) defines a valid request for information under FOIA as a request which:
 - (a) is in writing
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested.
15. In this case, the complainant's request was in writing, and they provided an address for correspondence. Therefore, the only issue for the Commissioner to consider is whether it sufficiently describes the information requested.
16. The Commissioner's published [guidance](#) on how to make an effective and valid request for information recommends that a requester be specific about the information that they require, including setting out date ranges within their request
17. A request that asks for information to be provided up to the point where it meets the cost limits (relevant to section 12) or similarly, to the point where it "is reasonably practicable" to do so, is not, in the Commissioner's view, a valid request. This is because the scope of such a request is not sufficiently defined and does not adequately describe the information required.

18. The MHCLG has advised the Commissioner that, upon further review, it accepts that the complainant's original request was not defined in terms of scope, and that its response should have set out its interpretation, and scoping, of that request.
19. The Commissioner considers that as the search parameters set out within the complainant's request are not sufficiently defined, it is not a valid request under FOIA. Given this, the Commissioner considers that the MHCLG was not correct to have interpreted the scope of the request to be for all of the information held dating back to 2014, particularly given that this has severely disadvantaged the complainant, as it has resulted in a section 14 refusal notice on the basis of unreasonable burden.
20. In light of the above, the Commissioner considers that the MHCLG was not obliged to comply with the complainant's request on the basis that it did not meet the requirements of section 8(1)(c).

Section 16 – advice and assistance

21. Section 16 of FOIA states that it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or who have made, requests for information to it.
22. The Commissioner's [guidance](#) says that the duty under section 16 should be interpreted broadly, and that if a request is received which a public authority believes is not valid for FOIA purposes, that public authority should consider what advice and assistance it can provide to the applicant to help them bring the request "within technical compliance of FOIA."
23. In light of the above, whilst the MHCLG is not obliged to process a request that is invalid on the basis that it asks for searches up to a cost, or similarly "practicable", limit, as per the Commissioner's [guidance](#), it still has a section 16 duty to provide the requester with reasonable advice and assistance to allow them to submit a properly defined request.
24. The Commissioner considers that as the MHCLG failed to provide advice and assistance to the complainant about how to make a revised and valid request for information which meets the terms of section 8(1)(c), it has not complied with the requirements stipulated in section 16(1) of FOIA.
25. At paragraph 5 of this decision notice, the MHCLG is now required to write to the complainant to provide appropriate advice and assistance on how to make a valid request.

Other matters

26. The complainant appears to have misunderstood that the MHCLG's initial refusal notice applied to all of the requested information as, within their internal review request, they asked for a redacted version of the same information to now be supplied. The Commissioner considers that the MHCLG should have simply set out a full explanation of its position to the complainant in its internal review response, rather than handle the complainant's submissions as a new request for information.
27. In addition, in the Commissioner's view, the MHCLG's decision to claim a different exemption (section 14 on the basis of burden) in response to the complainant's "new" request was confusing and unhelpful.
28. The MHCLG now has an opportunity to resolve the confusion when taking the step set out in paragraph 5 of this decision notice. When doing so, the MHCLG should have regard to the Commissioner's [guidance](#) which sets out advice and assistance which could be given to a requester in circumstances similar to that set out within this decision notice.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
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