

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 26 March 2007

Public Authority: Ofcom
Address: Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Summary

The complainant contacted the Commissioner following the failure of Ofcom to provide any of the information requested. Following the intervention of the Commissioner, Ofcom provided some of the information requested and refused the rest under section 12. The Commissioner finds that section 12 has been applied correctly but that Ofcom failed to comply with sections 1 and 17 in its initial response. These breaches have since been remedied and no further action is required.

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 5 March 2006, the complainant made the following information request:

"1. How many complaints (since 2000) to Ofcom or Oftel or ADRs (Alternative Dispute Resolution) is Ofcom aware of that have been received in respect of telephone accounts that have been disconnected or incoming calls diverted away from consumers, excluding those of non-payment or electrical fault?

2. In how many of these is Ofcom aware that the consumer was not reconnected as before as a result of the ADR process ruling?

3. In how many of these is Ofcom aware that the consumer's incoming calls continues to be connected to a third party as a result of the ADR rulings, despite

- the consumer's complaint? There is at least one such case that Ofcom is aware of.
4. How many complaints about each ADR process has Ofcom received?
 5. In how many of these did Ofcom take action on the ADR process?
 6. How many complaints has Ofcom received about service providers failing to provide consumers with details of the ADR process? There is at least one such case that Ofcom is aware of.
 7. In how many of these cases was action taken by Ofcom against the Service Provider?"
3. The public authority responded to this request on 31 March 2006. The public authority responded to each aspect of the information request as follows:
1. *"Ofcom does not have a report with the specific information you require."*
 2. *"Ofcom does not hold this information."*
 3. *"Ofcom does not hold information in this format."*
 4. *"Ofcom does not hold information in that format."*
 5. Response did not confirm or deny whether the requested information is held.
 6. *"Ofcom does not hold the information in that format."*
 7. *"Ofcom does not hold the information in that format."*

The Investigation

Scope of the case

4. Following receipt of the response dated 31 March 2006, the complainant contacted the Information Commissioner on 2 April 2006 to complain about the failure to provide the information requested. The Commissioner subsequently contacted the public authority to inform it that a complaint had been received.
5. On 2 May 2006, the public authority contacted the complainant to inform him that it should carry out an internal review of its handling of the request prior to the complaint being considered by the Information Commissioner. On 5 June 2006, the public authority responded giving the outcome of its internal review.
6. The public authority upheld its initial response to questions 1, 2, 5 & 6. In response to questions 3 & 7, the public authority altered its response, now stating that the information requested was not held. In response to question 4, the public

authority stated that the information was held. The public authority subsequently responded, by letter dated 16 June 2006, providing the information requested at question 4.

Chronology

7. The Commissioner contacted the public authority in connection with this complaint on 29 August 2006. In this letter, the public authority was asked to respond to the following questions:
 - Please clarify the response that “Ofcom does not hold information in this format”. How does this differ from where the complainant has been advised that information is not held?
 - Where Ofcom has stated that the information requested is not held, please confirm if this stance remains unchanged.
 - Please confirm whether the information requested at question 5 of the information request is held.
 - Please confirm whether, in light of the outcome of the internal review, a response to question 4 of the information request has now been provided to the complainant.
8. The public authority responded on 5 October 2006. The public authority responded to the above questions as follows:
 - The public authority provided some information about the volume of information that it would be necessary to search in order to locate information falling within the scope of the questions to which the response had been that *“information is not held in that format”*.
 - The public authority advised that it had reconsidered its responses where it had stated that information falling within the scope of the request was not held and that additional information would be provided to the complainant.
 - The public authority confirmed that the information requested at question 5 was held and that this information would be provided to the complainant.
 - The public authority confirmed that the information requested at question 4 had been provided to the complainant on 16 June 2006.
9. The public authority enclosed with its response a copy of a letter sent to the complainant on 5 October 2006. This letter set out the response of the public authority to the complainant’s information request following its reconsideration of this. The reconsidered response to each of the complainant’s requests was as follows:
 1. Refused under section 12 as the cost of complying with the request would exceed the appropriate limit.

2. *"Please see our response to question 1"*
3. *"Please see our response to question 1"*
4. The response of 16 June 2006, in which the information requested was provided to the complainant, was repeated.
5. The requested information was provided to the complainant.
6. The requested information was provided to the complainant.
7. The requested information was provided to the complainant.

Analysis

10. The Commissioner contacted the public authority for further clarification on 10 October 2006. In this letter, the public authority was asked to confirm whether its stance was that questions 2 & 3 from the complainant's information request could also not be responded to without exceeding the relevant cost limit. In this letter, the public authority was also advised that, where a public authority cites section 12, the Commissioner believes that section 16 requires that it should provide to the complainant advice as to how the request could be refined in order that it could be possible to comply with it without exceeding the cost limit.
11. In response to this, the public authority requested a meeting with representatives of the Information Commissioner. Representatives of the Commissioner met with representatives of the public authority on 14 November 2006.
12. At this meeting, the public authority providing supporting information concerning its cost estimate by demonstrating the volume of information that it would be necessary to search in order to confirm or deny whether information requested by the complainant is held.
13. Also at this meeting, the public authority was advised about aspects of the application of sections 12 and 16. Specifically, the public authority was advised that section 12 could be applied with regard to the duty to confirm or deny in section 1(1)(a) if to do so would, in itself, exceed the cost limit. The public authority was also advised of the requirement of section 17(5) to refer specifically to section 12 where a request is refused under this provision.
14. The public authority stated that, in this case, it did not believe that there was any useful advice or assistance that could be provided to the complainant concerning refining the request as it was not considered possible to refine this request sufficiently to bring it within the cost limit. The public authority was advised that it should refer specifically to section 16 in any future refusal advising that section 12 applied, even if only to state that to provide advice as to how to refine the request was not possible.

15. Following this meeting, the public authority contacted the Commissioner by letter dated 4 December 2006. In this letter, the public authority confirmed that questions 2 & 3 from the complainant's information request had been refused under section 12.
16. The public authority also confirmed what was discussed at the meeting, including its obligations under section 16 where section 12 is cited. The public authority reiterated that it did not believe that meaningful advice or assistance could be provided in this case, but that it would take the advice provided about this and other aspects of the Act into account when responding to future information requests.

Findings of fact

17. The public authority initially failed to confirm or deny whether the information requested was held in response to questions 1, 3, 4, 5, 6 & 7 of the request.
18. In response to question 2, the public authority stated that the information requested was not held, yet later acknowledged that it was unable to confirm or deny whether the information requested at question 2 was held without exceeding the cost limit.
19. The public authority has since confirmed that information falling within the scope of questions 4 - 7 is held. This information has been provided to the complainant.
20. The public authority has altered its stance in relation to questions 1 - 3. These have since been refused under section 12.

Decision

Section 1

21. The public authority failed to comply with section 1(1)(a) in that it initially failed confirm or deny whether the information requested in questions 4, 5, 6 & 7 was held and 1(1)(b) in that it failed to provide information that it later confirmed was held.
22. The public authority also failed to comply with section 1(1)(a) in that it denied that information was held that would fall within the scope of question 2. In later citing section 12, the public authority acknowledged that it was not in a position to deny that this information was held.

Section 12

23. The public authority has provided to the Commissioner representations concerning the volume of records that it would be necessary to search in order to confirm or deny that the information requested by the complainant at questions 1 - 3 is held. The Commissioner accepts that the relevant cost limit of £450 would

be exceeded in complying with questions 1 - 3.

Section 16

24. The public authority did not provide to the complainant advice as to how his requests in questions 1 - 3 could be refined in order that they could be complied with without exceeding the cost limit. However, the Commissioner notes that section 12 was applied with regard to the requirement of section 1(1)(a) to confirm or deny whether the information was held. This suggests that the further cost of locating, extracting and providing information falling within the scope of the request would be likely to be well in excess of the cost limit. The Commissioner therefore accepts that it is unlikely that meaningful advice as to how to refine the request could have been provided in this case.

Section 17

25. The public authority failed, in its response to questions 1 - 3, to comply with the requirement of section 17(5) that, where section 12 is applied, a refusal notice stating this should be provided. The public authority stated to the Commissioner that the response "*information is not held in this format*" was intended to convey the difficulty in locating information falling within the scope of the request. This response did not, however, fulfil the requirements of the Act.

Conclusion

26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it failed to comply with sections 1 and 17.
27. The Commissioner does not find any breach in regard to sections 12 and 16.

Steps Required

28. Although the Commissioner has found that the public authority has failed to comply with sections 1 and 17, these breaches were remedied by the public authority's response of 5 October 2006 and, with regard to question 4, in its response of 16 June 2006.
29. The Commissioner does not, therefore, require any steps to be taken.

Right of Appeal

30. 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

31. 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 26th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

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