

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 23 November 2022

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

Section 51

Under section 51 of the Freedom of Information Act 2000 ("FOIA"), 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 FOIA 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-131216-V8Q5, for a decision whether a request for information made by the complainant to the Home Office on 23 October 2020, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 23 October 2020, the complainant made the following request for information under the FOIA:

"I hereby kindly request a list of meetings held between representatives of Apple, Google (including Alphabet), Facebook (including WhatsApp and Instagram), Microsoft, Signal messenger, Telegram, and Wickr with officials from the Home Office held between the 1st of January 2017 and the 20 September 2020 on the subject of encryption. Where possible the list should include:

- 1) The date of all the meetings
 - 2) A list of all the participants in each meeting and their positions in the company and Home Office
 - 3) The general topic of discussion or a brief description of the issues discussed in each meeting"
3. The Home Office responded on 24 November 2020, and refused to confirm or deny that the requested information was held, citing sections 23(5) and 24(2) of FOIA.
 4. The Home Office provided an internal review on 30 June 2021 in which it maintained its position.
 5. On 27 September 2021, the complainant wrote to the Commissioner to complain about the response.
 6. On 19 July 2022, the Commissioner wrote to the Home Office raising various queries to assist with his investigation.
 7. On 9 September 2022, the Home Office revised its position. It wrote to the complainant confirming that information was held but that it was exempt by virtue of sections 23(5), 24(1), 31(1)(a)(b), 40(2) and 43(2) of FOIA.
 8. When making such a revision, public authorities are supposed to make a fresh submission to the Commissioner outlining their revised response and rationale, as was advised in the initial investigation letter referred to above; this was not provided.
 9. On 17 October 2022, the Home Office was advised that this submission was still required and a further set of questions was included, requiring a response within 10 working days.
 10. To date this response remains outstanding.

Information required

11. 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 him with a copy of the following information.
12. The Home Office is required to respond to the email which the Commissioner sent to it on 17 October 2022 namely:

“Please provide the withheld information.

Please clarify where each exemption has been applied.

Please answer the following questions in relation to the FOIA exemptions cited.

Please confirm whether or not each exemption is being applied to the request in its entirety.

Section 23 – information supplied by, or relating to, bodies dealing with security matters

Please confirm whether you are relying on section 23(5) on the basis that the requested information, if held, would be directly or indirectly supplied to it by one the bodies in sub-section (3) **or** on the basis that requested information, if held, would relate to one of the bodies in subsection (3).

If the position is that the information would be directly or indirectly supplied to you please clarify which of the bodies listed in section (3) it would be supplied by. If it would be indirectly supplied to you then please explain the connection between the information and the relevant security body.

If the position is that the information, if held, would relate to one of the bodies listed in subsection (3) please clarify which of the bodies the information would relates to and why – i.e. what is the connection between the information, the named security body and yourself.

Section 24 – national security

Please provide a detailed explanation to support your position that withholding this information is required in order to safeguard national security.

In providing this explanation please be aware that ICO interprets

'required' in the context of section 24 to mean reasonably necessary and therefore this sets a high threshold which has to be met in order for this exemption to be engaged. Consequently, it is not sufficient for the requested information simply to relate to issues of national security, rather there must be evidence of specific and real threats to national security which would occur if the requested information was disclosed.

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

Section 31 – law enforcement

You have cited 31(1)(a) and (b).

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

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 clarify 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 40 – personal information

I am presuming that this is being applied in respect of authors / recipients of emails, although this hasn't been clarified.

Please ensure any personal information is highlighted when you provide the withheld information and I will ask further questions if necessary.

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".

Further information required

13. At a late stage, the Home Office indicated to the Commissioner that it may not actually hold the requested information.
14. In the event that the information is not held, the Commissioner requires the Home Office to confirm this is the case and provide details of the searches undertaken to reach this conclusion. When doing so it should respond in full to the Commissioner's standard investigation questions for section 1, which can be found on his website via this link¹.

Failure to comply

15. 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.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/key-questions-for-public-authorities-foi-act-2000/#1>

Right of appeal

16. 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

17. 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