

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 23 June 2008

**Public Authority:** Department for Work and Pensions  
**Address:** The Adelphi  
1-11 John Adam Street  
London  
WC2N 6HT

#### Summary

The complainant made a request to The Pension Service for advice referenced in earlier correspondence to him from the authority. The Pension Service explained to the complainant that it did not hold a copy of the advice but that the advice was held by the Parliamentary and Health Ombudsman, The Pension Service suggested the complainant redirect his request. The Commissioner has investigated and is satisfied that The Pension Service does not hold a copy of the advice.

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#### 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

#### The Request

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2. The Commissioner notes that under the Act The Pension Service is not a public authority itself but is in fact an executive agency of the Department for Work and Pensions which is in turn responsible for The Pension Service. The public authority in this case is therefore the Department for Work and Pensions although, for the sake of clarity, this decision notice refers to The Pension Service as if it were the public authority.
3. The complainant, on 22 November 2006, made the following request for information to The Pension Service (TPS):

*“At the end of this letter reference is made to professional advice from an independent actuary on the financial assumptions underlying the actuarial basis for the Pension Services calculations, which he considered to be more optimistic than he would have used in the current economic and investment conditions.*

*Would you please arrange to send me a copy of this professional advice since I am concerned that it is impossible to achieve an interest rate of 23% as required by the amount of compensation I have received.*

4. The request refers to an earlier letter from TPS in which an officer of TPS states:

*“The Ombudsman sought professional advice from an independent Actuary. That Actuary suggested that the financial assumptions underlying the actuarial basis for the Pension Service’s calculations (referred as the GAD) factor) while more optimistic than he would have used in the current economic and investment conditions probably fell within a range most actuaries might consider reasonable. He concluded that The Pension Service’s approach to calculating redress was reasonable.”*

5. TPS responded on 30 November 2006 informing the complainant that the Parliamentary and Health Service Ombudsman (PHSO) requested advice from an independent actuary specific to the circumstances of an individually named customer. It was therefore unable to forward the advice and should not have made any reference to advice requested by the PHSO.
6. The complainant was dissatisfied with this response and wrote to the Commissioner on 16 December 2006.
7. Following communication with the Commissioner TPS provided a further response to the complainant on 2 April 2007. This letter explained that the Department for Work and Pensions (DWP) is not the owner of the information contained in the advice and that it does not hold a copy of the advice. TPS suggested to the complainant to re direct his request to PHSO.
8. The complainant requested an internal review of this decision and TPS responded on 16 May 2007. TPS explained that it had established that the officer who referenced the report in its earlier letter had been made aware of the report during verbal discussions with a Departmental policy team. However, TPS confirmed that no copy of the advice is held.

## **The Investigation**

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### **Scope of the case**

9. On 28 August 2007 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 if the information requested is held by TPS.

## Chronology

10. The Commissioner began his investigation on 17 April 2008 by writing to TPS to ask further detailed questions to establish if the information is held. The Commissioner also wrote to the complainant to ascertain if, as suggested by TPS, he had redirected his request to PHSO.
11. TPS responded on 22 May 2008 and explaining in detail why the information requested is not held.

## Analysis

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### Procedural matters: Section 1 'General Right of Access'

12. Section 1 requires that any person making a request for information is entitled to be informed by the public authority if the information is held and if so to have that information communicated to them.
13. The complainant's request stems from a reference made to him in a letter dated 23 June 2005 from TPS in which an officer of TPS made reference to advice sought by the Ombudsman from an actuary into financial redress. TPS explained that the advice was sought by the PHSO from an independent actuary in relation to the specific circumstances of a named customer. It went on to explain that TPS is not the owner of the report and does not hold a copy. It also explained that the officer who wrote to the complainant in June 2005 was made aware of the report during verbal discussions with a departmental policy team.
14. During the course of the Commissioner's investigation TPS explained that an investigation was carried out (in March 2007) by a Customer Service Manager in the National Pension Centre, Parliamentary and Customer Service Team who ascertained that the advice in question was commissioned by the Parliamentary Commissioner for Administration (PCA) and is owned by them. TPS has never seen a copy of the report and PCA has not provided a copy of it to TPS.
15. In May 2007, when the internal review was being conducted, a Customer Service Manager spoke to the officer who wrote the June 2005 letter. He stated that he had been made aware of the advice during a verbal conversation with a member of the departmental policy team but confirmed that an actual hard copy of the document was never in his possession or the possession of anyone involved in the complainant's case or the policy team itself.
16. TPS explained that due to the passage of time it would be difficult to establish to which case the advice related as the June 2005 letter made no reference to the case or the title given to the advice received from the actuary.

17. Section 16 requires a public authority to offer advice and assistance to complainants. Where a public authority conforms to the provisions of part II of the section 45 Code of Practice in relation to the provision of advice and assistance, it will be held to have complied with section 16. TPS further explained that it had informed the complainant that he should redirect his request for advice to the PHSO. This is in line with its duties under the s45 Code of Practice.
18. The Commissioner asked TPS to explain what searches it had undertaken in order to establish whether it holds the requested information and to explain if the information was ever held. In light of the responses as detailed above the Commissioner is satisfied that the information requested is not held by TPS and that by informing the complainant of this TPS complied with the requirements of section 1 (1) (a) of the Act.

## The Decision

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19. 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:
  - i. TPS complied with the requirements of section 1(1)(a) by informing the complainant that the requested information is not held.
20. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - ii. TPS breached the requirements of section 10(1) by failing to inform the complainant that the requested information was not held within twenty working days of receipt of the request.

## Steps Required

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21. The Commissioner requires no steps to be taken.

## Right of Appeal

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21. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 23rd day of June 2008**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## **Legal Annex**

### **General Right of Access**

**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 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## **Time for Compliance**

**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.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for

the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”