

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 10 September 2007**

**Public Authority:** Isle of Wight Council  
**Address:** County Hall  
High Street  
Newport  
Isle of Wight  
PO30 1UD

### Summary

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The complainant requested information concerning the lack of response to correspondence sent to the public authority. Following intervention from the Commissioner, the public authority informed the complainant that it did not hold the information, but this was not within the 20 working days permitted under the Freedom of Information Act 2000 (the Act). The Commissioner therefore decided that the public authority had breached section 10 of the Act. The Commissioner was satisfied that the public authority did not hold the information and therefore found that it had complied with section 1 of the Act.

### The Commissioner's Role

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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 Act. This Notice sets out his decision.

### The Request

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2. On 12 September 2006, the complainant requested the following information:
  - 1) a copy of the formal complaint made by the public authority on behalf of the complainant to Highways regarding a paper copy of an electronic notice supplied in small print,
  - 2) a copy of Highways' response to the complaint, and
  - 3) a copy of an acknowledgement and a response to a letter he sent to [name redacted] of the public authority on 14 December 2005

## The Investigation

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### Scope of the case

3. On 12 October 2006 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 point:
  - The lack of response to the request

### Chronology

#### 19 April 2007

4. On 19 and 23 April 2007, the Commissioner wrote to the public authority to ask whether it had responded to the request.

#### 1 May 2007

5. On 1 May 2007, the public authority informed the Commissioner that the matter surrounding the notice supplied in small print was not dealt with as a formal complaint. It confirmed that it did not therefore hold the information requested on elements 1 and 2 of the request. The public authority did not confirm whether it had received the letter of 14 December 2005, which formed element 3 of the request.

#### 8 May 2007

6. On 8 May 2007, the Commissioner wrote to the public authority to ask whether it had received a copy of the letter of 14 December 2005.

#### 21 May 2007

7. On 21 May 2007, the public authority confirmed that it had checked a log of all its incoming post, which showed that it had not received a letter dated 14 December 2005 from the complainant.

#### 12 June 2007

8. On 12 June 2007, the Commissioner wrote to the public authority asking it to confirm to the complainant that the requested information was not held. The public authority provided this confirmation to the complainant on 21 June 2007.

## Analysis

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### Lack of response

9. The Commissioner is satisfied that the public authority has now responded to the complainant's request of 12 September 2006. However, this response was not issued until 21 June 2007, which is outside the 20 working days permitted in the Act.

### Whether information is held

10. Whilst not the focus of the complainant's initial complaint, the Commissioner has also decided that it would be pragmatic to consider whether the public authority was correct to claim that the information was not held. He has considered the three elements of the complainant's request in turn below.

#### Element 1 - Copy of formal complaint about a small print notice

11. The public authority has informed the Commissioner that it received a telephone call from the complainant on 31 August 2006. He complained that he had received a notice in a standard size font rather than enlarged font. He stated that he wanted the telephone call to be treated as a formal complaint.
12. The public authority has stated that it apologised to the complainant for the provision of the notice, but has confirmed that the matter was not treated as a formal complaint.
13. The Commissioner is therefore satisfied that the information in relation to this element of the request is not held.

#### Element 2 - Response to the complaint

14. As outlined above, the Commissioner accepts that the public authority did not treat the complainant's dissatisfaction with the notice in small print as a formal complaint. As no formal complaint was made to the public authority's Highways Department on the complainant's behalf, it was not possible for the Highways Department to respond to such a complaint.
15. The Commissioner is satisfied that the information in relation to this element of the request is not held.

#### Element 3 – Acknowledgement and response to letter of 14 December 2005

16. The public authority has informed the Commissioner that it has checked all relevant files and electronic records as well as a log of all incoming post. Following these checks, it has confirmed that it did not receive a letter from the complainant dated 14 December 2005.

17. The Commissioner accepts that the public authority did not receive the letter of 14 December 2005. It follows that the public authority did not acknowledge or respond to this letter and therefore the Commissioner is satisfied that the information in relation to this element of the request is not held.

## The Decision

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18. 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 informed the complainant that the information was not held in accordance with section 1(1)<sup>1</sup> of the Act
19. 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 10(1)<sup>1</sup> of the Act by not informing the complainant that the information was not held within 20 working days

## Steps Required

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20. The Commissioner requires no steps to be taken.

## Other matters

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21. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
22. The public authority has clearly breached the 20 working day response time in relation to this request. The Commissioner would like to remind the public authority to ensure that future requests are responded to within 20 working days. This breach has been recorded and enforcement action may be considered should similar breaches occur in the future.

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<sup>1</sup> See legal annex for relevant extract of legislation

## Right of Appeal

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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](mailto: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 10<sup>th</sup> day of September 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

**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.”

**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.”