

Freedom Of Information Act 2015

DECISION NOTICE

Section 42

Decision Number: 2021/0004

Public Authority: Cabinet Office

Address: Third Floor
Government Offices
Bucks Road
DOUGLAS
IM1 3PN

Decision Date: 12 November 2021

Decision

1. The review applicant made a request to Cabinet Office that stated (to the extent relevant to this Decision Notice):

"1. I was provided with an email dated 25 March 2019 ... It is accepted that personal details are redacted.

(b) Please provide the original correspondence engaging Mr Hurley as the Inquiry Inspector ...

4. ... it was replied 6 Inspectors were approached.

(a) Please provide the responses from all 6 Inspectors"

2. Cabinet Office refused to give the information, inter alia, citing practical refusal reasons and the exemption set out in Section 23.
3. The review applicant applied for a review of that decision by the Information Commissioner.
4. The Information Commissioner investigated and his decision is:-
 - a. The public authority was justified in applying the exemption set out in section 23(d) to the information sought in point 1(b) of the Request; and
 - b. The public authority did not hold the information sought in point 4(a) of the Request and the practical refusal reason in section 11(2)(b), therefore, applied.
5. The Information Commissioner **does not uphold** the Applicant's complaint. No action is required by Cabinet Office.

REASONS FOR THE DECISION

Background

6. The review applicant ("Applicant") made a request for information to the Cabinet Office ("the public authority") on 11 May 2021.
7. On 07 June 2021, the public authority responded to the Applicant refusing to provide any information for numerous reasons, including practical refusal reasons and application of an exemption.
8. On 15 July 2021, the Applicant requested a review by the public authority.
9. On 20 August 2021, the public authority responded to Applicant, confirming its application of an exemption and the practical refusal reasons cited.
10. On 15 September 2021, the Applicant applied to the Information Commissioner ("Commissioner") for a review of the decision of the public authority.

Initial Review

11. On 23 September 2021, the application for review by the Commissioner under section 42 of the Freedom of Information Act 2015 ('FOIA') was accepted as valid and receipt acknowledged. Information was sought from the public authority, which was provided on 8 October 2021.

Commissioner's Analysis and Findings

12. Under section 42(1) the Commissioner is required to make a decision on
 - (a) whether a public authority has responded to a request for information in accordance with the requirements of Part 2 (access to information held by public authorities); or
 - (b) whether a public authority was justified in refusing to give information requested.
13. The right of access to information is set out in section 8, which states:
"Subject to this Act, every person who is resident in the Island has a legally enforceable right to obtain access, in accordance with this Act, to information held by a public authority."
14. The definition of "held", set out in section 8(2), states:
"In this Act, information is "held" by a public authority if it is held –
 - (a) by the public authority, otherwise than on behalf of another person*
 - (b) by another person for or on behalf of the public authority."*
15. Section 11(2), grant of requests for information, provides for circumstances in which a public authority may refuse to give the applicant the information requested.
16. The Commissioner has considered all the information provided to him by the Applicant and the public authority in making the decision.

17. The information provided to the Commissioner evidenced that the Applicant had submitted several other requests to the public authority regarding the Eastern Area Plan Inquiry and the appointment of the Inspector to that Inquiry.
18. Although the Applicant specifically referred the Commissioner to an email that had been sent to the public authority setting out “*matters of dissatisfaction*” regarding the public authority’s responses to requests, that email also referred to other requests (including that allocated reference 1727858).
19. Request **1786413** referred to the “... *previous request 1727858*” and stated: (Note: the enumeration below is applied for consistency of reference in this decision notice)
1. *I was provided with an email dated 25 March 2019 ... It is accepted that personal details are redacted.*
 - (a) *Please provide the email complete without the whole of the last sentence redacted...*
 - (b) *Please provide the original correspondence engaging Mr Hurley as the Inquiry Inspector ...*
 2. *I was provided with an email 17 February 2020 ... Please provide the complete email as sent*
 3. *I was provided with an email 27 November 2019 ... Please provide the response from Mike Hurley be it email/note of telephone conversation/memo etc.*
 4. *... it was replied 6 Inspectors were approached.*
 - (a) *Please provide the responses from all 6 Inspectors*
 - (b) *Please provide the process of selection Mr Hurley went through to be the successful applicant.*
20. The Commissioner’s obligation under section 42 is to consider the response by a public authority to “a request” (*emphasis added*); in this case, that is request **1786413**.
21. The Commissioner has analysed the information provided by the Applicant and the public authority and it is plain that points 1(a), 2, 3 and 4(b) of request **1786413** seek information that was refused, for various reasons, in response to prior requests (namely requests 1727858 and 1774158). Whilst the Applicant may have applied to the Commissioner for a review of those requests under section 42, they have not done so.
22. The Commissioner is satisfied that only **points 1(b) and 4(a)** of request **1786413** sought ‘new’ information. This Decision Notice relates, therefore, only to **points 1(b) and 4(a)** of request **1786413** (referred to henceforth as “the Request”).

Matters relating to section 42(1)(a) – compliance with the requirements of Part 2

23. The public authority responded to the Request within the standard processing period¹ and issued a refusal notice on 07 June 2021.

¹ Section 12 FOIA

Consideration of the scope of the Request and searches

24. Section 9(5)(a)(iii) requires applicants to provide “an adequate description of the information requested” and for the public authority “the logically prior issue is the correct interpretation of the scope of the request”.²
25. Section 15 requires public authorities to “give reasonable advice and assistance to persons who wish to make, or who have made, requests for information held by public authorities”.
26. The public authority did not contact the Applicant to give advice and assistance in respect of the scope of the request and it is concluded, therefore, that the public authority understood, and could ‘correctly interpret’, the scope of the Request.
27. The Commissioner is satisfied that the public authority undertook a reasonable search, as required by section 1.4 of the Code of Practice³, and located information relevant to point 1(b) of the Request.
28. However, searches did not locate any information relevant to point 4(a) of the Request.

Matters relating to section 42(1)(b) - Refusal to give information requested

29. The Commissioner must decide whether the public authority was “justified in refusing to give information requested”.
30. Section 11(1), “Grant of requests for information” requires public authorities to give applicants the information requested, subject to section 11(2) which, to the extent relevant, states:
- ... a public authority may refuse to give the applicant the information requested if —*
(a) the information is absolutely exempt information or qualified exempt information;
(b) a practical refusal reason applies and cannot be removed, despite the public authority complying with the duty in section 15 (advice and assistance); ...
31. Section 11(3) provides the following definitions:

“absolutely exempt information” is information covered by a provision of Part 3;
“practical refusal reason” means one or more of the following —
the public authority does not hold or cannot, after taking reasonable steps to do so, find the information that the applicant has requested; ...

Point 1(b) of the Request

32. The public authority refused to provide the information sought in **point 1(b)** of the Request, and applied the absolute exemption set out in section 23 (in Part 3).
33. Section 23, Absolutely exempt communications with the Crown states, to the extent relevant:

² Upper Tier Tribunal decision in *Adedeji v Information Commissioner* - (GIA) [2019] UKUT 309 (AAC) Para 17
https://assets.publishing.service.gov.uk/media/5dcaae1bed915d4e7fd7b6e9/GIA_0465_2018-00.pdf

³ <https://www.gov.uk/media/1358113/foia-code-of-practice.pdf>

*"Information is absolutely exempt information if it relates to communications with ...
d) the Lieutenant Governor."*

34. The public authority did not cite the specific exemption in the refusal notice, i.e. section 23(d), but did state that the information related *"to communications with the Lieutenant Governor"*.
35. The public authority's internal review response cited section 23 and also referred to paragraph 4 of Schedule 1 to the Town and County Planning Act 1999, which states, to the extent relevant:
- "The inquiry shall be conducted by a person or persons appointed by the Governor ... "*
36. Communications to/from the Governor regarding the appointment of the Inspector to the Eastern Area Plan Inquiry fall within the ambit of section 23(d) and the Commissioner is satisfied that the public authority was justified, therefore, in refusing to give the Applicant that information.

Point 4(a) of the Request

37. The public authority did not state that it was applying a practical refusal reason in the refusal notice, but stated that the information was 'not held' by the public authority and, therefore, by implication, that the practical refusal reason set out in section 11(2)(b) applied.
38. The public authority's internal review confirmed that the information was not held, but did not state that the practical refusal reason set out in section 11(2)(b) applied.
39. The Commissioner is satisfied, however, that the public authority did not hold the information sought in **point 4(a)** of the Request and the practical refusal reason in section 11(2)(b), therefore, applied.

DECISION

40. The Commissioner's decision is that:
- a) The public authority was justified in applying the exemption set out in section 23(d) to the information sought in point 1(b) of the Request; and
 - b) The public authority did not hold the information sought in point 4(a) of the Request and the practical refusal reason in section 11(2)(b), therefore, applied.
41. The Commissioner therefore **does not uphold** the Applicant's complaint. No action is required by Cabinet Office.

Appeal

42. Section 50(1) provides that either party has the right to appeal against this Decision Notice to the High Court on a point of law. An Appeal must be filed within 28 (calendar) days from the date of this Decision Note. Further information about the Appeal process can be found on the General Registry's web site at: <https://www.courts.im/courtprocedures/AppealsCivil/>

An appeal should be filed at or sent to:

The Court Office
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Enforcement

43. Section 48 provides that if a public authority fails to comply with a Decision Notice by not taking the steps it is required to take, then the Commissioner may certify in writing to the High Court that it has failed to comply. The Court must inquire into the matter and may deal with the public authority as if it had committed a contempt of court.

Publication

44. The Commissioner will publish this Decision Notice 5 working days after it has been issued to the Applicant and the public authority.



Iain McDonald
Isle of Man Information Commissioner

12 November 2021