

Reference: FPR0987678

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Post Office Limited

18 June 2024

Summary

Section 48 of the Freedom of Information Act (FOIA) empowers the information Commissioner (the Commissioner) to issue a practice recommendation where it appears to him that a public authority has failed to conform, specifically, to the FOIA Codes of Practice. These failures are addressed in the recommendations section below. Section 47 of FOIA also makes clear that the Commissioner has a duty to promote the following of good practice beyond just the requirements of the Codes of Practice.

In July 2023, the Commissioner engaged with the Post Office, following concerns raised about its FOI performance. The Post Office proactively engaged with the Commissioner, acknowledging its drop in compliance due to an increase in FOI requests. For June - July 2023, the Post Office's compliance rate was 52%. To put this into perspective, the Post Office explained that for the period of 18 May 2022 – 16 July 2022, it received 35 FOI requests. For the same period in 2023, it received 98 requests, a 280% increase.

The Post Office's performance steadily improved. In September 2023 it increased to 67%, in November 2023 to 84% and then in December 2023 to 90%.

For the period of January – April 2024, it's compliance once again fell to 50%. The Post Office has engaged well with the Commissioner throughout the past year about how its managing this increase in requests. The Post Office recruited more case handlers at the end of last year and has again had recruitment for four new FOI case handlers approved. Within the Post Office, FOI compliance remains an absolute priority and is supported by the senior leadership team.

The Commissioner acknowledges the unique circumstances that the Post Office faces. The underlying reason behind the drop in compliance is due to an overwhelming increase in requests due to the Post Office Horizon IT inquiry. The statutory inquiry has led to increased scrutiny of the Post Office in the media including extensive television coverage.

Despite the unique circumstances the Post Office faces, the Commissioner remains concerned that its compliance can steadily improve and then fall so significantly. The Commissioner has reached the view that the Post Office's request handling practices do not conform to part 4 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The Commissioner has discussed his concerns about the issues set out above with the Post Office. He has noted that the Post Office has drafted an Action Plan to improve its request handling processes and to bring its request handling back to acceptable levels of compliance. Whilst the Post Office's Action Plan is being finalised, the Post Office carries out these actions in the course of its day-to-day processing of FOIA requests.

The Commissioner has designed the following recommendations to support and enhance the Post Office's plan to improve its information rights practices and bring its overall response rate to an acceptable and sustained level of compliance.

In considering these recommendations, the Commissioner expects the Post Office to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken
<ul style="list-style-type: none">Section 8.5 – compliance statistics <p>Section 8.5 of the Code sets out that “public authorities with over 100 Full Time Equivalent (FTE) employees should, as a matter of best practice, publish details of their performance on handling requests for information under the Act.”</p>	<p>The Post Office does not currently publish its compliance statistics.</p>	<p>The Commissioner understands that the Post Office has undertaken a review of the publication scheme and from quarter 2 of this financial year, the Post Office has committed to publishing its compliance statistics.</p> <p>The Post Office should publish its compliance statistics from quarter 2 of this financial year onwards, and signpost the Commissioner to this information as soon as its published.</p>

<p>Part 4 – time limits for responding to requests</p> <p>Section 4.1 of the Code highlights the “clear” requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.</p> <p>Section 4.4 of the Code states that public authorities may exceed the 20 working day deadline if additional time is required to consider the public interest.</p> <p>Section 4.5 of the Code states that an extension is permitted “until such time as is reasonable in the circumstances”, taking account, for example, of where the information is especially complex or voluminous, or where a public authority needs to consult third parties.</p>	<p>As noted, the Post Office’s compliance is directly affected by external factors such as the statutory inquiry and peaks of media interest.</p> <p>Whilst the Post Office was able to bring up its compliance from 52% to 90% in six months, it took much less time for its compliance to fall back down to 50%.</p>	<p>The Post Office should use the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance.</p> <p>The Post Office should publish its action plan, which incorporates any recovery plan already in development, with appropriate processes put into place to ensure 90% timeliness is achieved by 31 December 2024. This action plan should be supported by a ‘lessons learned’ exercise, which examines the root cause of delays from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan.</p> <p>Once the Post Office has published its action plan, it should signpost the Commissioner to this information.</p> <p>The Post Office should analyse and review its current request handling procedures to ensure that it has adequate long term resources in the right areas. Its systems and procedures need to be able to cope with sustained increased volumes owing to increased scrutiny of the Post Office as a result of the statutory inquiry. The Post Office shouldn’t solely rely on recruitment to meet any increase in FOI requests, in case this isn’t possible in the future. The Post Office’s</p>
---	--	---

<p>Section 4.6 of the Code advises that it is best practice for an extension to be no more than a further 20 working days although a longer extension may be appropriate depending on the circumstances of the case, including the complexity and volume of the material.</p> <p>Section 4.7 of the Code makes clear that when a public interest test extension is required, the public authority must inform requestors which exemption or exemptions it is relying on.</p>		<p>action plan should include how to deal with sustained periods of increased volumes of information requests.</p>
		<p>The Post Office's request handling procedures should include provision for when a response is late, or is likely to be late at any stage of the internal processes. Its procedures should make clear when and where to escalate a matter, who is responsible for taking action, the action they will need to take, and by when.</p>
		<p>The Post Office should ensure that it has adequate levels of resource within its Information Rights teams to ensure that FOI requests, and internal reviews, are processed in a timely manner. The Post Office should also ensure that staff within its various departments responsible for request handling are also aware of the importance of processing requests in a timely manner.</p>
		<p>The Post Office must ensure that its information rights training is sufficient to ensure that it has adequate coverage in place in order that request handling times do not fall below a compliant level in the event of the departure of key staff members.</p>
		<p>The Post Office should also consider requesting a consensual audit of its FOIA policies, practices and procedures from the Commissioner.</p>

Reasons for issuing this Practice Recommendation

The Commissioner is issuing a Practice Recommendation at this time, rather than an Enforcement Notice, because he recognises the unique circumstances the Post Office faces and because it's engaged so openly with the Commissioner throughout the past year. It has also put together an action plan, detailing what it needs to address in order to bring its compliance with FOIA back up to acceptable standards. This action plan should be shared with the Commissioner, and published, as soon as possible.

However, the Commissioner remains concerned about how drastically the Post Office's compliance can drop in a short period of time and through the figures provided to him by the Post Office, it appears that the handling of information requests within the Post Office has, twice within a year, fallen far below the expectations set out in the Section 45 Code of Practice. The last phase of the statutory inquiry into the Post Office is estimated to be completed by the end of September 2024, with the Chair's report to follow as soon as practicably after. Scrutiny of the Post Office is likely to continue, if not intensify, and the Post Office needs to recognise in its action plan the increase of requests that it's receiving as its new normal.

This practice recommendation formalises the Commissioner's concerns and holds the Post Office accountable for improving its freedom of information request handling practices and, in turn, increase public confidence and trust in its information rights practices.

Other matters

The Post Office doesn't currently publish its responses to previous FOI requests. However, it has undertaken a review of the publication scheme and intends to do so from the end of June 2024.

Recognising the limitations on the Post Office's resources, the Post Office should aim to publish its disclosure log as soon as possible. The Post Office should signpost the Commissioner to this information as soon as this has been done.

On this subject, the Commissioner notes that the Post Office doesn't generally publish information discussed at the statutory inquiry. The Post Office has explained that the inquiry often publishes documents that are discussed during witness hearings, and if this falls within the scope of a FOI request, the Post Office provides links to the information in the response letter.

Reference: FPR0987678

If this information is going to be published by the inquiry anyway, or withheld under section 21 (information reasonably accessible to applicant via other means), the Post Office should consider proactively publishing this information and 'heading off' any future requests, so far as the limitations of the inquiry allow it to do so.

As much information should be published via the publication scheme, and as part of the disclosure log, as possible in the interest of transparency.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the Post Office.

The Post Office needs to publish its compliance stats by the end of June 2024 and notify the Commissioner when this is done. It should publish its disclosure log as soon as possible, as well as its action plan, and as soon as these items are published they should also be brought to the Commissioner's attention.

Finally, the Post Office should write to the Commissioner by 31 December 2024 to confirm that it has complied with the recommendations above and to explain how it has achieved this.