

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 September 2007

Public Authority: Commission for Racial Equality
Address: St Dunstan's House
201 – 211 Borough High Street
London
SE1 1GZ

Summary

The complainant, representing the London Metropolitan University (LMU), sought access to communications between the Commission for Racial Equality (CRE) and the National Association of Teachers in Further and Higher Education during the period when the LMU had been under investigation for possible breaches of the race relations legislation. CRE initially said that it did not hold information in relation to one part of the request and refused to release other information it held, citing section 30 of the Act. This information was subsequently released to the complainant once the investigation had been completed, as was additional information relating to that part of the request for which CRE had previously said no information existed. The Commissioner found CRE to be in breach of section 1(1) of the Act, and of section 17(3) for an initial failure to consider the public interest test.

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 3 August 2005 the complainant, on behalf of the London Metropolitan University (LMU), wrote to the Commission for Racial Equality (CRE) for the following information:
 1. *Details of all communications between any members of your corporate management team (CMT) and officers of the National Association of Teachers in*

Further and Higher Education (Natfhe) between 1 October 2004 and 1 July 2005. Details to include copies of emails, faxes and letters plus the content of any meetings or oral exchanges within the dates of the latter.

2. *The same information in respect of communications between the Education Officer (London Region) and officers of Natfhe over the same period.*
3. *Confirmation that the CRE was represented at a meeting of the Higher Education Equal opportunities Network held at Kings College London on 27 May 2005 and who that representative was.*
4. CRE replied to this request on 23 August 2005. In respect of the first part of the request CRE said that it held no information falling within the designated period. In respect of the second part, CRE drew attention to the fact that it was currently considering an allegation by NATFHE that LMU might not be complying with certain aspects of the Race Relations Act 1976 (as amended), and cited section 30(2) and (3) of the Act (Investigations and proceedings conducted by public authorities). In respect of the third part of the request, CRE confirmed that it had been represented at the meeting and released the identities of its representatives.
5. On 26 August 2005 the complainant wrote to CRE to seek a review. In particular, in respect of the response to the second part of his request, the complainant drew attention to the fact that CRE had not indicated whether or not it held any relevant information. The complainant also said that there was no evidence that CRE had, as required by the legislation, applied the public interest test before deciding if the information could be released. CRE replied substantively on 21 September 2005. CRE confirmed that it did hold information relative to that part of the request. It also accepted that it should have taken into account the public interest in coming to a view as to whether or not that information should be released. It had now done so, and had concluded that the balance of the public interest fell in favour of maintaining the exemption.
6. In a letter of 27 September 2005 the complainant then asked CRE to confirm that, if no substantive investigation were to be carried out into the allegation currently under consideration, the withheld information would then be released. In another letter of the same date the complainant also sought some additional information. He asked for:
 1. *Details of all communications between the Education Officer (London Region) and offices of NATFHE between 1 July 2005 and 23 September 2005. details to include copies of all emails, faxes and letters plus the content of any meetings or oral exchanges with the dates of the latter;*
 2. *Confirmation or otherwise that the correspondence between the University and the Regional Officer has been the subject of notification or discussion to third parties and if so the identity of those third parties.'*
7. CRE replied to these two letters on 10 October 2005. CRE confirmed that, if the outcome of its consideration of the current allegation led to no further investigation, the withheld information would then be released. In respect of the new request, CRE said that its response to the first part of it was governed by the same factors that had made it unable (up to now) to respond to the earlier request. In respect of the second part, CRE confirmed that the correspondence

- referred to had neither been discussed with, nor notified to, any third parties. In a further letter dated 18 October 2005 the complainant made it clear that he did not accept CRE's interpretation of the public interest. He did, however, confirm that he would wish to have relevant information released to him in the event that matters relating to the allegation were taken no further by CRE.
8. On 23 January 2006 the complainant wrote again to CRE. He asked if, in the light of the decision by CRE that matters relating to the allegation by NAFTHE were to be taken no further, CRE would now release the information that it held? CRE replied on 15 February 2006. In response to the first and second parts of the complainant's original request of 3 August 2005, CRE agreed to release one document relating to each part. In response to the first part of the second request of 27 September 2005, CRE said that no information could be found.
 9. The complainant wrote again on 27 February 2006. He expressed concern at the fact that, in its initial response, CRE had said that it held no information in relation to the first part of his first request: however, it had now found and released two relevant documents (Commissioner's note: CRE's letter of 15 February 2006 referred to only one document falling within that specified period but it had, in fact, released two). In relation to the second part of the first request, the complainant expressed surprise that there was only one letter to be found, particularly as the contents of that one letter suggested not only that there had been previous communication but that further communication could be expected in future. In relation to the first part of the second request, he again expressed surprise that no information could be located. He asked CRE for details of its appeals procedure in respect of the Act.
 10. In its response dated 28 March 2006 CRE said that the documents now released to the complainant had only come to light following the departure of the Education Officer, subsequent to the response to the first request. No other information relating to the request had been discovered. The complainant was advised, if he remained dissatisfied, to refer the matter to the CRE's Information Manager. CRE said that *'We aim to respond to your complaint within 30 working days, although it may take longer if the complaint is particularly complex'*. The complainant subsequently wrote to the Information Manager on 21 April 2006 setting out the basis of his appeal. He received an acknowledgement dated 5 May 2006, which invited him to contact CRE if he had not received a substantive reply by 13 June 2006. Having received no such reply, the complainant wrote to CRE on 20 June 2006 but received no further response.

The Investigation

Scope of the case

11. On 10 July 2006 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. He said that the nature of his complaint was set out in the letter to CRE of 21 April 2006. He confirmed that he had received no response from CRE to his appeal request.

Chronology

12. On 7 February 2007 a member of the Commissioner's staff wrote to CRE to determine whether or not CRE had responded to the complainant's review request and, if it had not so far done so, to establish whether or not it intended to. CRE indicated that it wished and intended to complete the review process. As, however, no more progress was made on this matter, the Commissioner wrote to CRE on 29 June 2007 to indicate that it was unable to agree to any further extensions of time in order to allow CRE to complete the review process: the formal investigation process would therefore begin. In coming to that view, the Commissioner had in mind the fact that CRE would cease to exist as a separate organisation from 30 September 2007 and that it was therefore desirable, if at all possible, to conclude matters before that date.
13. On 19 July 2007 CRE replied to the Commissioner. CRE said that the complainant had been provided with copies of all of the available documents falling within his request. Further inquiries would however be made to see if any additional documents could be discovered. On 29 August 2007 CRE wrote to the Commissioner to say that these inquiries had not resulted in the location of any more information. CRE provided the Commissioner with all the papers it held pertaining to this matter.

Findings of fact

14. The complainant's information request followed a letter written by NAFTHE to CRE on 5 May 2005 in which NAFTHE asked CRE to investigate the alleged failure of LMU to conduct written Race Impact Assessments (RIA) Attached to that letter was a Summary Note setting out the allegations in more detail: this Summary Note (but not the letter) was subsequently placed on the NAFTHE website. The Chairman of CRE subsequently confirmed that it would examine the matters raised. On 7 December 2005 CRE wrote to LMU to say that, having looked into the allegations, it believed LMU to have acted in breach of the Race Relations Act 1976 (Statutory Duties) Order 2001 (the Race Equality Duties). While noting that, however, CRE also took the view that LMU had now put its house in order and that no further action was required at that time.

Analysis

Procedural matters

15. In its reply of 23 August 2005 to the initial information request (a reply which was provided within the timescale required by the legislation) CRE indicated that it held no information relative to the first part of that request. However, in its response of 15 February 2006, CRE made it clear that it did hold such information, although only a rather limited amount, which it then released to the complainant. On that basis, CRE was breach of section 1(1) of the Act (the text of which is set out in the legal annex), for which it merits criticism.

16. In addition CRE's reply of 23 August 2005, while citing a qualified exemption of the Act in section 30, failed to give any indication that it had, as required by the legislation, applied the public interest test in relation to the information covered by that exemption. In his response of 26 August 2005 the complainant drew attention to that omission. This was acknowledged by CRE and rectified in its subsequent response of 21 September. However, through its initial failure to apply the public interest test, CRE was in breach of section 17(3) of the Act for which, again, it merits criticism.

Exemption

Section 30

17. In refusing to release other information at the time of the original request, CRE said that the information could not be released because it was at that time investigating an allegation under the Race Relations Act against LMU: it cited sections 30(2) and (3) of the Act in support. This information was, however, subsequently released to the complainant once the investigation was concluded and CRE had decided to take no further steps in the matter. On that basis the Commissioner sees no virtue in now attempting to determine whether or not CRE had correctly applied section 30 to the information at the time the request was made.

Volume of information

18. The complainant has expressed his surprise at the low quantity of documentation released by CRE in relation to his request and is of the opinion that there should be more. On a number of occasions the Commissioner sought to confirm with CRE that the information made available to his staff constituted the entirety of what CRE currently held. CRE told the Commissioner that this was the case: in an attempt to see if more might be available a request had been circulated to all relevant members of staff still in post in case additional material could be discovered, but none could be found. The Commissioner can however confirm that the complainant has had released to him all of the information relevant to his request that is contained within the document file that he has examined, and there is no evidence to suggest that there is other relevant information which has not been made available to the Commissioner.

The Decision

19. 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 breached section 1(1) by denying that it held information in relation to part of the complainant's request when in fact it did hold such information. It also breached section 17(3) of the Act by failing to apply the public interest test when considering a qualified exemption.

Steps Required

20. The Commissioner requires no steps to be taken.

Other matters

21. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. The complainant's appeal, which was submitted on 21 April 2006 and to which a response was promised within 30 working days, never received a reply. The Commissioner understands that matters have been difficult for CRE over the past twelve months: as a result of the forthcoming merger staff have been leaving and those remaining have had to shoulder a substantial burden of work (Commissioner's Note: on 1 October 2007 CRE will merge with the Equal Opportunities Commission and the Disability Rights Commission to form the Commission for Equality and Human Rights). However, it is beyond dispute that CRE simply failed to deal with the review request, and it is to be hoped that the new organisation will take steps to ensure that it has adequate procedures in place to deal with FOI requests in accordance with current practice and guidance.

Failure to comply

22. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

23. 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 25th day of September 2007

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

1. (1) 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.

17. (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming-
 - (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
 - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.