

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 August 2013

**Public Authority:** Office of National Statistics  
**Address:** Segensworth Road  
Titchfield  
Fareham  
Hampshire  
PO15 5RR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the Office of National Statistics's (ONS) development of an 'in-house' records management system.
2. The Commissioner's decision is that ONS has provided the complainant with all of the information it holds relevant to the scope of the requests.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 17 September 2013, the complainant wrote to ONS and requested information in the following terms:

"1) I demand to know on what basis you made the above assertions. For the avoidance of doubt that means I demand to see the document you based your assertions on or alternatively, on the assumption you didn't simply make this up, who told you that no commitment was made to provide us with the specification and also make the obviously conflicting assertion, that I had declined an offer to see the system specification? You are stating that I have lied and I demand you justify yourself.

Furthermore, even if we disregard basic honesty and professionalism with regard to commitments made, I wish to understand why [named individual], a member of the legal team and the FOI team could state that ONS, a tax payer funded body, had no legal obligation to let us see the document when of course any member of the public had and has the right to see the document as copyright is inherent in all such documents but it does not affect any persons right to see such a document.

2) Can [named individual] explain on what basis she believed we had "dropped the IP issues" and what she means by being "directly challenged", what any challenge would be, why she thought that this was a potential concern considering that she had stated there were no IP issues to address, and how we could "directly challenge" anything if we were not told that the replacement system project was going ahead, as we had been promised. She might also explain why she instructed [named individual] to cease sending correspondence to us unless it was vetted by the legal team and what correspondence she had in mind when making that instruction?

3) I require the documentation that explains why ONS concluded, that rather than rely on internal legal advice produced in April 2011, that spending public money on external legal advice was justified to deal with this matter.

4) I require the details of what [named individual] was "planning to do" as at 20 April 2011, as [named individual] could not possibly make a judgment regarding IP unless she understood what [named individual] was actually "planning to do". This should include details of all emails leading up to the meeting and the meeting notes.

5) I wish to know on what basis ONS refused to even consider an enhancement to the system they had already paid for which had the potential to save ONS hundreds of thousands of pounds annually and instead proceeded to develop a replacement system that does not provide that feature and moreover one that could not and has not resulted in anything like the savings that could have been achieved across the whole organisation if the enhancement had been deployed. I suggest you conduct a search starting with [named individual's] and [named individual's] emails and whoever in IT they contacted to provide an answer.

6) I request that Record Management department budgets and actuals for 2010-2011 and 2011-12 broken down by staff (at a gross not individual level) and other non-staff elements. You should also provide any documentation about what alternative "efficiency measures" were considered to meet their budget and why the record management team and senior management rejected them.

- 7) Why did ONS not take up our offer of using mediation to resolve this dispute?
  - 8) Why did ONS refuse to provide a copy of the system under a confidentiality agreement?
  - 9) Following my letter to [named individual] dated 10 December 2012 I require information regarding the assurance she sought and received that there were no copyright issues, why the implementation of the system proceeded when ONS could not make the savings budgeted for financial year 2011-12 and the justification for writing off 11 months of the support and maintenance fee already paid. I suggest you search the emails of [five named individuals].
  - 10) Can you confirm or otherwise if this figure includes the cost of using [named company] to review the terms of the support and maintenance contract after ONS tried to cancel the contract outside the terms of that contract. If it does not could you provide that cost. Could you also provide a breakdown of the legal costs for financial years 2011-12 and 2012-13 and indicate which department's budget the cost was allocated to.
  - 11) Confirm or otherwise whether any external advice has been taken and provides details of the checks made that the replacement system conforms to policies and standards of the National Archives.
  - 12) What or who was the source of your assertion and please provide documentary evidence over the last 8 years to support it.
  - 13) Please confirm or otherwise that nobody at director level approved the content of [named company's] letters.
  - 14) Can ONS confirm that they have the right to use taxpayer's money to perform a detailed technical analysis of suppliers systems with the objective of replacing those systems to avoid paying maintenance income? I request that you get a director to confirm this and provide his/her name."
5. ONS responded to these requests on 4 December 2012. It said that it considered that not all of the requests were FOIA requests for recorded information, but were asking for ONS's opinion and views relating to a dispute. It said that the requests were now getting to the point where it would either need to apply section 12 FOIA as it would exceed the cost limit to comply or section 14 as the requests were becoming vexatious. It concluded that ONS had answered his requests fully and had provided views where this was appropriate when it had responded to earlier FOIA requests.

6. The Commissioner asked ONS to carry out an internal review. On 20 May 2013, ONS wrote to the complainant with the result of the internal review it had carried out. It provided the complainant with some further information. It confirmed that it had now provided the complainant with all of the information it holds within the scope of his requests.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 28 November 2012 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether any further information is held by ONS which would fall within the scope of the requests.

### **Reasons for decision**

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9. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request".
10. On 12 July 2013 ONS confirmed that it has provided the complainant with all of the recorded information it holds relevant to the scope of the requests, either in response to earlier requests or within the internal review dated 20 May 2013.
11. The Commissioner is aware that when ONS responded to the requests it had provided the complainant with recorded information but had also tried to answer some or part of those requests on the basis of views and opinions of ONS staff where information was not held. The Commissioner considers that the latter falls outside the scope of FOIA and has not therefore been considered further within this Notice.
12. ONS confirmed that Records Management use a Business Database to store documents connecting to all facets of work in this area. The database is organised using categories and sub-categories beneath them, allowing for documents to be filed in an appropriate area of the database therefore keeping information on a particular subject together. It said that no further searches needed to be carried out as all information relating to [named company] was filed in its business database including emails that ONS created or received. It confirmed that this is the only place in which the requested information would be held.

13. The complainant has argued that this is untrue. He said that it is entirely optional for users to file emails in the business databases and the business databases contain only a fraction of the emails ONS sends and receives, both internally and externally. ONS therefore cannot state that no information other than that in their business database exists if no searches have been conducted. The complainant has said that he is aware that emails were sent which were not disclosed to him.
14. The Commissioner considers that ONS has provided a satisfactory explanation as to how it conducts its business. The Commissioner is aware that the complainant has referred to emails when he has corresponded with ONS which he already appeared to have access to. The Commissioner would not expect ONS to provide the complainant with emails that were sent to or received from him or his representatives. This is information which the complainant would already have access to and would therefore be exempt from disclosure under section 21 FOIA.
15. ONS went on to explain that its Document and Records Management Policy states that:

"The policy ensures that information can be: Readily available to users, in order that the organisation has the information it needs to reconstruct any activities that have taken place; to identify a clear chain of events; or to respond readily to a subject access request under the Freedom of Information Act". This is backed up by guidance which allows creators of records to assign descriptors to the record which in turn have attendant retention periods. At the end of these periods, the records are reviewed and are either retained or marked for deletion dependent upon business need. If marked for deletion, Records Management are the only ones who can delete the records; users cannot.
16. It therefore confirmed that nothing within the scope of the request had been deleted or destroyed.
17. ONS is certain as to the location of information relevant to the scope of this request and has confirmed that no further information is held. On the balance of probabilities the Commissioner is satisfied that ONS does not hold any further information relevant to the scope of these requests other than that which has already been provided to the complainant or is already accessible to him.

## **Other matters**

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18. In this case, the same member of staff at ONS provided the complainant with the response dated 4 December 2012 and the internal review dated 20 May 2013. The Section 45 Code of Practice states that "the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable." The Commissioner does expect that as a matter of good practice, the internal review should not be carried out by the same individual who provided the initial response. This rule of good practice was not followed in this case.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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 .....**

**Pam Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**