



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 29 June 2006

Public Authority: London Borough of Richmond upon Thames

**Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ**

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 10 and section 17 (7) (b). It has however complied with its obligations under section 1, section 16 and section 17 (7) (a).

The Commissioner confirms that no remedial action is required.

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- the application has been withdrawn or abandoned,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 has advised that on 6 May 2005 he asked the public authority for copies of correspondence dated between 17 March 2005 and 6 May 2005 and relating to a previous Freedom of Information request he had made. The full wording of the request is given at the Annex to this notice.
- 2.3 The public authority replied on 3 June 2005 stating that it was enclosing certain information, and issuing a Refusal Notice in respect of information that it was withholding under the exemption for Legal Professional Privilege. However, the enclosures referred to were not included with this letter, and they were not actually sent to the complainant until 28 June 2005.
- 2.4 The public authority reviewed its decision, and on the 25 July provided a copy of an e-mail that it had previously withheld, and confirmed that it was still withholding three further e-mails under the exemption for Legal Professional Privilege.

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 16(1)** provides that –

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

- 3.4 **Section 17 (7)** provides that –

“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”

3.5 **Section 42** provides that –

“(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings.

4. Review of the case

4.1 In his complaint to the Information Commissioner the complainant made various allegations against the public authority which he asked to be considered. The Information Commissioner considered the allegations which related to the requirements of the Act. He did not consider further allegations which fell outside the scope of the Act. The allegations he considered, quoted from the complainant’s letter of complaint, were as follows:

- i) “Failure to provide information within the statutory time limit.
- ii) Failure to provide advice and assistance.
- iii) Failure to provide details of the Council’s appeal procedure.
- iv) Failure to give valid reasons for non-disclosure under the Public Interest Test.”

4.2 In his review of the case the Information Commissioner contacted the public authority to obtain its comments about its processing of the complainants request. He also obtained copies of the information that had been withheld and questioned the public authority about its reasons for withholding this information.

4.3 In considering whether or not the public authority had fulfilled their obligations under section 16 of the Act by providing advice and assistance, the Information Commissioner considered the extent of this obligation. He firstly referred to the Code of Practice issued by the Secretary of State under section 45 of the Act, which states that “the aim of providing assistance is to clarify the nature of the information sought”. This code provides guidance to public authorities in desirable practice for dealing with Freedom of Information Requests. Whilst the code itself is not statutory, section 16 of the Act provides that where a public authority has conformed with the code, then it has met its section 16 obligations. He further referred to his Freedom of Information Awareness Guidance no 23, in which it is stated that “In simple terms the provision of advice and assistance can be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants, and where possible assists him in obtaining this, maintaining a dialogue with the applicant throughout the process.

- 4.4 In considering whether the public authority had failed to give valid reasons for non-disclosure under the Public Interest Test the Commissioner considered whether the public authority had correctly applied the exemption for legal professional privilege allowed under section 42 of the Act.
- 4.5 In reaching this decision the Commissioner firstly considered whether the withheld information qualified as communications between a professional legal adviser and a client. He then assessed the public interest in maintaining adviser and client confidentiality against the public interest in disclosing the information.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has partly dealt with the complainant's request in accordance with the requirements of Part I of the Act, but that it has partly failed to do so.
- 5.2 The Commissioner finds that although the public authority issued a refusal notice on 3 June 2005, the requested information that it was not claiming as exempt, was not provided until the 28 June 2005. In addition a further non-exempt e-mail was not provided until 25 July 2005. The public authority is therefore in breach of section 10(1) of the Act in that it exceeded the statutory time limit for responding to a request made under section 1(1).
- 5.3 The Commissioner finds that the public authority met its obligations under section 16(1) of the Act in that it engaged with the complainant sufficiently to; establish what he wanted, assist him in obtaining it, and maintain a dialogue with him. The Commissioner considers that the public authority did not require any further clarification to establish what information the complainant wanted, and did not need to assist the complainant in framing his request in a way that would assist him in obtaining the information, as the request was already clear. Further the public authority stayed in correspondence with the complainant throughout the processing of his complaint.
- 5.4 The Commissioner finds that the public authority's refusal notice of 3 June 2005 provided details of how the complainant could appeal against its decision. It did not however provide details of the complainant's right under section 50 to complain to the Information Commissioner. The public authority has therefore complied with section 17(7)(a), but has breached section 17 (7)(b).
- 5.5 The Commissioner finds that the exemption for legal professional privilege, applied by the public authority under section 42 of the Act does apply to the information that was withheld.
- 5.6 The Commissioner considers that the withheld e-mails were communications between a professional legal adviser (the Council lawyer) acting in his professional capacity, and his client (the Council). With reference to internal guidance of the Information Commissioner's office, the Commissioner finds that these e-mails formed information passed between solicitor and client as part of a

continuum aimed at keeping both informed, so that advice could be sought and given as required, and as such they attach legal professional privilege.

5.7 The exemption given at section 42 is a qualified exemption. This means that information is only exempt from release under this section of the Act if the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information. In deciding whether this applies to the information that was withheld in this case, the Commissioner considers the following:

5.8 The factors in favour of disclosing the withheld information are :

- The inherent public interest that public authorities are transparent in the decisions they take in order to promote accountability. If reasons for decisions are made public there is a strong argument that this should improve the quality of future decisions.
- The public interest in disclosing information where to do so would help to determine whether public authorities are acting appropriately in the execution of their public duties, one of which is dealing with Freedom of Information requests in accordance with the requirements of the Act.

5.9 The factors in favour of maintaining the exemption are:

- The strong public interest in protecting the established principle of confidentiality in communications between lawyers and their clients. This encourages clients to seek legal advice and allows for full and frank exchanges.
- The strong public interest in the proper administration of justice, in that parties may be tempted to hold back on matters if it is likely that their communications with legal advisers may later be subject to disclosure. If clients and lawyers do hold back for fear of disclosure, then proper legal advice cannot be given, as advice may only be based on partial knowledge of the circumstance. This can in turn lead to worse quality decision making which is not in the public interest.

5.10 In this case the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information.

6. Action Required

6.1 In view of the Commissioner's decision that the section 42 exemption was correctly applied, the Commissioner does not require the public authority to take any remedial action.

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 29th day of June 2006

Signed

**Phil Boyd
Assistant Commissioner
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex

The complainant's request to the public authority of 6 May 2005 was worded :

“Could you please supply me with the following correspondence between 17th March 2005 and 6th May 2005 related to my request for information under the FIA dated 17th March 2005 between : -

- i. The Council and The “eight people” written to in October 2003 : - namely
 - a. [name] Gerald Eve Chartered Surveyors
 - b. Director of Technical Service
 - c. Audit Commission [[name] and/or all others]
 - d. [name]
 - e. [name] [if any]
 - f. [name]
 - g. [name]
 - h. [name]
 - i. And any other person to whom the Council may have written excluding Officers currently in the employment of the Council. Eg. [name]
 - j. Including advisors to any of the above

- ii. Any internal memorandums, e-mails, minutes of meetings, hand written notes of meetings or telephone conversations etc between any of the following :-
 - a. The Chief Executive
 - b. The Democratic Service Manager
 - c. And yourself as Information Officer
 - d. The Borough Solicitor
 - e. [name]
 - f. Any other Officer or Councilor with whom contact has been made with regards to my application under the FIA dated 17th March 2005. “

The information Commissioner has removed names from the wording above.