

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 January 2012

**Public Authority:** The Information Commissioner's Office

**Address:** Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

#### Decision (including any steps ordered)

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1. The complainant asked to see a report made by the Information Commissioner's Office (the ICO) into a data protection security breach involving a certain organisation. The complainant had been informed by that organisation that she had been affected by the security breach, and accordingly requested sight of the ICO's report into the matter.
2. The Information Commissioner's decision is that an objective reading of the complainant's request was that she had asked for "sight of the actual report" and that no such report is held by the ICO. He has therefore concluded that the ICO has complied with the FOIA in this case in that it stated correctly that the requested information was not held.

#### Request and response

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3. On 12 April 2011 the complainant wrote to the ICO and requested information in the following terms:

*"Thank you for your reply, which I must say is disappointing as it conveys no specific information as to the outcome whatsoever, using as it does, the cover all comment "appropriate regulatory action taken". I would like to have sight of the actual report and would be grateful if you could arrange for this to be made available."*

4. The ICO responded on 11 May 2011. It stated that the information related to an investigation into a security breach and therefore section

30(1) of the FOIA applied. The ICO considered that the public interest favoured withholding the requested information.

5. Following an internal review the ICO wrote to the complainant on 13 June 2011. It stated that having considered all the information held in relation to the investigation, there was nothing which could be considered to be an 'actual report'. The ICO therefore concluded that the requested information was not held and told the complainant this.

## Scope of the case

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6. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way her request for information had been handled. She stated that whilst the internal review equivocated what is meant by "sight of the actual report", it must have been known what was meant by her request. However, she did not provide any more detail as to what this was.
7. The Commissioner contacted the complainant to outline his understanding of the scope of her complaint. He advised that his investigation would focus on whether the ICO had correctly interpreted her request objectively and consequently whether any relevant information was held which could be provided. The complainant disagreed with the scope of the investigation and asked the Commissioner to include a number of issues which were outside his remit in relation to section 50 of the FOIA and which are therefore not considered here. The Commissioner informed the complainant of this and clarified that the focus of his investigation would be whether the ICO interpreted her request objectively.

## Reasons for decision

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8. Public authorities are required to read requests objectively. On this point, the Information Tribunal decision *Boddy v ICO and North Norfolk District Council* [EA/2007/0075] states that:

*"The correct approach to the law is that a request for information ought to be "taken at face value", i.e. it should be read objectively."*

Where there is ambiguity in what the requester is requesting, section 16 of the FOIA obliges the public authority to provide advice and assistance by asking for clarification of the request. However, where there is no such ambiguity, there is no requirement to go back to the requester for clarification.

9. In this case, the complainant requested "*sight of the actual report*" conducted by the ICO into the security incident. The ICO explained that in the context of the request, it had interpreted it as being for a copy of a report about the investigation which gave details of the outcome of any action taken by the ICO. The Oxford English Dictionary definition of 'a report' is, amongst other things, a formal statement of the results of an investigation carried out by a person or appointed body. As the ICO is an appointed body in relation to matters of data protection and as it carried out an investigation, the Commissioner considers that this is the appropriate meaning to give to 'a report' in the context of this request. Taking this definition and the context of the request, the Commissioner considers that no section 16 duty arose in this case. He has therefore gone on to consider whether the ICO holds a formal statement of the results of the investigation in question..
10. Following from this objective reading of the request, the ICO has explained that in the course of responding to it, it located all the information held in relation to the security incident. This included information held on the ICO's electronic case management system, a paper file of documents and other electronic and manually held information held by members of the team who had been involved in the investigation. The ICO advised that having considered all the information there was nothing which could be considered to be a report. Although it initially identified a request for legal advice from the investigating officer to an in house lawyer as falling within the scope of the request, at internal review the ICO concluded that this was not an 'actual report' as it did not record or give details of the outcome of the case because the case had not concluded at that point.
11. The ICO has also explained that there are no operational procedures which require a report to be written about an investigation, either during or at the conclusion of an investigation. When an investigations case is recorded on the electronic case management system as was the situation in this case, the outcome of that investigation is recorded as a specific closure state when the case is closed.
12. The Commissioner has considered the ICO's explanations and has also seen the information held in relation to this matter. He is satisfied that no information which could be considered to be a 'report' is held. Therefore, he considers that the ICO provided an appropriate response to the complainant's request by informing her that the information she requested was not held.

## Right of appeal

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13. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

14. 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.
15. 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 .....**

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**