

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 10 October 2022

Public Authority: Natural England (executive agency of DEFRA)

Address: Foss House
Kings Pool
1-2 Peasholme Green
York
YO1 7PX

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-152361-W5L8, for a decision whether a request for information made by the complainant to Natural England on 10 August 2021, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. The scope of the complaint being investigated by the Commissioner is restricted to a single element of the complainant's request. The complainant has noted that Natural England's initial response and the outcome of its internal review appear to contradict each other.
3. The Commissioner wrote to Natural England on 6 October 2022, noting the narrow scope of the matters under consideration and asking for answers to just two questions that, in his view, would be likely to resolve the matter. In view of the relatively limited information that was being required of Natural England, he asked for the information to be provided within 10 working days.
4. Natural England responded the same day to say that this timeframe was "unreasonable" as it was already dealing with four other complaints from the same complainant. It stated that the "earliest" it could respond was 20 November 2022.
5. The Commissioner notes that he wrote to Natural England on 3 February 2022, when he originally accepted the complaint, to say that:

"The Commissioner will provide a public authority with one opportunity to justify/confirm its position. Once a case officer is assigned, you will be given a maximum of 20 working days to provide any withheld information and supporting submissions to the Commissioner.

"Although no information needs to be provided to the ICO before then, the Commissioner expects the public authority to have used the time since receiving this correspondence to have thoroughly reviewed its handling of the request and to ensure that it is **fully prepared and ready to provide its final detailed submissions to the Commissioner**. The public authority should already be clear and confident in its position, including any public interest arguments, and to have asked for opinions from interested third parties, if relevant. The public authority has already had two previous opportunities to do so when responding to the complainant." [original emphasis]
6. Given that Natural England has had, in effect, eight months already to prepare its response, the Commissioner considers that it is unreasonable to expect to be allowed six weeks in which to provide answers to just two questions. The Commissioner also notes that, of the five complaints that the complainant has made, Natural England is fully aware that only one other complaint has yet been allocated for investigation.

7. Whilst the Commissioner recognises that issuing an Information Notice has the effect of allowing Natural England longer than the original 10 working days, in the circumstances of this case, he considers that setting a legally-enforceable deadline is appropriate.

Information required

8. 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 Natural England shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - Answers to both the numbered questions contained in his letter of 6 October 2022

Failure to comply

9. 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

10. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@Justice.gov.uk

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

11. 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

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