

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 10 July 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

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 him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he 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-220731-Q6Y6, for a decision whether a request for information made by the complainant to the Home Office on 8 November 2022, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 8 November 2022, the complainant made the following request for information under the Act:

“Please could you release, under the provisions of the FOIA 2000:

(1) The proposal for a ‘Third Party Proof of Concept’ submitted by Asylum Operations to the Home Secretary in August 2020 referenced at 7.36, p.49 of ICIBI (2022) ‘An inspection of asylum casework: (August 2020 – May 2021)’ available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034012/An_inspection_of_asylum_casework_August_2020_to_May_2021.pdf

(2) Any risk assessments produced prior to the implementation of the ‘Third party proof of concept’

(3) Any concluding reports relating to the ‘Third Party Proof of Concept’, including data on the success of the concept (as referenced at 7.45, p. 50 of ICIBI (2022) ‘An inspection of asylum casework: (August 2020 – May 2021)’

I am available should you require any clarification on this request”.

3. The Home Office responded on 17 November 2022 and refused to provide the requested information, citing section 43(2) (Commercial interests) of the Act.
4. The Home Office provided an internal review on 2 February 2023 in which it maintained its position regarding section 43(2) of the Act, adding reliance on section 31(1)(e) (Law enforcement).
5. On 9 March 2023, the complainant wrote to the Commissioner to complain about the response.
6. On 15 May 2023, the Commissioner wrote to the Home Office raising various queries to assist with his investigation.
7. On 27 June 2023, the Home Office wrote to the Commissioner requiring additional time in which to provide its formal response. The Commissioner agreed to an extension until 7 July 2023, provided the Home Office initially sent him copies of the withheld information for consideration.

8. On 27 June 2023, the Home Office provided the withheld information.
9. At the time of writing this notice, the Commissioner has not received a formal response to his inquiries.

Information required

10. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish the Commissioner with the following information.
11. The Home Office is required to respond to the enquiries in the email which the Commissioner sent to it on 15 May 2023, namely:

“The complainant wishes to challenge the application of exemptions to refuse the request. Her grounds are as follows:

- the information requested relates to a discontinued ‘proof of concept’ from August 2020. As is noted at para 7.44 (p.50) of the same ICI report (2020), the Home Office concluded that the “proof of concept... has not been successful / proven”, meaning that the disclosure would not impact upon the working of the current immigration system as it has no relevance.
- the Home Office has failed to disaggregate the request and has applied a blanket application of section 43.
- the Home Office has not identified a causal link between the disclosure of the requested information and the prejudice claimed.
- the Home Office did not demonstrate that it has consulted with the relevant third party about the impact on their commercial interests.
- a sufficient timeframe has elapsed such that the likelihood of disclosure affecting commercial competitiveness is reduced.

Please will you provide a response to these points.

...Please answer the following questions

Section 43 – Commercial interests

Please identify the party or parties whose commercial interests would, or would be likely to be prejudiced if the withheld information was disclosed.

Please provide a detailed explanation to support the position that disclosure of the withheld information would, or would be likely to prejudice a party’s commercial interests.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice to commercial interests which may occur.

If the prejudice relates to the commercial interests of third parties, in line with the Information Tribunal decision in the case *Derry Council v Information Commissioner (EA/2006/0014)*, the ICO does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns. Therefore, please clarify on what basis you have established that disclosure of a third party's interests may occur and please provide copies of correspondence you have had with third parties in relation to this request.

Please specify the level of likelihood being relied on, i.e. would or would be likely to prejudice.

Please add any further public interest arguments that you would like to rely on.

Section 31 – Law enforcement

You have cited sub-section of 31(1)(e) of FOIA.

Please clearly explain why disclosure of the information would prejudice, or be likely to prejudice this function.

Please ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice which may occur.

Please specify the level of likelihood being relied on, i.e. would or would be likely to prejudice.

Please add any further public interest arguments that you would like to rely on".

12. As also requested with the above email, the Home Office should ensure that it clarifies to the Commissioner which parts of the withheld information are being withheld under each exemption.

Failure to comply

13. 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

14. 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

15. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF