

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2012

Public Authority: Office for National Statistics
(‘the ONS’)

Address: Segensworth Road
Titchfield
Fareham
Hampshire
PO15 5RR

Decision (including any steps ordered)

1. The complainant made a number of requests for information to the Office of National Statistics (‘the ONS’) about how it and subcontractors handle the personal data that is generated during the census.
2. The ONS provided partial responses. As the complainant was not happy with them he made a complaint to the Information Commissioner (‘the Commissioner’)
3. During the course of the Commissioner’s investigation, the ONS reconsidered the requests and issued more appropriate responses to them. After further discussion, the complainant asked for the Commissioner to issue a formal decision notice about the defects in the original responses to his request.
4. The Commissioner has determined that the ONS failed to comply with section 1(1)(a) and 10(1) of FOIA in its original handling of the complainant’s various requests. However, the Commissioner requires no remedial steps to be taken as the ONS remedied those defects during his investigation.

Request and response

5. The complainant made a number of requests to the ONS for recorded information between 13 April 2011 and 29 June 2011. The

Commissioner has identified four documents that contained fourteen distinct requests for information and these have been placed in Annex A.

6. The ONS issued a number of responses to those requests and reviewed its answers a number of times. In summary, it:
 - Read the requests narrowly (for example, for request [1] it appeared to only consider contractors who process the census data itself – rather than all the contractors involved in the collecting and/or processing the data);
 - Issued incomplete responses that could be said to be ambiguous;
 - Didn't address some of the requests at all (for example, request [10] did not receive any answer);
 - Did not confirm specifically whether it held relevant recorded information in each request; and
 - Provided some information but always beyond the 20 working day limit in section 10(1) of FOIA.
7. After the Commissioner's intervention, the ONS decided to review how it handled all of the complainant's requests for information and communicated the result of this review on 30 November 2011. The review addressed the concerns the Commissioner had about how it read the requests and how it dealt with them.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his requests for information had been handled on a number of occasions.
9. On 14 December 2011 the complainant agreed that, in light of the new better response that he had received, that the Commissioner would:
 1. Clarify three further points that became apparent in the information; and
 2. Issue a formal decision notice about the inadequacies of the original responses and the delays that he had experienced in obtaining what he had requested.
10. On 12 January 2012 the ONS clarified those three points and the purpose of this decision notice is to record what went wrong originally.

Reasons for decision

11. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request,

(b) if that is the case, to have that information communicated to him”

12. It should be noted that FOIA only offers the complainant the right to recorded information that is held at the date of the request. It does not present any obligation to answer questions or provide additional accountability where it does not hold relevant recorded information of that description.

13. The Commissioner considers that in this case confusion was generated by the ONS failing to explain this clearly to the complainant and failing for each request to confirm whether it held relevant recorded information in line with section 1(1)(a) or communicate that information when appropriate in line with section 1(1)(b).

14. The Commissioner also considers and the ONS concedes that it read the original requests too narrowly and not objectively. This led to there being confusion and the ONS failing to comply with its obligations under section 1(1)(a) and 1(1)(b).

15. However, the ONS remedied these defects during the course of the Commissioner's investigation. It is therefore now complying with these sections.

Procedural matters

16. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days and comply with its obligations found in section 1 of the Act (subject to a limited number of exceptions none of which are relevant in this case).

17. The ONS did not:

1. Respond to all the requests it received in 20 working days; or

2. Comply with all of its obligations imposed by section 1(1) in the same timeframe.
18. It therefore breached section 10(1) of FOIA.
19. The Commissioner notes that the ONS has apologised to the complainant and the Commissioner about this breach. It also reconsidered the requests in an appropriate manner.
20. The Commissioner has used his discretion to require no remedial steps to be taken in this case, because there are no steps that can remedy the breach that have not already been taken.

Right of appeal

21. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A – a schedule of the fourteen requests

Number	Date	Copy of the request for information
[1]	13/04/2011	<i>Please confirm and provide details of the Data Protection Act registration numbers and the details of all data controllers and data processors of any independent third parties that are being used to collect and/or process the personal data generated by the 2011 UK Census.</i>
[2]		<i>Please also confirm and provide details of the existence of third party processing agreements between all involved parties.</i>
[3]		<i>Where the independent third party processor is based outside of the UK, please confirm and provide details of the relevant agreements allowing the passing of personal data relating to individuals covered by the UK Data Protection Act to organisations outside the jurisdiction and protection of the UK data protection legislation, for example, where a company may be based in the USA, please provide details of the US Safe Harbour agreement confirming that the organisations in question are allowed to process personal data, and the details of the license as it appears on the US safeharbour.export.gov website.</i>
[4]	20/06/2011	<i>...Regarding the DPA registration for Lockheed Martin UK Integrated Systems & Solutions Ltd - Z6891321 - which of these purposes includes the processing of personal data of UK individuals for the purposes of a Census?</i>
[5]		<i>...Regarding the DPA registration for Lockheed Martin UK Integrated Systems Ltd - Z5593231 - which of these purposes includes the processing of personal data of UK individuals...for the purposes of a Census?</i>
[6]		<i>...Regarding the DPA registration for Lockheed Martin UK Strategic Systems Ltd - Z1186763 - which of these purposes includes the processing of personal data of UK individuals...for the purposes of a Census?</i>
[7]	22/06/2011	<i>'The story suggests that the ONS is indeed 'working with... contractors' on the 2011 UK Census....Who are these contractors?</i>
[8]		<i>Where are the DPA registrations that permit them to process personal data for the purpose of a census?</i>
[9]		<i>Do they have Third Party Processing Agreements in place to be processing the personal data of UK Citizens?</i>
[10]		<i>And what steps have been taken to ensure that they have adequate security systems in place to prevent the loss of personal data.</i>
[11]	29/06/2011	<i>In what capacity are Lockheed Martin UK involved in the UK Census, if they are not involved in the processing of personal data gathered as a part of the Census?</i>

[12]		<i>In what capacity are Lockheed Martin UK's subcontractors involved in the UK Census, if they are not involved in the processing of the personal data gathered as part of the Census?</i>
[13]		<i>The Census forms are clearly in a format intended to be machine read – whose machines are reading them and where is the data being stored, and by whom?</i>
[14]		<i>Please provide the relevant Data Protection registrations for all parties involved in the gathering and processing of the personal data collected as part of the UK Census.</i>