



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 12 July 2006

Public Authority: Lancashire County Council

**Address: County Hall
Preston
PR1 0LD**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority 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 17.

However, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the public authority.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the '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 (the 'Act').

1.2 Where a complainant has made an application for 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- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.



- 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 The complainant requested the following information on 7 January 2005 in accordance with section 1 of the Act.

'...I request the names and home addresses of the governors of Walton-le-Dale High School and Cuerden Church Primary School, Bamber Bridge, other than the head teacher and staff representatives.'

- 2.2 The public authority responded to this request on the 20 January 2005; however the complainant did not receive this letter. The complainant chased a response from the public authority by letter of the 7 April 2005 but he did not receive a response to this letter. On the 14 April 2005 the complainant requested an internal review of the public authority's failure to respond to the original request. The public authority again failed to respond to this correspondence and the complainant submitted an application under section 50 of the Act asking the Commissioner to review the public authority's failure to respond.

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** provides that –

(1)“A public authority which ... is to any extent relying:



- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies...

(7) A notice under subsection (1), (3) or (5) must—

(a) contain 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.”

3.4 Section 40(2) and (3) provide that:

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.



4. Review of the case

- 4.1 The Commissioner initially investigated potential breaches of s.1 and s.10 of the Act as the public authority was alleged to have failed to respond at all to the complainant's request. However, when the Commissioner raised this matter with the public authority, the public authority denied failing to respond and provided the Commissioner with a copy of its original response of the 20 January 2005 which the complainant had not received.
- 4.2 The letter of 20 January 2005 refused access to the information requested on the grounds that to communicate the information to the complainant would constitute a breach of the 2 data protection principle.
- 4.3 The complainant confirmed that he was unhappy with the refusal and wished the Commissioner to review the refusal and to investigate whether the public authority had failed to communicate the requested information in breach of s.1 of the Act.
- 4.4 At this point no internal review had been conducted and the Commissioner gave the public authority the opportunity of conducting its own review before the Commissioner considered the complaint under section 50. The public authority provided the complainant with the outcome of the internal review by letter of the 15th December 2005. The internal review upheld the initial decision to withhold the information requested.

5. The Commissioner's Decision

- 5.1 The Commissioner has considered first the procedural requirements of the Act and then the reliance by the Council on the exemption at section 40 of the Act.

Section 10 (Time for Response)

- 5.2 When he first contacted the Commissioner, the complainant stated that he had received no response to his information request. Having been provided with copy correspondence by the Council, the Commissioner accepts that a refusal notice was sent within the period of time allowed for response.
- 5.3 At the same time, the Commissioner also considers that the public authority should have systems in place to link correspondence regarding a Freedom of Information request with the original request. This did not occur in this instance and as a result the complainant was left without any indication that a response had been sent and subsequently not delivered. The public authority has acknowledged that it should have sent a copy of the original response to the complainant at an earlier date and has apologised to the complainant for this error.

Section 17 (Refusal Notices)



- 5.4 Section 17 provides that, when refusing a request for information, a public authority must give an applicant a refusal notice explaining, among other matters, any exemptions relied upon and why those exemptions apply, and providing details of any internal review offered by the public authority of the refusal of a request, together with details of how to make a complaint to the Commissioner.
- 5.5 The notice issued by the Council on 20 January 2005 failed to properly explain why it considered that the requested information was exempt and to provide details of the rights of appeal. To that extent the Commissioner finds that the public authority failed to comply with the requirements of the Act.

Section 40 (Personal Information)

- 5.6 The complainant's request was refused on the basis that it was a request for third party data (that is data of which the applicant was not the subject) and that disclosure would breach one of the data protection principles. In its refusal notice, the Council cited the second data protection principle.
- 5.7 The second data protection principle provides –

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”
- 5.8 The Council contends that since the disclosure of personal data in response to a request for information under s.1 of the FOI Act is not specified in information provided to governors on their appointment, the release of names and addresses to the complainant would contravene this principle.
- 5.9 The Commissioner considers that this is not a correct interpretation of the Data Protection Act. If the Council was correct in its interpretation, no disclosures of third party data would be permitted in response to FOI requests except where data subjects had been given prior notice. This would include cases where requests for information identified individuals acting in a public or official capacity and information which had already been placed in the public domain. If Principle 2 were a general obstacle to the disclosure of third party data, the Commissioner would expect this to be made clear on the face of the Act and in the accompanying Explanatory Notes.
- 5.10 The Commissioner considers that the correct interpretation of Principle 2 in this context is that the disclosure of third party data in response to a request submitted in accordance with other statutory rights is not inherently incompatible with any other lawful purpose for which information may be obtained. Principle 2 may, however, restrict the purposes for which a third party to whom personal data are disclosed may subsequently process those data.



5.11 The Commissioner considers that the central issue in considering whether or not the FOI Act requires the disclosure of personal data is not the second data protection principle, but rather the first principle. This provides:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

5.12 In this particular case, the request for information was as to the names and addresses of school governors. The Commissioner understands that the names of school governors are published separately. It would have been reasonable, therefore for the Council either to supply the names or to indicate where the complainant might have obtained them. In the first scenario, the Council would effectively be taking the view that since the names of governors had already been placed in the public domain, there would be no unfairness to those individuals in supplying them to the complainant. In the second scenario, the Council would effectively be relying upon the exemption at section 21 of the Act which provides that information is exempt from disclosure under the Act if it is reasonably accessible to the applicant by other means.

5.13 So far as the addresses of school governors are concerned, the Commissioner understands that these are not presently published. He also recognizes that on appointment, governors are given some assurances that their home addresses will not be released. In any event he considers that in some cases it would be unfair to disclose the home address of a governor to a third party. In taking this view, he notes that even though home addresses are not published, parents and other interested parties are provided with contact addresses through which individual governors may be contacted.

Summary of the Commissioner's Decision

5.14 The Commissioner finds that the refusal notice issued by the Council did not meet the standard required by the Act. At the same time he notes that the Council has acknowledged its failures in this regard in the early days of the Act. He also notes that the notice was issued in a timely manner although not delivered to the complainant.

5.15 Although he accepts that the addresses of school governors are exempt by virtue of section 40 of the Act, he considers that it would be the first and not the second data protection principle which would be contravened.



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6. Action Required

6.1 In the light of the above considerations, the Commissioner does not require the public authority to take any steps to achieve compliance with the Act.

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 12 day of July 2006

Signed

Phil Boyd
Assistant Commissioner

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