

30 September 2013

Royal Mail Group

Mr Christian Cowell

By Email: request-171380-a29344e3@whatdotheyknow.com

Information Rights Team
(Freedom of Information Act)
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Dear Mr Cowell

Re: Freedom of Information Act – Internal Review (Our Reference: MTEE-9AAASU)

I am writing in response to your email dated 02 September 2013 and your subsequent emails of 03 and 05 September 2013 within which you expressed dissatisfaction with the way your FOI request had been handled. We have carried out a thorough review of our handling of your request in line with the requirements of the Freedom of Information Act 2000 and the associated Code of Practice. I am writing to inform you of the outcome of that review.

In your request for information, submitted by email on 03 August 2013, you asked for the following information:

'...any and all communications on record from the GCHQ, to Royal Mail, and from Royal Mail, to GCHQ, in full, and dated if not otherwise obvious within the document itself.'

'I also request any internal communications that will be created when fulfilling this request, including any communications between Royal Mail departments and/or third parties (such as FOI lawyers).'

Within our response dated 02 September 2013 we explained that we considered section 23(5) of the FOI Act to be engaged. Section 23(5) removes the duty for a public authority to confirm or deny whether it holds information, if doing so would involve the disclosure of any information (whether or not already recorded) relating to any of the security bodies specified in section 23(3). We confirmed that the Government Communication Headquarters is one of the security bodies specified in section 23(3).

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In regards to the second point of your request we confirmed that section 1(4) of the FOI Act states that the information to be communicated to an applicant under the Act is the relevant information *'held at the time when the request is received'*. We explained that as no information relating to your request was held at the time your request was made on 03 August 2013, it would not fall within scope of your request. You were advised you would be required to submit a fresh request for this information at a later date.

You wrote to us on 02 September 2013 expressing your dissatisfaction with our response; stating that you found it *'woefully inadequate'*. You went on to write that you would be *'expecting the information by the 3rd September 2013. My request has not been amended, so it is still within the 20 working day timeframe of which it is currently the 19th day'*.

We advised you that, as you had expressed dissatisfaction with our response, we would conduct a review in line with the Code of Practice issued under section 45 of the FOI Act. This states that any response from an applicant expressing dissatisfaction with a response should be handled in accordance with a public authority's complaints procedure. On 05 September 2013 you asked that we also consider the correspondence between yourself and the Information Rights Team as part of the Internal Review process. As a matter of course, our full handling of a request and any decisions taken pursuant to the FOI Act are considered as part of an internal review.

After reviewing your request we continue to believe that section 23(5) is engaged in respect to your request for *'any and all communications on record from the GCHQ, to Royal Mail, and from Royal Mail, to GCHQ'*. Section 23(3)(c) of the Act clearly identifies the Government Communication Headquarters as a security body to which subsections (1) (2) and (5) of section 23 of the Act relate. Section 23(5) exempts a public authority from their duty to confirm or deny whether information is or is not held if to do so would involve the disclosure of any information (whether or not already recorded) which relates to any of the bodies in subsection (3).

As your request clearly relates to a security body identified in section 23(3) of the Act, we maintain that it is correct to apply section 23(5) to your request on this occasion. It is important to note that reliance on this exemption should not be taken as a confirmation or denial that information relating to your request does or does not exist – we can neither confirm nor deny whether this is the case. Section 23 of the Act is an absolute exemption. Therefore there is no requirement for Royal Mail Group to consider the 'public interest test' in this case.

We have also reviewed our response to the second part of your request, which asked for the following information:

'...any internal communications that will be created when fulfilling this request, including any communications between Royal Mail departments and/or third parties (such as FOI lawyers).'

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We have reviewed this decision and still believe that the initial request was not a valid request for the purposes of the FOI Act because the information you requested was not yet held by Royal Mail Group.

Within your email of 05 September 2013 you asked that we also consider the correspondence entered into between 02 and 05 September 2013. We do not consider that your emails of 02 and 03 September included a clear new request for information. You stated only that you required the information to be provided to you within the 20 working day deadline for your initial request of 03 August 2013. Therefore Royal Mail's appeal panel concluded that the information provided to you was correct and your request has been handled appropriately in line with the requirements of the Act.

A new request for information created in the course of dealing with your request of 03 August has now been received and you should expect a response to be issued to you no later than 03 October 2013, which is 20 working days from the receipt of the request on 05 September 2013.

I am sorry that your request of the 03 August could not be met but hope that this response suitably explains our reasons. If you remain dissatisfied with our handling of this request you do of course have a right to appeal to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
WILMSLOW
SK9 5AF

Yours sincerely

Colin Young
Head of Information Rights
Royal Mail Group