

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 March 2018

Public Authority: Her Majesty's Inspectorate of Prisons
Address: Victory House
6th floor
30-34 Kingsway
London
WC2B 6EX

Decision (including any steps ordered)

1. The complainant requested details of where to address some concerns from Her Majesty's Inspector of Prisons (HMIP). The Commissioner's decision is that HMIP breached section 10(1) of FOIA by failing to provide the requested information within the statutory time limit.
2. As a response has now been provided the Commissioner does not require HMIP to take any action as a result of this notice.

Request and response

3. On 21 August 2017 the complainant wrote to HMIP and, within his letter, requested information in the following terms:

"... I should be thankful if you would advise on the person/s/ department/s with full responsibility for attending to my expressed concerns in order that I may redirect them".

4. The complainant wrote again on 20 September 2017 chasing a response. When doing so he commented:

"In the unlikely event that you have no opinions on the issue and are not in possession of the information I have requested, you are obliged to advise me as to where and from whom I may obtain such".

5. HMIP did not respond.
6. The complainant contacted the Commissioner on 26 November 2017 to complain about a lack of response to an information request. The Commissioner required further information from him to clarify what he considered to be his information request.
7. The complainant responded on 22 January 2018. He advised thus:

"... in para five of my letter 21 August, you will note I asked for details of persons / departments to whom I should address my enquiries in order that I may redirect them. I received no such advice and I submit, therefore, that the Chief Inspector of Prisons is in breach of the FoIA/EIR".
8. The Commissioner wrote to HMIP on 29 January 2018 to establish whether or not it had received the correspondence. HMIP responded on 7 February 2018. It advised that both letters had been received but it did not consider that they warranted a further response.
9. The Commissioner wrote to HMIP again on 8 February 2018. She asked it to clarify whether or not it considered the request to fall under the remit of the FOIA. If it did not, she asked HMIP to provide its reasoning. If it did, she asked it to respond to the complainant within 10 working days.
10. On 16 February 2018, HMIP responded to the Commissioner. It advised that it was unsure as to whether or not the request was valid as it did not hold such information in a recorded form. However, in order to be helpful, it advised that it had now written to the complainant providing him with relevant contact details for HM Prisons and Probation Service from the gov.uk website.

Scope of the case

11. The complainant wrote to the Commissioner on 8 March 2018. He asked her to issue a decision notice to formally record HMIP's handling of his request.
12. The Commissioner initially notes that HMIP's position is that it is 'unsure' whether or not the information request is valid as per section 8(1)(c) of the FOIA. However, it did eventually provide a response to the complainant and did not cite this as an issue to him. The Commissioner is therefore unable to consider this matter any further.
13. The Commissioner will consider the delays in responding to the request below.

Reasons for decision

Section 10 – time for compliance

14. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
15. The request was submitted on 21 August 2017 and the complainant did not receive a response until 16 February 2018. The Commissioner therefore finds that HMIP has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Section 16 – advice and assistance

16. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request, so far as it would be reasonable to do so. Section 16(2) clarifies that, if an authority conforms to the good practice recommendations in providing advice and assistance which are contained within the Code of Practice issued under section 45 of FOIA, it will have complied with section 16(1).
17. Part III of this Code deals with transferring requests for information. It applies in any case in which a public authority is not able to comply with a request because it does not hold the information requested.
18. If a public authority has reason to believe that some or all of the information requested is held by another public authority, it should consider what would be the most helpful way of assisting the applicant with his or her request. The code states that:

"In most cases this is likely to involve:

- *contacting the applicant and informing him or her that the information requested may be held by another public authority;*
 - *suggesting that the applicant re-applies to the authority which the original authority believes may hold the information; and*
 - *providing him or her with contact details for that authority".*
19. In its belated response, HMIP provided details of where it understood the complainant should address his request. Such advice is considered best practice by the Commissioner as it allows the complainant to further his enquiries. Unfortunately, the considerable delay in providing this advice was not helpful. However, as it has now been provided, the Commissioner finds no breach of section 16 of the FOIA.

Other matters

20. As well as finding above that HMIP is in breach of section 10(1) of the FOIA, the Commissioner has made a record of the delay in this case. This may form evidence in future enforcement action against HMIP should evidence from other cases suggest that there are systemic issues within HMIP that are causing delays.

Right of appeal

21. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

22. 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.
23. 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

Carolyn Howes
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