

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 18 February 2020

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 her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

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

she 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 FS50866320, for a decision whether a request for information made by the complainant to the Home Office on 3 July 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 3 July 2019 the complainant made the following request for information under the Act via the *WhatDoTheyKnow.com* website:

"Please kindly provide contents of the Home Secretary's work diary for the evening of 19th December, 2018 between the period of 18:30 and 23:30.

Below are our equivalent requests to all other Government departments where they've provided this information for their Secretaries of State (along with the Prime Minister). Also below is a historical decision notice where the ICO ordered the release of a Secretary of State's diary covering one hundred and six calendar days.

Prime Minister <https://www.whatdotheyknow.com/request/p...>

SoS for DWP <https://www.whatdotheyknow.com/request/s...>

*SoS for Education
<https://www.whatdotheyknow.com/request/s...>*

SoS for Justice <https://www.whatdotheyknow.com/request/s...>

*SoS for Housing, Communities and Local Government
<https://www.whatdotheyknow.com/request/s...>*

*SoS for Transport
<https://www.whatdotheyknow.com/request/s...>*

*<https://www.whatdotheyknow.com/request/5...>
<https://www.whatdotheyknow.com/request/1...>
<https://www.whatdotheyknow.com/request/1...>*

*SoS for Environment, Food and Rural Affairs
<https://www.whatdotheyknow.com/request/1...>*

*SoS for Exiting the European Union
<https://www.whatdotheyknow.com/request/1...>*

*SoS for Department for Digital, Culture, Media and Sport
<https://www.whatdotheyknow.com/request/1...>*

*Historic Decision Notice where ICO ordered release of Secretary of State's diary covering one hundred and six calendar days
<https://ico.org.uk/media/action-weve-tak...>"*

3. The Home Office responded, late, on 14 August 2019 and refused to provide the requested information, citing section 35(1)(d) of the FOIA. A link was provided to published information on ministerial gifts, hospitality, travel and meetings for Home Office Ministers which is part of the Transparency data available for government departments on gov.uk.

4. The Home Office provided an internal review, late, on 19 November 2019 in which it maintained its position regarding section 31(1)(d); however it disclosed the following information:

"...we are able to disclose that the Home Secretary was attending a private occasion on this particular evening."

5. On 22 September 2019, the complainant wrote to the Commissioner to complain about the response.
6. On 14 January 2020, the Commissioner wrote to the Home Office raising various queries to assist with her investigation.
7. On 11 February 2020 the Commissioner wrote to the Home Office advising that she required a response by the end of the week, ie 14 February 2020. On 17 and 18 February 2020, she also left voicemail messages asking the Home Office to contact her. At the time of writing this notice, she has received no acknowledgement or response.

Information required

8. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Home Office shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
9. The Home Office is required to respond to the emailed letter which the Commissioner sent to it on 14 January 2020 namely:

"... we need the following information from you to reach a decision:

- *A copy of the withheld information.*
- *Detailed explanations for the part of the FOIA cited.*
- *In order to assist the ICO's consideration of the application of section 35(1)(d) please answer the following questions:*

Section 35 – formulation of government policy, etc

Section 35(1)(d)

- *Which private office(s) does the information relate to? How does it relate to its/their operation?*
- *Please provide any further arguments/explanations you may wish to include in support of your reliance on section 35(1)(d).*

- *Arguments as to why you believe the public interest in maintaining the procedural section of the FOIA exemption outweighs the public interest in disclosure.*

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate the Information Commissioner's approach to the exemptions and procedural sections of the FOIA. These can be found on our website:

- <http://search.ico.org.uk/ico/search/decisionnotice>
- <https://ico.org.uk/for-organisations/>

New exemption(s)

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now please do the following:

- *Consider whether to change your response to the information request, and let us know the outcome.*
- *Send us the withheld information.*
- *Send us your full and final arguments as to why you think the exemption applies.*
- *Answer all of the questions in this letter.*

Delays

- *Please explain why the Home Office failed to provide its substantive response within the statutory 20 working days' timeframe.*
- *Please also explain why the internal review was not completed within the recommended 20 working days' period.*

Both these delays have been logged.

Time for response

Please provide your response within 20 working days of the date of this letter, that is by 11 February 2020, ensuring that you fully set out your final position in relation to this request."

Failure to comply

10. 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

11. 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

12. 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