

Freedom of Information Act 2000 (Section 51)

Information notice

Date: **13 July 2023**

Public Authority: **Department for Business & Trade (DBT)**

Address: **1 Victoria Street
London
SW1H 0ET**

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 FOIA.

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-186501-R7N4, for a decision on whether a request for information made by the complainant to the Department for Business,

Energy & Industrial Strategy¹ ("BEIS") on 7 March 2022, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 7 March 2022 the complainant made the following request for information:

"When the 2017 General election was called, civil servants in BEIS would have prepared briefing papers and slides regarding the manifesto pledges of the various parties; these to be given to incoming Ministers from the winning party or parties.

Therefore, given the possibility that the Labour party would form the government, civil servants in BEIS would have produced ministerial briefings on the Labour Party's pledge to introduce on Sectoral collective bargaining.

Therefore, I would like a copy please of the briefing material intended to be given to incoming Ministers from the Labour Party regarding sectoral collective bargaining."

3. BEIS responded to the request on 11 July 2022 relying on FOIA section 35(1)(b) – Ministerial communications, to refuse the request.
4. The complainant requested an internal review on the same day (11 July 2022), challenging the exemption. He cited the Commissioner's guidance and explained their view that:

"...given the Labour Party did not form a government, the exemption cannot apply as the purpose of section 35(1)(b) is to protect the operation of government at ministerial level. It cannot be stretched to cover a possible government.

This conflating of the term Minister with a possible Minister is found in the public interest analysis in the of 11 July letter. ... The department must accept that the requested information has nothing to do with actual Ministers sharing views."

¹ On 7 February 2023, under a Machinery of Government Change, the Department for Business Energy and Industrial Strategy ("BEIS") began the transition into three separate departments, including the Department for Business and Trade ("DBT"). The request in this case was made to BEIS, however this notice will be served on DBT as the appropriate authority.

5. The complainant contacted BEIS on 11 August 2022 as they had not received an internal review.
6. On 15 August 2022 the complainant contacted the Commissioner to complain that the internal review had not been provided.
7. On 18 August 2022 the Commissioner explained to the complainant that he considers a reasonable time for the provision of an internal review in most cases is 20 working days from the date of the request. However for complex or high volume requests he accepts that up to 40 working days is a reasonable timeframe. In this case that date would be 6 September 2022.
8. On 7 September 2022 the complainant contacted the Commissioner to advise him that they were still waiting for an internal review.
9. On 7 September 2022 the Commissioner wrote to BEIS reminding it of its responsibilities and asking for the internal review to be provided within 10 working days, by 21 September 2022.
10. On 22 September 2022 the complainant contacted the Commissioner and explained that they had not received an internal review nor any correspondence providing an explanation for the delay.
11. The Commissioner wrote to BEIS on 22 September 2022 advising that he had accepted the complaint, it would be allocated in due course and he expected BEIS to use the time prior to allocation to ensure that it was ready to respond to his investigation.
12. On 29 March 2023 the Commissioner wrote to DBT asking for the withheld information and responses to both his standard investigation questions for the exemption cited and case specific questions to be provided by 28 April 2023.
13. On 5 June 2023 the Commissioner contacted DBT reminding it that its response was over-due.
14. On 9 June 2023 DBT contacted the Commissioner and explained that it had decided that FOIA section 35(1)(b) was not applicable and it was considering reliance on section 36(2)(b)(i) – prejudice to the effective conduct of public affairs. DBT explained that it would be seeking a Minister's agreement on the engagement of the exemption following which the complainant would be contacted regarding the new exemption.
15. On 26 June 2023 the Commissioner contacted DBT requesting an update on the case, which was acknowledged.

16. On 29 June 2023 DBT contacted the Commissioner to advise that the case had not progressed with regard to seeking the Minister's agreement on the new exemption.
17. On 7 July 2023 the Commissioner wrote to DBT reminding it that its response was over-due and advising that if a response was not forthcoming an information notice would be served the following week.
18. On 11 July 2023 DBT advised the Commissioner that submissions to the Minister had still not been sent and therefore the complainant had still not been advised of the change in exemption. It added that the submissions requested by the Commissioner could not be provided by 14 July 2023.
19. In view of the above circumstances the Commissioner has decided that a hard deadline via the serving of this notice is required.

Information required

20. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that DBT shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - A substantive response to his letter of 29 March 2023 covering any change in reliance on exemptions.
 - A copy of the withheld information.

Failure to comply

21. 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 FOIA, and may be dealt with as a contempt of court.

Right of appeal

22. 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

23. 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

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