

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 22 January 2007

Public Authority: Metropolitan Police Service
Address: Empress State Building
London
SW6 1TR

Summary

The complainant submitted a request to the public authority for information relating to an investigation undertaken in the early 1990s into allegations of corruption by employees of a local council. The public authority advised the complainant that although its records confirmed that a file relating to this investigation had once been held, due to the time that had elapsed since the investigation took place this file had since been weeded or destroyed. Having considered the information available the Commissioner is satisfied that the information requested by the complainant is no longer held by the public authority.

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. On 6 January 2005 the complainant wrote to the public authority asking for information relating to an investigation it had undertaken into allegations of corruption against employees of a local council.
3. The public authority advised the complainant that it did not consider that this application constituted a valid request under the Act as he was seeking the public authority's views and opinions rather than actual recorded information. The public authority explained that for the request to be considered the complainant would need to describe the nature of the documentation or data he was seeking.
4. The complainant made a number of subsequent applications (dated 15 January 27 January, 5 February and 15 February 2005) in which he requested the following information relating to the police investigation:

- i. A copy of the police investigation report;
 - ii. A list of the people interviewed by the police;
 - iii. The views of the police on aspects of the case and any notes made by officers when considering additional material provided by the complainant;
 - iv. All documentation relating to his case.
5. The first of these requests was received by the public authority on 21 January 2005. The public authority provided a response on 17 February 2005.
6. The complainant was provided with copies of the police documentation held at that time and advised that any additional personal information relating to a separate subject access request would be sent at a later date.
7. The public authority advised the complainant that a full investigation into his allegations of corruption was conducted in the early 1990s. Unfortunately, the docket created on 12 November 1992 for this investigation (reference CR235/92/1034) had been weeded or destroyed. The public authority explained that no record of the date of destruction could be found and a search of the records management branch had not located any further information.
8. The complainant was also advised that any future requests for this information would be treated as 'repeated' under section 14(2) of the Act, since the public authority had already responded to a request for this information on 7 June 2004.
9. The complainant wrote to the public authority on 9 July 2005 to dispute various aspects of the response he had received.
10. The public authority responded to the complainant on 10 August 2005 by explaining that it had completed an internal review of the request and decided to uphold its original decision. In its reply the public authority stated that it was treating the request as vexatious under section 14(1) of the Act.

The Investigation

Scope of the case

11. In September and November 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - i. The alleged failure of the public authority to provide all information held relating to his case and his requests, including any notes that were taken when analysing the additional information provided by the complainant;
 - ii. The public authority's claim that the investigation file had been destroyed;
 - iii. The public authority's decision to class his requests as 'repeated or vexatious'.

Chronology

12. The Commissioner wrote to the public authority on 16 May 2006 to request the following information:
 - i. Confirmation that all information relevant to the complainant's requests had been disclosed and details of any exemptions that were being relied upon to withhold information.
 - ii. Details of any searches that had been undertaken to try and locate the investigation file and confirmation of whether information of this type is covered by a retention and disposal policy.
 - iii. Clarification of whether the public authority was relying upon section 14(1) or 14(2) of the Act to refuse further requests for this information and details of the rationale behind this decision.
13. The public authority responded to the Commissioner on 19 June 2006. It explained that all information that it held relevant to the complainant's request had been disclosed and confirmed that it was not applying any exemptions to withhold any information.
14. In relation to the investigation file, the public authority had contacted its Records Management Branch and asked that it conduct a search for the information. This department confirmed that the information had been held but the relevant investigation file had been destroyed.
15. Although the date of destruction had not been recorded the public authority supplied the Commissioner details of its 'Retention and Disposal Schedule'. This document states that case papers and investigation files are usually retained for a period of 7 years before being destroyed. This particular file was created on 12 November 1992, which suggests that it would have been destroyed in 1999.
16. With regard to the decision to refuse the requests under section 14 of the Act, the public authority confirmed that it considered the requests to be 'repeated requests' under section 14(2) of the Act. This is because the public authority had already provided the complainant with a response to a request for the same information on 7th June 2004.
17. The complainant wrote to the Commissioner on 4 August 2006 to express his belief that a few months before he submitted his information request the investigation file had been in the possession of a Detective Chief Inspector who was responsible for considering 'new evidence' relating to his allegation of corruption. The complainant argued that the Detective Chief Inspector must have been in possession of the investigation file as without these records he would have been unable to conclude that the additional information supplied by the complainant contained no new evidence to warrant reinvestigation of this matter.
18. In response to these claims the Commissioner wrote to the public authority on 5 September 2006 to establish whether the Detective Chief Inspector had access to the investigation file at the time of his review of the additional information supplied by the complainant.

19. The public authority responded on 14 September 2006. It explained that it had been in contact with the Detective Chief Inspector who confirmed that never had access to the investigation file and did not see the investigation file at the time of his review in April 2004.
20. The complainant had also stated that he felt the decision to class his requests of January and February 2005 as 'repeated' was unfair.
21. On 30 October 2006 the Commissioner wrote to the public authority in relation to its decision to invoke section 14(2) of the Act.
22. The public authority responded on 10 November 2006.

Analysis

Procedural matters

Section 1(1) – the general right of access

23. The Commissioner has considered whether the investigation file requested by the complainant is held by the public authority.
24. The public authority has assured the Commissioner that it does not hold the information requested by the complainant. The public authority has provided the Commissioner with details of the steps it has taken in order to establish whether it holds the information requested by the complainant. This included contacting the Detective Chief Inspector responsible for deciding whether to reinvestigate the complainant's case.
25. The public authority also provided the Commissioner with a copy of its 'Retention and Disposal Schedule' which states that case papers and investigation files are usually retained for a period of 7 years before being destroyed. The file in question was created on 12 November 1992.
26. Having considered the information available the Commissioner is satisfied that the information requested by the complaint is not held by the public authority. Consequently, the Commissioner is of the opinion that the public authority has complied with section 1(1) of the Act. Section 1(1) of the Act 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.”*

Section 14(2) – repeated requests

27. The Commissioner has considered whether the public authority's application of section 14(2) of the Act was appropriate.
28. In a letter dated 17 February 2005 the public authority advised the complainant that any further requests submitted under the Act would be refused as the complainant had been deemed a "repeated and vexatious requestor".
29. The public authority explained that it had received a total of 14 requests for this information in 2003 and 21 in 2004. It would appear that these requests may have been taken into consideration when deciding to class the January and February 2005 requests as repeated.
30. Having considered this information the Commissioner took the view that the application of section 14(2) of the Act would not have been appropriate at that time as the complainant's requests of January and February 2005 were the first he had made for this information since the Act had come into force. The numerous 'pre-FOI' requests should not have been taken into account by the public authority.
31. In response to the Commissioner's enquiries the public authority agreed that the decision to class the January and February 2005 requests as repeated was incorrect.

The Decision

32. The Commissioner's decision is that the public authority dealt with the request for information in accordance with section 1(1) of the Act because it did not hold the requested information.
33. However, the Commissioner has also decided that the public authority's application of section 14(2) of the Act was not appropriate at the time the complainant submitted his requests in January and February 2005.

Steps Required

34. The Commissioner requires no steps to be taken.

Right of Appeal

35. 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 22nd day of January 2007

Signed

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