



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 April 2006

Public Authority: Department for Constitutional Affairs

**Address: Selborne House
54 Victoria Street
London SW1E 6QW**

Summary Decision and Action Required

The Information Commissioner's (the "Commissioner") decision in this matter is that the Department for Constitutional Affairs (the "DCA") has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1), section 10 and section 17 of the Freedom of Information Act 2000 (the "Act").

- 1) The DCA did not confirm or deny whether it holds the information specified in the request and if that is the case communicate that information to the Complainant pursuant with s.1(1) and;
- 2) The DCA did not respond to the request within the time for compliance set out in s.10 of the Act and;
- 3) The DCA did not issue a refusal notice in accordance with s.17 of the Act.

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 the DCA shall, within 30 days of the date of this Decision Notice, issue a refusal notice to the Complainant in accordance with section 17 of the Act. In doing so the DCA shall advise the Complainant that the cost of complying with his request would be likely to exceed the appropriate limit referred to in section 12 of the Act.

1. Freedom of Information Act 2000 (the “Act”) – Applications for a Decision and the Duty of the Commissioner

- 1.1 The Information Commissioner has received an application for a decision whether, in any specified respect, the Complainant’s request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000.
- 1.2 Where a complainant has made an application for a decision the Commissioner is under a duty to make a decision, unless:
- a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned.
- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 In this case, the request was made to Her Majesty’s Courts Service (the “Courts Service”) which is an executive agency of the DCA. Whilst the DCA is the public authority for the purposes of Section I of the Act, for clarity sake, the Commissioner will refer to the Courts Service rather than to the DCA in the body of his decision.
- 2.2 The Complainant has advised that in an email to the Courts Service Customer Service Unit of 1 February 2005 he requested the following information in accordance with section 1 of the Act:
- 2.3 “Have there been any judgements relating to The Copyright and Related Rights Regulations 2003 [the “Regulations”]? If so what are they?”
- 2.4 The Courts Service in an email of 2 February 2005 the Courts Service replied stating:

“[t]ry this link <http://www.legislation.hmso.gov.uk/si/si2003/20032498.htm>”

This link provides access to a website through which one may access electronic copies of legislation. In particular, this link directs one to an

electronic copy of the Copyright and Related Rights Regulations 2003. However, this website does not contain the requested information.

- 2.5 In an email of 14 March 2005, the Complainant made a formal complaint to the Courts Service. He asked again for a response to his information request. In a further email of 15 March 2005 the Courts Service replied that it could not help the Complainant and that he should instead try the Manchester Magistrates' Court.
- 2.6 In an email of 16 March 2005, the Complainant requested that the Commissioner consider whether the Courts Service had dealt with his request for information in accordance with its obligations under the Act.

3. Relevant Statutory Obligations under the Act

3.1 Section 1(1) provides that –

“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.”

3.2 Section 10(1) provides that –

“...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”.

3.3 Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

3.4 Section 17(7) provides that –

“A notice under subsection (1), (3) or (5) must –

(a) contain the particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.”

4. Review of the case: Findings & Analysis

- 4.1 On 28 April 2005, the Commissioner’s Office contacted the Courts Service to notify it that the Commissioner had received a complaint, to clarify the Courts Service procedure for dealing with Freedom of Information requests and to inquire as to whether information of the description specified in the Complainant’s request is held by the Courts Service. The Courts Service agreed to look into the matter. The Courts Service response of 4 May 2005 was that it does not hold the information requested. The Courts Service agreed to communicate this in writing to the Complainant.
- 4.2 In an email to the Complainant of 4 May 2005, the Courts Service denied it held any information within the scope of his request and suggested that the Complainant refer to www.bailii.org.
- 4.3 The Commissioner noted that the Bailii website referred to in the Courts Service response to the Complainant of 4 May 2005 contains a database of decisions of the Chancery Division of the English and Wales High Court (the Court which would hear cases in relation to the Copyright and Related Rights Regulations 2003). Further, the Commissioner confirmed that this website contains copies of decisions in respect of the above Regulations. However, the Commissioner also found that the website does not contain copies of all such decisions.
- 4.4 In a further attempt to resolve the complaint informally, the Commissioner wrote to the Complainant on 23 May 2005 to ascertain whether he was satisfied with the response from the Courts Service and therefore whether he wished to withdraw his complaint. In a telephone conversation of 22 June 2005 the Complainant confirmed that he was not satisfied with the Courts Service response of 4 May 2005. He also alleged that the Courts Service was not being truthful about not holding information falling within the scope of his request. The Complainant clarified that he wanted to know if there have been any court decisions relating to the Copyright and Related Rights Regulations 2003 and if so to be provided with copies of the relevant judgements.
- 4.5 In an email of 22 June 2005, the Complainant submitted a copy of a judgement obtained from the Courts Service *Selected Judgements Database* which is a part of its publication scheme as evidence that the Courts Service did in fact hold judgements falling within the scope of his request.

- 4.6 In addition, in respect of the database available via the Bailii website cited above, the Commissioner noted that this database includes decisions that have been made available to the Courts Service and the public. The Commissioner also noted that some of the judgements contained on the Bailii website are provided by the Courts Service.
- 4.7 On the 4 August 2005 the Commissioner's Office contacted the Courts Service again in order to inquire as to whether judgements pertaining to the Regulations are held by the Courts Service and to ascertain what is held on the Courts Service *Selected Judgements* database. The Courts Service informed the Commissioner that records of judgements could be accessed through the Court that issued the judgement, or in some cases through the transcription company which the Courts often use. The Commissioner ascertained that the *Selected Judgements* database only includes selected judgements of particular significance dating back to 1996. Therefore, even if judgements had been made in relation to the Regulations, the database would not record them all.
- 4.8 On 17 August 2005, a representative of the Department for Constitutional Affairs Access Rights Unit (the "ARU") contacted the Commissioner to discuss the Commissioner's investigation into the Complainant's allegation that the Courts Service incorrectly denied it holds information of the description outlined in his request. In an email to the ARU of 17 August 2005, the Commissioner outlined the complaint and requested that the ARU review the Complainant's allegation that the Courts Service does hold information falling within his request.
- 4.9 On the 23 August 2005, the ARU informed the Commissioner that the Courts Service does not hold a complete "list of judgements". The ARU also confirmed that the *Selected Judgements* database includes a selection of particularly significant judgements (the ARU acknowledged that this database had not been available on its website due to technical difficulties, but that these problems had been resolved). The ARU agreed to find out whether the judgement referred to in the Complainant's e-mail of 22 June 2005 is, or had been, held by the Courts Service on its *Selected Judgements* database.
- 4.10 On 1 September 2005 the ARU contacted the Commissioner to confirm that the judgement submitted by the Complainant on 22 June 2005 is held by the Courts Service on its *Selected Judgements* database. The ARU agreed to clarify its position in writing to the Commissioner.
- 4.11 In a letter of 9 September the ARU outlined the Courts Service position in relation to the Complainant's allegation that the Courts Service had incorrectly claimed that it does not hold information of the description outlined in his request. In summary, the ARU argued that copies of court

- judgements are retained by the Courts Service on individual case files. The ARU asserted that the Courts Service does not have a central record of the content or subject of judgements made by the Courts and therefore the Courts Service does not hold any information from which judgements relating to the Copyright and Related Rights Regulations 2003 could be readily identified. The ARU asserted that in view of this the Courts Service does not hold the information requested by the Complainant.
- 4.12 In a letter to the ARU of 22 September 2005, the Commissioner questioned the ARU's assertion that the Courts Service does not hold the information requested by the Complainant. Firstly, the Commissioner found that the Courts Service had identified some information on its *Selected Judgements* database that falls within the Complainant's request, and therefore it would be wrong for the Courts Service to claim that it did not hold any of the requested information.
- 4.13 Further, the Commissioner asserted that if the judgements are held by the Courts Service and contain information saying which statute the judgement pertains to then the Courts Service does hold the information requested, albeit in a form which would not allow easy location or retrieval. The Commissioner suggested that the fact that the Courts Service does not hold a list of all of the content or subject of all judgements made by the Courts does not mean that complying with the request would involve the Courts Service creating new information.
- 4.14 In view of the information provided by ARU, the Commissioner accepted that the information is organized in such a way as would require the Courts Service to manually search through its entire collection of individual case files to locate the requested information. Therefore, the Commissioner asked the ARU to clarify whether the Courts Service wished to rely on section 12 of the Act (exemption where the cost of complying with a request exceeds the appropriate limit) as its basis for not providing the requested information.
- 4.15 In a letter of 6 October 2005 the ARU argued that the Courts Service does not hold a central list or database from which to identify all the judgements relevant to the request. Nor, does it hold information on all of the cases brought under the Regulations. It argued therefore that the cost of identifying all the cases falling within the request would exceed the appropriate limit for the purposes of section 12(1).
- 4.16 Further, the ARU stated that it does not accept that the Act requires it to search the *Selected Judgements* database.
- 4.17 The Commissioner pointed out that information contained in this database is a part of the Courts Service publication scheme, and therefore, it would

- not be appropriate for the Courts Service to deny it holds such information. However, the Commissioner also pointed out that where information is available to the public via a publication scheme, the public authority may choose to withhold it on the grounds of section 21 of the Act (information accessible by other means).
- 4.18 In a letter of 12 October 2005, the Commissioner asked the ARU to explain the basis of its view that the information requested is not held by the Courts Service, and to clarify their application of section 12(1). The Commissioner also asked whether the case files, or judgements themselves, held by the Courts Service contain information about which statute the judgement pertains to. The Commissioner explained that it is not relevant whether the Courts Service has a central list or database from which to readily identify all the relevant judgements, nor is it relevant whether the Courts Service holds copies of all the relevant judgements falling within the request. The issue is whether information falling within the scope of the request is held by the Courts Service and, if so, whether it is required to provide it. Again, the Commissioner stressed that a public authority's failure to organize information in a way which would allow for easy retrieval does not mean that the information is not held.
- 4.19 The ARU responded in a letter of 21 October 2005. In this letter the ARU argued that in the absence of a list or database of judgements, it would not be possible to determine what judgements relating to the Regulations were on file without going through thousands of records and then reading each of the judgements to determine whether any of them make reference to the Regulations. Therefore, according to the ARU, the cost of confirming or denying whether the Courts Service holds all such judgements would exceed the appropriate limit and consequently there would be no requirement upon the Courts Service to confirm or deny whether it holds such information by virtue of section 12(2). The ARU maintained that the information could also be exempted from disclosure by virtue of section 12(1) because providing all the relevant judgements that the Department does hold would exceed the appropriate limit. In addition, the ARU asserted that the judgements would be exempt under section 32 (court records) as they constitute information that the Courts Service holds only by virtue of it being contained in documents created by a court.
- 4.20 In a letter of 8 December 2005 the Commissioner requested further clarification from ARU in relation to its application of section 12, section 32 and further information about the Courts Service's management of the requested information. In particular, the Commissioner noted that judgements in relation to the Regulations would be taken by the Chancery Division. Therefore the Commissioner asked:

1. How many case files containing judgements taken by the Chancery Division does the Courts Service hold?
2. Does the Courts Service hold any of these case files electronically?
3. How does the Courts Service organize these files (e.g.: chronological order, names of litigants, judge hearing the case)?
4. a) Does the Courts Service keep a record of all the case files it holds?
b) If so, what information is included in this record (e.g.: date, names of litigants, judge hearing the case, etc.)?

4.21 In its reply of 30 December 2005, the ARU clarified that the Chancery Division processes in excess of 4,000 claims a year. Details of the claim in each case are then entered into the Chancery Chamber's computer system, called 'High Court Forms', which replaced the old 'Cause Books' in 1999. According to the ARU this computer system holds the following information:

- names of the Parties and their addresses
- names of the Parties' representatives and their addresses
- type of case
- fee paid
- an event screen including documents lodged and sent
- applications
- orders made
- file movement

The ARU also informed the Commissioner that it is not possible to search on the "type of case" field, and there is a field called "other" which the Courts Service staff use if they are not sure of the type of proceedings.

4.22 Therefore, according to the ARU, the computer system would not contain the details of the judgement, and it is unlikely that the Courts Service would update an entry saying whether a judgement was filed. In addition, the ARU informed the Commissioner that each claim is assigned a paper file. These files are organized chronologically and the documents on the files are kept in date order with the latest at the top.

4.23 Further, according to the ARU, it is not possible to identify which file contains a judgement or which judgement pertains to the Regulations without looking in each file and reading the judgement. The ARU asserts therefore that taking each of a year's worth of files off the shelf, opening it and determining whether the file contained a judgement and then replacing it would exceed the appropriate limit under section 12(1).

4.24 In this letter the ARU again asserted that under section 12(2) the Courts Service is not obliged to comply with its duty under section 1(1)(a) to

- confirm or deny whether such information is held. The ARU said that although it is almost certain that relevant information is held on the Courts Service's files, the cost of confirming this would, for the reasons outlined above, exceed the appropriate limit under section 12(2).
- 4.25 Although in a letter dated 21 October 2005, the ARU cited section 32 of the Act (court records) as a basis for exempting the information from disclosure, it chose not to rely on the exemption in this case because in the ARU's view the obligation to communicate the information is removed by virtue of section 12.
- 4.26 In a final letter to the ARU of 27 January 2006, the Commissioner requested: additional clarification in relation to the information contained in the Chancery Chambers computer system called 'High Court Forms' and in respect of the ARU's application of section 12; including a breakdown of the costs the ARU estimates would apply in this case.
- 4.27 The ARU replied in a letter of 8 March 2006. In summary, the ARU said that it was not possible to search High Court Forms using the 'other' field or 'event screen' in order to narrow the search of the manual files.
- 4.28 The ARU also clarified that between the date the Regulations came into force (31 October 2003) and date of the request (1 February 2005), the Chancery Division has processed an average of 5,000 claims. Therefore according to the ARU, manually taking each of these files off the shelf, opening them and determining whether the files contained a judgement and then replacing them would exceed the appropriate limit of £600.
- 4.29 On the basis of the information provided by the ARU, the Commissioner accepts that complying with the request would exceed the appropriate limit under section 12(1). However, on the basis of the facts in this case, the Commissioner does not accept that section 12(2) applies. Consequently, in the Commissioner's view the Courts Service was obliged under section 1(1)(a) to confirm or deny whether it holds information of the description outlined in the request.
- 5. The Commissioner's Decision**
- 5.1 The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed

to inform the Complainant in writing whether it held information of the description specified in the complainant's request and;

to communicate to the Complainant such of the information specified in his request as does not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

The Commissioner has determined that the request for information is valid for the purposes of the Act. However, the Commissioner is not satisfied that the Courts Service's responses of either 2 February 2005 or 14 March 2005 fulfilled its' obligations under section 1 of the Act. In particular, neither response satisfied the Courts Service's obligation under section 1(1) to confirm or deny whether it holds information of the description specified in the request.

In addition, the Commissioner found that the email to the Complainant of 4 May 2005, in which the Courts Service denied that it holds any information of the description specified in the Complainant's request, was not accurate. The Commissioner found that the Courts Service does hold information of the description outlined in the request (copies of judgements relating to the Copyright and Related Rights Regulations 2003). In the Commissioner's view the fact that the Courts Service does not hold a list, or database from which the relevant judgements it holds could be readily identified does not mean that it does not hold the information requested.

As outlined above, the Commissioner found that the Courts Service holds records of judgements made by the Chancery Division, which hears cases related to the Copyright and Related Rights Regulations 2003. In addition, the Commissioner found that some information falling within the scope of the request is held in the *Selected Judgements Database* which is available on the Courts Service website and is included in its' publication scheme. In respect of any part of the requested information made available through the Courts Service publication scheme, whilst the Commissioner recognizes that this information could be exempted from disclosure under the Act by virtue of section 21 (information available by other means), in his view the Courts Service was wrong to deny that it holds such information for the purposes of section 1(1)(a).

Further, on the basis of the facts in this case, the Commissioner does not accept that section 12(2) applies, and therefore, in the Commissioner's view the Courts Service is obliged to confirm or deny under section 1(1)(a).

Section 10(1) – in that it exceeded the statutory time limit for responding to a request made under section 1(1).

The responses of 2 February 2005 and 14 March 2005 do not meet the requirements set out in section 1(1) of the Act. Neither response confirms or denies whether the Courts Service holds information of the description outlined in the Complainant's request. Therefore, in the Commissioner's view the Courts Service did not respond to the Complainant's request within the time for compliance set out in section 10 of the Act.

Section 17 – in that it failed to give the applicant a notice explaining that the refusal was made in reliance upon section 12 of the Act (cost of compliance exceeding appropriate limit). The Courts Service also failed to provide particulars of its complaints procedure, or to advise the applicant that it does not have one and to advise the Complainant of his right to complain to the Information Commissioner under s.50 of the Act.

6. Action Required

6.1 In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that the DCA shall, within 30 days of the date of this Decision Notice, issue a refusal notice to the Complainant in accordance with section 17 of the Act. In doing so the DCA shall advise the Complainant that the cost of complying with his request would be likely to exceed the appropriate limit referred to in section 12 of the Act.

6.2 Failure to Comply

Failure to comply with the action 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.

7. Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 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 12th day of April 2006

Signed

Phil Boyd
Assistant Commissioner

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