

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2021

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. He is therefore under a duty as regulator to make a formal determination of a complaint made against him 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 a complete organogram of ICO staffing structure including staff names and current posts. The ICO stated the information was not held.
2. The Commissioner's decision is that at the time of the request the information was held and that the ICO failed to respond to the request in accordance with section 1(1). The Commissioner has also found the ICO breached section 10 of the FOIA in failing to respond to the request in the required timeframe.

3. The Commissioner does not require any steps to be taken. As explained in detail in this notice the Commissioner accepts that the information, as requested at the time, cannot now be provided.

Request and response

4. On 5 February 2020 the complainant made a request to the ICO in several parts. Part 4(d) of the request was in the following terms:
"A complete organogram or organograms of the ICO staffing structure, including all current posts, with names of staff."
5. On 12 June 2020 the ICO responded and stated the information was not held as, at the time of the request, the ICO's internal HR system could not produce organograms with all the necessary information included.
6. The complainant requested an internal review on 25 June 2020. The ICO conducted an internal review and responded on 4 December 2020. The ICO now stated its systems were capable of generating organograms but it would take considerable time, not least as some redactions would need to be made under section 40(2).

Scope of the case

7. The complainant contacted the Commissioner on 15 December 2020 to complain about the way their request for information had been handled. The complainant indicated they wanted to complain about the delays in handling the request and the failure to disclose the organograms that existed at the time of the request.
8. The Commissioner considers the scope of her investigation to be to determine if the ICO held the requested information and complied with its obligations under section 1 of the FOIA.

Reasons for decision

Section 1 – is the information held?

9. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by a public authority to check that the information is not held and any other explanations provided by the authority to explain why the information is not held.
11. In determining whether the ICO held the information to provide the organograms as requested the Commissioner asked the ICO a number of questions to establish how its systems worked and what information was available at the time of the request.
12. The ICO's internal review had stated the information was not held as, at the time of the request, it stated it was not possible to produce organograms from its HR system with all the necessary information included i.e. current posts with names of staff. The ICO went on to state that following recent updates to its HR system it could now be used to create organograms but only for four levels of staff and to create organograms to cover every member of staff would take significant time, not least because some redactions would likely be needed for personal data. The ICO went on to state that:

"At the time we did not have the ability to produce organograms with all the information you requested. Whilst we accept the information necessary to produce an organogram is held, the 'complete' organogram(s) itself requested was not."
13. The complainant provided counter-arguments; they stated that all organograms are 'static' at the point they are generated, in that they are a snapshot of an organisations structure at that moment in time. The complainant accepted that they may not therefore be up-to-date but that does not render them unfit for purpose. In terms of the ICO's new HR system the complainant stated their understanding was that this was only capable of producing a structure down to four levels (approximately 220 of the ICO's over 850 staff) and it would not specify departments or teams, only reporting lines.

14. The complainant also points to the ICO/DCMS Management Agreement¹ that states on page 18 that the ICO will, every six months, provide publication of senior salaries and organograms either on the Arm's Length Body's website or hosted on DCMS' website.
15. The complainant further points to the ICO's own guidance on Non-Departmental Bodies (NDPB's) publication schemes² which states that details of organisational structure should be a part of a NDPB's publication scheme; specifically that an explanation of the internal structures of the NDPB with reference to its functions and how the structure relates to the roles and responsibilities, should be made available.
16. In the ICO's submissions to the Commissioner the ICO states that the complainant asked for a 'complete' organogram and as such the ICO maintains this was not held.
17. The ICO went on to explain that at the time of the request it did hold piecemeal 'ready made' organograms that were on its intranet. However, it stressed these were not a complete representation of all of its staff. Even if all of these piecemeal organograms were combined it would not have added up to a complete organogram of the whole organisation. Any such organograms available at the time of the request, and now, on the ICO's intranet were out of date with staff being cited as being in positions they no longer occupied.
18. Furthermore, the ICO explained it understood that at the time of the request the HR system could not produce organograms without the job titles of staff being cut off. As the request specifically included current posts the ICO considered the information requested was not held as what would essentially be produced was a staff list.
19. The ICO therefore remains of the view that the information that was requested was not held. The ICO did acknowledge the information required to create a complete organogram to satisfy the request was held – a list could have been produced via the HR system and then individual job titles could have been added manually – but the ICO argued producing this would have been a significant undertaking and likely would have reached the cost limit at section 12 of the FOIA.

¹ [Microsoft Word - Management agreement 2018-2021 .docx \(ico.org.uk\)](#)

² [Definition document for Non-Departmental Public Bodies \(ico.org.uk\)](#)

20. The Commissioner's has referred to his own guidance on 'Determining whether information is held'³. At its most simple level, information can be said to be held if a public authority "holds the building blocks required to generate it and no complex judgement is required to produce it."
21. It is clear from the ICO's submission that the building blocks required to generate organograms are held – the request specifically asked for organogram(s) of the ICO staffing structure including current posts and names of staff. The ICO, by its own admissions, held a list of staff and their positions. It even went as far as to say that the information required to create a complete organogram to satisfy the request was held but maintained the complete organogram as requested was not held.
22. The Commissioner's guidance is clear that if a public authority holds the building blocks and it is simply a case of extracting the information and organising it into a list or in this case an organogram, then the information is held. Presenting information in the form of an organogram would not be the creation of new information but the re-presentation of existing information. The Commissioner does not envisage this would be a technically difficult task to undertake, nor has this been argued by the ICO. He is also clear that the accuracy of the information is not a factor in determining whether the information is held.
23. Taking all this into account the Commissioner considers that the requested information was held at the time of the request as the ICO did hold a list of staff and their current positions albeit not in the format of an organogram. That being said, he notes that it is not possible to go back in time to produce the information that was available at the time of the request and the information will have changed significantly over time. The ICO has indicated that it has grown significantly since the date of the request. As such although the Commissioner finds the ICO did hold the requested information and failed to comply with its duties under section 1(1) of the FOIA, he finds he cannot reasonably order the ICO to now provide the information as requested as this information has now changed.
24. However, the Commissioner does expect the ICO to consider any future requests for the same or similar information in light of the decision in this case. He makes no comment in this decision on the ICO's position

³ [determining whether information is held foi eir.pdf \(ico.org.uk\)](#)

that complying with any future request may engage other exemptions and will consider this if it is brought to him at a later date.

Section 10 – time for compliance

25. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have the information communicated to him or her if it is held and is not subject to an exemption.
26. Section 10(1) says that a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
27. The complainant submitted his request to the ICO on 5 February 2020 and did not receive a response until 12 June 2020, outside the 20 working days. The ICO therefore breached section 10(1) with regards to this request.

Other matters

28. The Commissioner notes that the ICO took just over four months to complete the internal review. The section 45 code of practice recommends all public authorities to offer an internal review. It recommends that these are completed within 20 working days of receipt, and certainly within a maximum of 40 working days. Only those particularly voluminous or complex requests should take up to 40 working days. The vast majority should be carried out and completed within 20 working days.
29. Despite the issues of the Covid -19 pandemic, four months is excessive and an unacceptable delay. The ICO is reminded of the importance of the section 45 code of practice and advised to complete future internal reviews in a more timely manner.

Right of appeal

30. 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

31. 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.
32. 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

Jill Hulley
Senior Case Officer
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SK9 5AF