

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 25th August 2005

Name of Public Authority: Hertfordshire County Council
Address: County Hall
Hertford
SG13 8DE

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint that on 4 January 2005 a written request was made under the Freedom of Information Act 2000 (the "Act") to Hertfordshire County Council ("the Council"). The information requested was:

1. On what clear legal basis did (the Council) act when my mother was detained at Watford General Hospital, removed in secret and incarcerated in a care home.
2. Please furnish documentary evidence that all proper procedures were followed by (the Council's) ACS.

The complainant also made a number of other requests under the Act to the Council. Although the complainant is not satisfied by the response which he received, these are not the subject of his complaint or this Decision Notice.

The Council responded to the request of 4 January and to the further requests on 26 January 2005, stating that the "Council is treating your correspondence as a complex request under its FOIA procedures, not least because your correspondence raises a number of items which have previously been subject to scrutiny by the Local Government Ombudsman." The Council stated that "a number of the exemptions in Part II of the Act may apply to your application and the Council has to consider whether "the duty to confirm or deny outweighs the public interest in disclosing whether the public authority hold the information". (Section 2(1)B) Under these provision the County Council is entitled to extend time for compliance with your request until such time as is reasonable in the circumstances. (Section 10(3))."

The applicant wrote again to the Council on 27 January 2005 complaining, among other things, that it had failed to indicate the exemptions in question and asking for details of its complaints process.

The Commissioner wrote to the Council on 18 March 2005 asking whether it had by now made its decision as to disclosure and, if it had refused the complainant's request, if it would provide a copy of its refusal notice. If it had not reached a decision, it was asked to provide a target date to both the

Commissioner and the complainant. The Commissioner also asked for an account of why the extension was required in a case which has already apparently received extensive consideration by the Council and in which the public interest considerations were thus presumably reasonably well known.

No reply to this letter was received until 10 June 2005 when the Council apologised for the delay, explaining that the member of staff to whom it had been addressed was no longer employed by the Council and provided a copy of its response to the complainant.

In response to the two questions put to the Council in the complainant's original request of 4 January, the Council stated that the information requested was held but had already been provided to the complainant in previous correspondence and reports produced in response to complaints previously submitted by the complainant. The Council stated that since the information had already been provided to the complainant, it was covered by the absolute exemption set out in section 21 of the Act relating to information reasonably accessible to an applicant by other means.

The complainant stated to the Commissioner that he did not consider that the answers to his questions were in fact contained in the information previously sent to him.

The Council then provided the Commissioner with copies of the correspondence and reports referred to above.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner has a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner has considered both the procedural aspects of this complaint and the substantive issue which it raises, namely the refusal of the complainant's request in reliance on the exemption set out in section 21.

a) Procedural matters

1. The Council is a public authority for the purposes of the Act. The request for information submitted by the complainant to the Council was a valid request under s.1 of the Act. The Council was therefore under a duty, subject to the exemptions contained in Part II of the Act, to confirm whether or not the information requested was held by it and, if so, to communicate that information to the requester. The Council was also under a duty to deal with the request according to the other requirements of Part I of the Act.

2. Section 10 of the Act provides that a response to a request under section 1 must be provided promptly and, in any event, within 20 working days. However, subsection 10(3) also provides for a possible extension for “such time as is reasonable in the circumstances” if the public authority requires additional time to consider whether, in respect of information subject to a qualified exemption, the public interest requires the maintenance of the exemption or disclosure. Public authorities which require the extension to the 20 working days period are nevertheless required by section 17 of the Act to issue a notice to the requester containing an estimate of the date by which it expects to have made a decision as to the application of the public interest test. This is known as a “refusal notice”.

The Commissioner is satisfied that the letter sent to the complainant on 26 January 2005 constitutes a refusal notice, albeit one that fails to provide an estimate of the date by which the authority expected to have made a decision in respect of the application of the public interest test.

However, the Commissioner is neither persuaded that any prejudice would have arisen if the Council had confirmed or denied that it held the information requested nor that any extension to the normal 20 day period for response to a request was required. The complainant evidently has been in dispute with the Council for a considerable period of time and it would be perfectly normal for the Council to have obtained legal opinion. It would also be expected that it held information as to the procedures followed by its staff in the matter giving rise to the original complaint to the Council.

3. The Commissioner is, however, satisfied that the letter to the complainant from the Council of 10 June constitutes a proper refusal notice as required by s.17 of the Act, albeit one issued considerably later than the required timescale. This letter identifies the exemption from disclosure relied upon by the Council (section 21), explains why the exemption applies, provides details of the Council's own complainants procedures and indicates that a complaint may also be made to the Commissioner. These are the required elements of a refusal notice.

b) Reliance upon section 21 of the Act

The final refusal notice of 10 June 2005 gives as its reasons for not supplying the complainant with information requested the fact that the information had been previously provided and was therefore reasonably available to the applicant by other means. The refusal notice referred to five specific documents including correspondence from the Council to the complainant and reports into formal complaints submitted by the complainant.

These were provided on request to the Commissioner. Inspection of these documents reveals that the information requested had indeed been supplied to the complainant previously and on several occasions.

The Commissioner is satisfied, for instance, that a letter to the complainant of 15 May 2002 from the Area Manager E&PD Services-Dacorum, which

describes the obligations placed by s.47 of the National Health Service and Community Care Act 1990 and the effect of s.21 of the National Assistance Act 1948, and which explains the interaction of the 1948 Act with the Human Rights Act 2000 constitutes a proper reply to the question:

“On what clear legal basis did HCC act when my mother was detained at Watford General Hospital, removed in secret and incarcerated in a care home.”

Part B (“Legislation, Departmental Policy and Practice as relevant to the Complaint”) of the Stage 2 Independent Investigator’s Report into the complainant’s complaint about the treatment of his mother, dated 18 December 2002, deals extensively with this question.

This Report also gives a full account of the treatment of the complainant’s mother including, in particular, information as to the conduct of members of the Council’s staff. Sections C (“Précis of Background Information relevant to the Complaints”), section D (“The Investigation”), Section E (“Chronology of Main Events from Records” and the section headed, “Findings” document in considerable detail the actions of members of the Council’s staff and consider the extent to which proper procedures were followed. In this context it is relevant to note that the Act gives a right of access to information rather than the right to have copies of particular documents. Although it may have been possible for the Council to have provided the same information in a different, form, for instance, copies of other documents containing the same information, the Commissioner has no reason to suppose that any information has been withheld and he is satisfied that the information contained in the Independent Investigator’s Report listed above meets the second of the complainant’s requests under section 1 of the Act, namely:

“Please furnish documentary evidence that all proper procedures were followed by HCC ACS.”

In summary, the Commissioner upholds the view of the public authority in this case, that the information requested was available to the complainant by other means and was thus exempt under section 21 of the Act.

Action Required

In view of the fact that a refusal notice has now been issued by the Council and the Commissioner is satisfied that it is entitled to rely upon an exemption from disclosure, no action is required of the Council.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 25th day of August 2005

Signed:

Graham Smith
Deputy Information Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF