

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 5 June 2023

Public Authority: Department of Business and Trade ("DBT")

Address: Old Admiralty Building
Admiralty Place
London
SW1A 2DY

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-165458-V8Y5, for a decision whether a request for information made by the complainant to the Department for Business, Energy and Industrial Strategy ("BEIS")¹ on 8 October

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

2021, has been dealt with in accordance with the requirements of Part I of FOIA.

Nature of complaint

2. On 8 October 2021 the complainant made the following request for information:

“On 21 September, 2021, Business Secretary Kwasi Kwarteng announced “an agreement with CF Fertilisers to ensure the continued supply of CO2 to UK businesses” .

Please provide information detailing any and all of the terms of that agreement.

Please provide the most up-to-date information as of the date this request is fulfilled in electronic (soft copy) form via email to me at [redacted].

If it is not possible to fulfil this request for cost reasons, please provide advice and assistance as to how I can refine my request. If you can identify any other ways that my request could be refined I would be grateful for any further advice and assistance.”

3. BEIS responded to the request on 29 October 2021. It provided a brief explanation related to the request and confirmed that it held information within the scope of the request which was being withheld in reliance of FOIA section 43(2)– commercial interests.
4. The complainant requested an internal review on 29 October 2021, challenging the causal effect of disclosure resulting in commercial prejudice to the company, BEIS’ consideration of the public interest and the blanket refusal of the information, citing the Commissioner’s guidance on disclosure of contracts.
5. BEIS responded with a letter dated only “December 2021” advising that it was disclosing a letter of 21 September 2021 with redactions under section 40(2) – personal information, section 41 – information provided in confidence and section 43(2) – commercial interests.
6. The complainant contacted the Commissioner on 11 April 2022.

case was made to BEIS, however this notice will be served on DBT as the appropriate authority.

7. The Commissioner informed BEIS on 21 April 2021 that he had accepted the complaint, that it would be allocated in due course and that he expected the public authority to use the time prior to allocation to ensure that it was ready for the investigation, once the complaint was allocated.
8. On 29 March 2023 the Commissioner wrote to BEIS asking for an unredacted copy of the information held in the scope of the request and responses to his standard investigation questions for the exemptions cited and complained about along with more case specific questions. He also asked for copies of correspondence between BEIS and CF Industries in relation to this request. He asked for a response within 20 working days. This correspondence was neither acknowledged nor responded to.
9. On 12 May 2023 the Commissioner contacted the public authority and reminded it that its response was over-due and if a response was not received by the end of May 2023 and information notice would be served.
10. To date the response and requested information remain outstanding. In view of the age of this case the Commissioner has proceeded to serve this notice.

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 FOIA he requires that the Department for Business and Trade 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.
 - Copies of the unredacted information in scope of the request and the correspondence between BEIS and CF Industries.

Failure to comply

12. 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

13. 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

14. 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