

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 6th December 2005

Name of Public Authority: Cardiff County Council

Address of Public Authority: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 28 January 2005 the following information was requested from Cardiff County Council (the "Council") under section 1 of the Freedom of Information Act 2000 (the "Act"):

"All possible information from August 1992 to date regarding the following:

- (a) [The National School for Children with Cerebral Palsy's] current site including future development plans
- (b) Proposals for an alternative site or accommodation should development plans be in the affirmative
- (c) Any information regarding the Method of Conductive Education following the visit to the Peto Institute by three senior officers of the Council with a representative of the Welsh school and related letters from the then Secretary of State for Wales."

Cardiff County Council responded to this request on 7 March 2005 by stating that it needed more time to consider the Public Interest Test in relation to the exemption at section 36 of the Act. A target date of 18 March 2005 was given to the complainant for communicating the decision with regard to the Public Interest Test. To date, the Council has not yet done so.

The Commissioner's Decision

The Commissioner's decision in this case is that Cardiff County Council has not dealt with the request in accordance with the requirements of Part I of the Act, in that it has failed to comply with section 1(1), section 10(1) and section 10(3).

The Council has breached section 1(1) of the Act because it has failed to provide an adequate response to the request. Section 1(1) states:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

The Commissioner finds that the time taken to respond to the original request fell outside the twenty working day deadline set out in section 10(1) of the Act. That section states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Further, the Commissioner finds that the time taken by the Council to consider the Public Interest Test is not reasonable in the circumstances, and exceeded the estimated date for the response by an unreasonable amount of time. It has, therefore, failed to comply with section 10(3) of the Act, which states:

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances.”

Sections 2(1)(b) and 2(2)(b) relate to circumstances where the public interest in maintaining an exclusion or exemption outweighs the public interest in disclosing whether such information is held, or in disclosing the information itself.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers, under section 50 of the Act, he requires that Cardiff County Council shall, within 30 days of the date of this Decision Notice –

- (a) inform the complainant whether it holds information of the description specified by him in the request and, if it does, provide that information to him, or

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(b) provide the complainant with a separate notice, in accordance with section 17(3) of the Act, stating the reasons why it is considered in the public interest to withhold the information, or to not disclose if the information is held.

Failure to comply

Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

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 6th day of December 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF