

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 17 May 2007

Public Authority: Parliamentary and Health Service Ombudsman
Address: Millbank Tower
Millbank
London
SW1P 4QP

Summary

The complainant wrote to the public authority to request copies of transcripts of two interviews it had conducted in the course of investigating a complaint against the West Yorkshire Ambulance Service NHS Trust. The public authority refused to disclose the information under section 44 of the Act. The public authority said that the relevant statutory prohibition was section 15(1) of the Health Service Commissioner's Act 1993. The Information Commissioner has investigated the complaint and is satisfied that section 44 of the Act was correctly applied. However, the Information Commissioner has found that the public authority breached section 17 of the Act by failing to issue a refusal notice within 20 working days of receiving the request.

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 had previously made a complaint to the public authority about the West Yorkshire Ambulance Service NHS Trust. On 12 May 2006 the complainant wrote to the public authority to request information regarding the

public authority's investigation of his complaint. The complainant asked for transcripts of certain interviews conducted by the public authority during its investigations of the West Yorkshire Ambulance Service NHS Trust.

3. In a letter of 10 September 2006 the complainant wrote to the public authority stating that he had not received a response to his request. He asked that the public authority let him know its decision on his request and to specify under what section of the Data Protection Act 1998 it had reached its decision.
4. The public authority responded to the request on 11 September 2006. It explained that it was treating his request as a request for information under the Act and that whilst it did hold information falling within the scope of the complainant's request the information was exempt from disclosure. It explained that the information was exempt under section 44 of the Act and that the relevant statutory prohibition was section 15 of the Health Service Commissioner's Act 1993.
5. The complainant wrote to the public authority 12 September 2006 to request that it carry out an internal review its handling of his request.
6. On 12 October the public authority provided the complainant with the result of the internal review. It said that it upheld the original decision to refuse the request under section 44 of the Act.

The Investigation

Scope of the case

7. On 15 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner has considered the public authority's decision to refuse the complainant's request under section 44 of the Act by virtue of section 15(1) of the Health Service Commissioner's Act 1993.
8. The Commissioner recognises that the complainant asked the public authority to consider his request under the Data Protection Act 1998. The Commissioner has considered, as part of a separate investigation, whether the complainant would be entitled to the withheld information under the Data Protection Act. The Commissioner decided that the withheld information did not constitute personal information of which the complainant is the data subject and that therefore the public authority was not obliged to disclose this information under the Data Protection Act. Consequently the Commissioner has considered the public authority's response to the complainant's request under the Freedom of Information Act and not the Data Protection Act.

Chronology

8. The Commissioner wrote to the public authority on 20 December 2006 to ask that it fully justify and explain its application of section 15(1) of the Health Service Commissioner's Act 1993. The Commissioner also asked that the public authority provide him with copies of all of the information it had withheld from the complainant under section 44 of the Act and that it provide him with a brief

chronology of its investigation into the complaint against the West Yorkshire Ambulance Service NHS trust.

9. The public authority provided the Commissioner with this information on 22 January 2007.

Findings of fact

10. The public authority has confirmed that its investigation into the West Yorkshire Ambulance Service NHS Trust was opened in September 2004 and that it reported the outcome of its investigation in December 2006.
11. The withheld information constitutes transcripts of two interviews conducted by the public authority in the course of its investigation.

Analysis

12. Full extracts of all the relevant statutes referred to in this section are contained within the legal annex.

Procedural

13. The complainant made his request for information in a letter dated 12 May 2006. The public authority responded to the request on 11 September 2006 and therefore failed to respond within 20 working days.

Exemption

14. The Commissioner accepts that section 15(1) of the Health Service Commissioner's Act acts as a statutory prohibition on the disclosure of any information obtained in the course of or for the purposes of an investigation and is satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in sub-sections a) – e) of section 15(1). The main issue to be considered in this decision is whether the information requested by the complainant was obtained in the course of, or for the purposes of the public authority's investigation into the complaint against the West Yorkshire Ambulance Service Trust.
15. The two interview transcripts were generated by the public authority itself in the course of investigating the complaint and therefore were not physically obtained insofar as the information was not passed to the public authority by another party involved in the complaint. However it is quite clear that since the withheld information constitutes transcripts of two interviews the information contained within these two documents was obtained by the public authority in the course of or for the purposes of the investigation. It is also the Commissioner's view that where any information draws upon or makes reference to the details or nature of the complaint then this information would be covered by the statutory prohibition on disclosure.

16. During the course of the Commissioner's investigation the complainant advanced arguments as to why he felt that the information should have been disclosed. The complainant has stated that the public authority was wrong to refuse his request because he felt that section 15(1)(c) of the Health Service Commissioner's Act allows for disclosure for the purposes of an inquiry with a view to the taking of proceedings for an offence of perjury. However disclosure in this instance would not be for the purposes of an inquiry with a view to taking of proceedings because information could only be released under this section to an individual or body with the necessary power to conduct such an inquiry. Responding to a freedom of information request is not one of the reasons for disclosure provided for in section 15(1) and therefore the public authority would still not be obliged to respond to the request.
17. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
18. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of or for the purposes of an investigation where it believes that it would be beneficial for the purposes of that investigation. In reaching his decision the Commissioner has not sought to question the public authority's use of its discretion in this regard.

The Decision

17. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - the public authority correctly refused to disclose the information under section 44 of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the public authority breached section 17 of the Act by failing to issue a refusal notice within 20 working days of receiving the request.

Steps Required

18. The Commissioner requires no steps to be taken.

Right of Appeal

19. 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 17th day of May 2007

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

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 10 of the Act 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.”

Section 17 (1) of the Act states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 44 of the Act provides that:

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court.”

Section 15 (1) of the Health Service Commissioner's Act 1993 provides that

“information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed except –

- (a) for the purposes of the investigation and any report to be made in respect of it,
- (b) for the purposes of any proceedings for –
 - (i) an offence under the official secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by virtue of this Act by the Commissioner or any of his officers, or
 - (ii) an offence of perjury alleged to have been committed in the course of the investigation,
- (c) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in paragraph (b),
- (d) for the purposes of any proceedings under section 13 (offences of obstruction or contempt), or
- (e) where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients as permitted by subsection (1B).