

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 28 September 2006

Public Authority: The Department for Constitutional Affairs
Address: Selborne House
54 Victoria Street
London
SW1E 6QW

Summary

The complainant requested the name of the head of a unit within the Legal Services Commission, the instructions given to one of the public authority's employees when writing to the complainant and any cover note written by the Attorney General, Lord Goldsmith, that accompanied the complainant's "critique" when it was transferred from his office to the public authority. The public authority failed to respond to his request under the Act and a complaint was subsequently made to the Commissioner. The Commissioner accepts that the information requested has now been supplied or is not held by the public authority. However, the public authority has breached the time for compliance specified by section 10 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant made a Freedom of Information request to the public authority on the 14 July 2005. The request contained three elements:
 - a) *"Who is the Head of the Civil Legal Aid Strategy Unit?"*
 - b) *"Who instructed you (DCA Employee) to write to me with regard to the unlawful instrument dated 29 July 2005 and what position do they administer in the LSC unit?"*

- c) *A true copy of the cover/note, written by the disreputable Goldsmith when he attempted to transfer, evade his lawful responsibility as Attorney General with regard the critique, delivered to his office care and attention as of the 14 July 2005.*"
3. The public authority dealt with the complainant's request in the normal course of business. It answered the complainant's correspondence by providing a general response detailing the organisation the complainant should contact to make a complaint.
 4. The complainant repeated his request in correspondence dated 14 September 2005.
 5. The public authority responded on 31 October 2005, 15 November 2005 and 11 July 2006.

The Investigation

Scope of the case

6. On 15 September 2005 the complainant wrote to the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the failure of the public authority to respond to his information request and whether the information requested was held by the public authority.
7. The complainant also raised issues in relation to the Legal Services Commission ("LSC") and the Attorney General's Office that are not addressed in this Notice because they fall outside the scope of the Freedom of Information Act 2000.

Chronology

8. The complaint was dated 15 September 2005 and was allocated to a case worker on 16 March 2006.
9. The Commissioner acknowledged that the public authority had answered, in correspondence dated 15 November 2005, part (a) of the complainant's request.
10. A number of questions were put to the public authority, by letter of 29 March 2006, regarding parts (b) and (c) of the request, in particular:
 - In what circumstances, if any, would an employee seek assistance/instruction on a response to the correspondence in question?
 - For what, if any, business purpose would you have held a covering letter/note, for example, would it be added to a case file?
 - Are cover notes, such as this, held in an electronic format, for example are they scanned to a referenced complaint or enquiry?
11. The public authority responded to the Commissioner's correspondence by e-mail

on 2 June 2006.

12. With regards to (b), the public authority's policy on dealing with information requests states that many requests for information should be dealt with as "normal business". The seniority of the officer who dealt with the request means that it is highly unlikely that instruction would have been received prior to writing the letter which set out the public authority's relationship with the LSC and provided information regarding whom complaints about the LSC should be directed to.
13. The public authority explained that it had not responded to element (c) on the basis that this element had been partly answered by the Legal Secretariat to the Law Officers ("LSLO") on 28 September 2005.
14. The public authority went on to explain that it does not hold a cover/note written by Lord Goldsmith in relation to the transfer of the complainant's "critique" as such a note never existed. The public authority explained that a cover note, for the transfer of documents to another department, would be created by an officer of the public authority and not Lord Goldsmith.
15. The public authority provided an explanation of its retention policy in relation to cover notes drafted for the transfer or receipt of correspondence from or to other government departments. Generally there are two ways in which correspondence is received or transferred. The first is where the transfer or receipt is arranged over the telephone, in these circumstances no cover note is received or sent with the correspondence and the telephone conversation is not recorded or noted. The second method is where the transfer or receipt is arranged via e-mail. In such circumstances the e-mail is printed and attached to the hardcopy file after which the e-mail version is deleted. The public authority also states that there is no absolute requirement to retain cover notes once that transferred file has been received. Decisions on whether to retain such documents are taken by officials in line with the public authority's retention policy and with reference to the relative importance of the information in terms of business, audit and historical importance.

Findings of Fact

16. The public authority provided the information requested under (a) on 15 November 2005, (b) on 31 October 2005 and (c) on 11 July 2006.
17. The Commissioner accepts that the officer who wrote to the complainant on 29 July 2005 did not receive instruction prior to doing so.
18. The public authority maintains that it did not receive a cover note with the "critique" transferred from the LSLO and therefore does not hold the requested information.
19. The Commissioner accepts that a cover note is not held. Even if a cover note existed, and the complainant's request was interpreted widely to include a cover note prepared by a member of Lord Goldsmith's staff, the public authority

followed its policies on the retention and handling of such correspondence.

Analysis

20. **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.”

21. **Section 10(1)** provides that –

“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.”

Procedural breaches

22. The complainant made an information request in correspondence dated 14 July 2005. The public authority responded to the first element the complainant's request on 15 November 2005, the second element on 31 October 2005 and the third element on 11 July 2006.
23. On this basis the public authority failed to meet its statutory obligation to respond to the complainant's information request within twenty working days following the date of receipt. Therefore breaching section 10 of the Act.

The Decision

24. The Commissioner's decision is that the public authority has now complied with its duties under section 1 of the Act but failed in respect of section 10.

Steps Required

25. The Commissioner requires no steps to be taken as the public authority has now provided the information it holds in relation to this request.

Right of Appeal

26. Either party has the right to appeal against this Decision Notice to the Information 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

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 28th day of September 2006

Signed

**Graham Smith
Deputy Commissioner**

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