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FOI/EIR	FOI Section/Regulation	s8, s11, s43	Issue
			Does a public authority have to respond to a request that would result in automatic publication of copyright material?

Line to take:

*As part of the guidance review some of the content of this line to take is now covered in external guidance. In some instances new policy positions will be reflected in the guidance and where this is the case this will be highlighted in the existing line. All other sections of this line to take remain effective. The remainder of the line will be incorporated into guidance or caseworker advice notes in due course at which point this line will be withdrawn.*

An automatically generated email address is a valid address for correspondence for the purposes of s.8.

Section 11(1) concerns the means by which information should be made available, not the address to which the communication is to be made so there can be no assessment made under s.11 as to whether it is reasonably practicable to respond to the address given for correspondence.

Section 43(2) can only apply where the authority regards the disclosure itself would result in prejudice to commercial interests, not merely disclosure to a particular address or by a particular means. *This point is now covered in the following external guidance – Intellectual property rights and disclosures under the Freedom of Information Act (see the section headed 'Disclosure to websites resulting in the automatic publication of copyright material' on page 16.)*

Further Information:

In case FS50276715 the requester made a request to the House of Commons via a website called [www.whatdotheyknow.com](http://www.whatdotheyknow.com). He requested that the response was sent to an email address that was linked to the same website. Any responses received at this web address are processed automatically and appear on the website pages.

The House of Commons was happy to give the requester the information he was seeking but was not happy to provide that information to the address provided as this would result in automatic publication in breach of its Parliamentary copyright which would otherwise enable it to prevent republication.

The Commissioner first considered whether the request was made in accordance with s.8 FOIA and concluded that it was a valid request as the email address provided was an address for correspondence.

The House of Commons argued that s.11 of the Act was engaged as it was not "reasonably practicable" to give effect to the requester's expressed preference for communication of the information electronically as this would result in publication in breach of copyright.

The Commissioner concluded that s.11 could only apply if there was something about the information itself that made it intrinsically impractical to communicate it electronically. In this case the authority was not arguing that. It was, in fact, both willing and able to communicate it electronically, but only to a different email address. Therefore, s.11 was not engaged.

The House of Commons also argued that s.43(2) was engaged as a disclosure that resulted in automatic publication in breach of copyright deprived both the authority and relevant third parties of their intellectual property right:

The applicant refused to take out a licence and refused to provide an alternative address for correspondence on the basis that he fully intended to publish in breach of copyright in any event.

The Commissioner concluded that s.43 was not engaged as it was not the disclosure of this information of itself that would prejudice the commercial interests but the re-publication. *N.B. This point relating to s43 is now covered in the following external guidance – Intellectual property rights and disclosures under the Freedom of Information Act (see the section headed 'Disclosure to websites resulting in the automatic publication of copyright material' on page 16.)*

Reference was also made to s.50(1) Copyright Designs and Patents Act: "(1)Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright."

The Commissioner found that responding to an FOI request via a valid address was specifically authorised and, therefore, there would be no breach of third party copyright if the authority was to disclose the information.

Source

Details

Legal- policy delivery

Related Lines to Take

Related Documents

[FS50276715](#) House of Commons

Contact

LD/ DC

Date

12/07/2012

Policy Reference

**LTT217**

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- Information Commissioner's Office intranet