

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 1st August 2005

Name of Public Authority: The Standards Board for England
Address of Public Authority: 1st Floor Cottons Centre
Cottons Lane
London
SE1 2QG

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 7th January 2005 the following information was requested from the Standards Board for England (the "public authority") under section 1 of the Freedom of Information Act 2000 (the "FOIA"):

"copies of all correspondence, emails and memos, and any notes relating to contacts between the Standards Board and [a third party] (including those of 18th October 2004) together with copies of all internal correspondence, emails, memos and notes between any employees of the Standards Board which also contain any reference to this case, other than the specifics of the Complaint which are with the ESO."

The third party referred to in the request had made a complaint to the public authority about the complainant.

The complainant contended that the public authority did not have the power to carry out an investigation in this particular case and that disclosure of the information in question would show this.

The public authority issued a refusal notice on 20th January 2005 in which it stated that the information requested was personal information about the complainant and, as such, subject to an absolute exemption under section 40 of the FOIA. The public authority went on to state that it had considered the request for information under the Data Protection Act 1998 (the "DPA") and considered that the information was exempt from disclosure on the grounds that such disclosure would inhibit the effective discharge of the investigation process.

At the request of the complainant, the public authority carried out a review of its refusal. The outcome of that review was provided to the complainant by letter dated 28th February 2005. The public authority confirmed that it considered that the information requested was exempt under section 40 of the FOIA. In addition, the public authority sought to rely on section 44 of the FOIA which contains an absolute exemption in respect of information whose disclosure is prohibited by law. The public authority stated that disclosure of the information requested would contravene section 63 of the Local Government Act 2000.

The Commissioner raised the complaint with the public authority, which provided him with a copy of the information which had been withheld from the complainant. In doing so, the authority made an additional point, namely that some of the documents which had been requested were “legally privileged as they refer to the legal advice that was given in relation to the investigation and the decision as to whether the allegation should be referred for investigation. It is considered that this information should not be disclosed as it is subject to the exception under section 42 of the Freedom of Information Act 2000.”

The Commissioner’s Decision

Under section 50(1) of the FOIA, 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 is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the FOIA and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner’s decision is as follows:

General

The Commissioner is satisfied that a request was made under section 1 of the FOIA and that the public authority has complied with the relevant procedural requirements of the FOIA. Its response was timely; a refusal notice was issued as required by section 17; and an independent review of the initial refusal was conducted by the Chief Executive Officer. Although, arguably the refusal notice should also have referred to the additional grounds for refusal (the legal professional privilege and statutory prohibitions exemptions which were identified in the course of internal review), the Commissioner is satisfied that the notice given to the complainant states the grounds for refusal relied upon at the time.

The Commissioner is satisfied from an examination of the documents provided by the public authority that almost all the information consists of personal data, some relating to the complainant and others to third parties including, but by no means restricted to, the third party who had made a complaint against the complainant.

Personal data of the complainant

Insofar as the information requested constitutes personal data relating to the complainant, the Commissioner upholds the approach of the public authority to treat that request as a request made under section 7 of the DPA. If the information subject to a request under section 1 of the FOIA constitutes personal data of which the applicant is the subject, then there is an absolute exemption from disclosure under section 40 of that Act. In that case, for the purposes of a decision notice, the Commissioner is not under a duty to consider whether a data controller is justified in relying upon an exemption from the subject information provisions in the DPA.

Third party personal data

Insofar as the information requested is personal data of which the applicant is not the data subject, the FOIA creates an absolute exemption if disclosure would breach one or more of the data protection principles or if the information would have been exempt from disclosure had it been requested by the data subject.

The Commissioner is satisfied that had the information been requested under the DPA by the relevant data subjects (i.e. persons other than the complainant to whom the information relates), the public authority could have withheld the information in reliance on section 31 of the DPA. This provides that personal data processed for the purpose of the discharging of various regulatory functions is exempt from the subject access provisions of the DPA if disclosure would prejudice those purposes. The Commissioner is satisfied that the public authority does perform regulatory functions as envisaged by this section of the DPA, in particular functions designed to protect the public against “dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.” The Commissioner is satisfied that disclosure of the information requested would have prejudiced that purpose.

Legal Professional Privilege

Some parts of the information requested consist of legal advice obtained by the public authority as to its powers to consider the allegations made against the complainant. The Commissioner is satisfied that this information is exempt by virtue of section 42 of the FOIA. There is always a strong public interest in maintaining this exemption. In this particular case, it is clear that the complainant disputes the powers of the public authority. In the event of litigation, the authority would clearly wish to rely upon the legal advice which it has obtained. Although there is some public interest in the basis of the action of the public authority being known, the Commissioner considers that this does not outweigh the public interest in the public authority being able to seek and obtain legal advice which may be relevant in the event of litigation. In this context it is worth noting that in the event of the public authority upholding the allegations against the complainant, he would have the opportunity to dispute its findings and the basis of those findings in the normal way.

Disclosures of information prohibited by law

Although the complainant states that he does not seek access to the information held for the purposes of the investigation, simply to that which would reveal the basis of the investigation, in practice both categories of information are interwoven.

Although not all of the information which has been withheld was used for the purposes of the investigation of the allegations against the complainant, the Commissioner is satisfied that disclosure of those parts of the information which were used for that purposes would contravene section 63 of the Local Government Act 2000 and is, therefore, exempt from disclosure by virtue of section 44 of the FOIA.

Other

The Commissioner does not consider that any meaningful information, not covered by any of these exemptions, could be extracted from the documents by way of redaction.

Action Required

In view of the matters referred to above the Commissioner requires no action to be taken by the public authority.

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 1st day of August 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF