

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 29 July 2008

**Public Authority:** University of Oxford  
**Address:** University Offices  
Wellington Square  
Oxford  
OX1 2JD

### Summary

---

The complainant made a request for information for some documents that were referred to in a letter from the public authority to the Inland Revenue on 2 August 1977. The public authority replied that it did not hold these documents. The public authority in its internal review carried out a further search and came to the same conclusion. However it later located a small amount of information that was within the scope of the request which it provided to the complainant after its internal review. The Commissioner has concluded that the public authority breached section 1(1)(a) in denying that it held relevant information. It also breached section 10(1) in failing to comply with section 1 within twenty working days of the request and section 1(1)(b) in failing to provide the relevant material by the completion of the internal review. He has concluded that on a balance of probabilities the public authority does not hold any further information relevant to the request.

### The Commissioner's Role

---

1. The Commissioner's role 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 public authority in this case is the University of Oxford. The Oxford University Press (OUP) is a department of the University and therefore information held by it is held by the University for the purposes of the Act. In this case the Commissioner understands that if any information within the scope of the

complainant's request were held by the public authority it would be within the OUP records.

3. The complainant, after making a similar request to the public authority made a second request for information as a result of the full response to the first. This second request is what the Commissioner has focused his investigation on.
4. This request was made on 13 July 2007. The complainant referenced a letter written by a former employee of the public authority that suggested further information was held by the OUP in 1977 and asked for the following information in accordance with section 1 of the Act:

*'Copies of all and any correspondence that passed between the University (Press) and the Inland Revenue relating to the [Oxford University Press] OUP's application for tax exemption made in 1952 (including 'the ruling') and on the 'several occasions' previously.'*

5. On 13 August 2007 the public authority replied that it did not hold documentation that related to the request:

*'We have examined our archives and have found no correspondence between the Press and the Inland Revenue in or before 1952 relating to an application by the Press for tax-exemption. Despite a careful search, we have been unable to locate the files between 1940 and 1951.'*

6. On 16 August 2007 the complainant requested an internal review. On 10 September 2007 the public authority confirmed that it did not believe it held documentation that related to the request:

*'OUP has undertaken a further careful search of its archives but is unable to find any correspondence between it and the Inland Revenue over an application for tax exemption dating from 1952 or before.'*

## The Investigation

---

### Scope of the case

7. The complainant specifically asked the Commissioner to consider whether the public authority does hold information relevant to his request and also whether the public authority has responded to his requests in a timely manner.

### Chronology of the case

8. On 22 September 2007 the complainant wrote to the Commissioner and asked him to investigate if the public authority did hold the requested information and were wrongly denying him access to it. On 12 February 2008 the case was allocated and the Commissioner began to investigate his complaint.

9. On 12 February 2008 the Commissioner wrote to the complainant, apologised for the delay and indicated the scope of the investigation.
10. On 12 February 2008 the Commissioner wrote to the public authority and asked a series of questions about how the archives of the OUP work, the procedure relating to locating information generally and in relation to the complainant's requests, its retention policy and an explanation about the likely destination of the information that was requested given that it was available in 1977.
11. On 4 March 2008 the complainant wrote to the Commissioner and indicated that there was some confusion in relation to the complainant's separate complaint concerning another public authority. The Commissioner wrote on 7 March 2008 to update the complainant about this complaint, to apologise for the delay in allocation and to resolve the confusion.
12. On 13 March 2008 the public authority provided detailed responses to the Commissioner's enquiries of 12 February 2008. In that letter it indicated that subsequent to the internal review dated 10 September 2007, a letter was identified which fell within the scope of the request. This was discovered when staff were carrying out an unrelated activity and was provided to the complainant.
13. On 27 March 2008 the Commissioner wrote to the complainant indicating in detail the responses he had received from the public authority to his enquiries and informing him that he was satisfied that on the balance of probabilities the public authority did not hold information other than the letter mentioned in the previous paragraph any more. The Commissioner invited the complainant to provide submissions about why he thought otherwise.
14. On 30 March 2008 the complainant wrote to the Commissioner asking him if he had contacted the source of the letter mentioned in paragraph 4 above and provided the contact details of the source. He also asked whether the Commissioner had asked the public authority if it had asked the source if he knew where the information could be found.
15. On 3 April 2008 the Commissioner responded to the complainant. He informed him that the Commissioner does not generally consult third parties as part of his investigation but that he may consider if it would have been reasonable for the public authority to do so. The Commissioner informed the complainant that he would ask the public authority if it had consulted the third party when trying to locate the requested information. If it had not he invited submissions about why it was felt that this would be an unreasonable step for the public authority to take.
16. On 3 April 2008 the Commissioner called the public authority to request submissions on the points above. On 4 April 2008 the public authority called back and said it had not and provided reasons why it felt consultation with the third party would have been unreasonable.
17. On 4 April 2008 the Commissioner called the complainant and informed him that the University had not contacted the source and that it had explained why in its view it would have been unreasonable to do so. He also invited the complainant

to make further submissions about why he felt the University held his information. He consolidated what was said on the phone in a letter dated 7 April 2008.

18. On 5 April 2008 the complainant wrote to the Commissioner providing his further submissions to his letter of the 27 March 2008. The complainant expressed that he did not believe that the public authority had lost 'such self evidently important papers' and that he suspected they either held it or had destroyed it in response to his request. He did not provide further evidence however.
19. On 19 April 2008 the complainant wrote to the Commissioner informing him that while he did not believe the University were being candid with the Commissioner he did not have any definitive proof in this case. He also informed the Commissioner that he would conduct his own investigation into archiving methods at OUP to find discrepancies.

### **Findings of fact**

20. When OUP retains old correspondence it holds it in the Oxford University Press' archive.
21. The correspondence in the archive dates from 1668 and the collection covers approximately 10 miles of shelving but is far from complete.
22. OUP did not have a records manager until an archivist took over the role informally in the 1950s.
23. Systematic listing and preservation of the collection at OUP by professionally trained staff did not begin until the 1980s.
24. The OUP archive database was set up in about 1990 and work has continued since then to list new file material deposited by the business. Most material before that date has either been incorporated into the database or listed by hand.
25. OUP does have a backlog of material not yet incorporated into the database and not listed by hand. Indexing this material, whether electronically or by hand, is a time-consuming process, which could not be accelerated without the provision of considerable extra resources.
26. OUP does not have a retention policy in relation to old correspondence. The closest thing it has is OUP Archive's Deposit Guidelines, which does not mention information of the type requested in this case.

### **Analysis**

---

#### **Section 1(1)**

27. The Commissioner has focused on whether the public authority holds any information other than the letter sent to the complainant after the internal review.

- In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities, the information is held.
28. The Commissioner asked detailed questions about how information is held at the public authority, the answers to this part of his investigation are detailed above at paragraph 20 to 26.
  39. The Commissioner then went on to ask how the public authority generally searches for information and what it did in relation to answering the complainant's first request.
  30. The public authority replied that key words and phrases from the request were fed into the archive database by the OUP archivist, paper lists were checked, and the relevant box files retrieved. The Press Group's Legal Director then reviewed the box files to identify the requested material. The public authority also informed the Commissioner that the same initial steps were taken on receipt of the complainant's second request to which the complaint relates.
  31. The Commissioner also asked what 'the further careful search of the archives' entailed which was referred to in the internal review letter dated 10 September 2007.
  32. The public authority replied to the Commissioner that:

*"A "further careful search of the archives" involved OUP's archivist checking whether any relevant files were still in the backlog of material referred to above and OUP's Group Legal Director reviewing and re-reviewing the box files retrieved by OUP's archivist."*
  33. The Commissioner also enquired if the OUP had a document retention policy. He was provided with the equivalent OUP Archive's Deposit Guidelines, which do not indicate that the documentation ought to be held.
  34. The Commissioner asked if the OUP held a record of the destruction of the information but it replied that it did not.
  35. The Commissioner also asked the public authority, given that the letter previously mentioned indicated that it had the information to hand in August 1977, whether it could explain what happened to the information. The public authority responded that because of the lack of record keeping at that time it could not.
  36. In relation to the information disclosed to the complainant after the internal review the public authority explained that it was found in a file named "System of Finance". It did not think at the time that relevant information would have been held in that file. It was only located as a result of work on an unrelated activity.

The Commissioner notes that in any event it was belatedly identified and sent to the complainant. He also recognises that other material within the backlog of information not yet archived was considered by the public authority as part of its searches.

37. Notwithstanding the small amount of information found after the internal review, given the detailed searches conducted and the age of the information, the Commissioner informed the complainant on 27 March 2008 that he felt that on the balance of probabilities the public authority did not hold any further information within the scope of the request. He invited the complainant to make further submissions if he continued to disagree.
38. The complainant replied to the Commissioner asking him if he had contacted the source of the letter which indicated the material was held in 1977. He provided the contact details of the former employee who was the author of the letter. He also asked whether the Commissioner had asked the public authority if it had asked the former employee if he knew where the information could be found.
39. As explained previously the Commissioner does not generally consult private third parties when carrying out his investigations. However he was willing to ask the public authority whether it had taken such a step.
40. The Commissioner asked the public authority and it informed him that it had not contacted the former employee directly. In support of why it was reasonable not to it submitted the following points:
  1. The former employee had been retired from the OUP for twenty years.
  2. The information requested related to information he had accessed thirty years ago and it was unlikely that he would recall it after such a time.
  3. The OUP had already spent time equivalent to the costs limit of the Act looking for this information.
  4. The OUP archiving system has considerably developed in the twenty years since the former employee's retirement as outlined in paragraphs 23 to 25 in this notice.
41. The Commissioner agrees that the public authority was reasonable in not consulting its former employee in this case.
42. The Commissioner also invited the complainant to provide further evidence of why he believed that the public authority holds the information. The complainant provided submissions on 5 April 2008 and 19 April 2008 but while the Commissioner acknowledges the complainant was unhappy with the result of his investigation there was no further evidence that the public authority holds the requested information.
43. The Commissioner recognises that some information within the scope of the request was located after the internal review was completed. He accepts that in view of the fact that this information was located after he was informed that no material was held, it is understandable that the complainant believes that further information would be held. The Commissioner also notes that the archive dates



back to 1668 and that it is not unreasonable for the complainant to therefore expect that material relating to the significant issue of tax exempt status dating from 1950 might be held. However, it is not necessarily the case that simply because some material has been retained all recorded information on the subject must have been. The Commissioner has concluded that taking into account the detailed searches carried out and on the balance of probabilities the public authority does not hold further information within the scope of the request.<sup>1</sup>

44. In light of the Information Tribunal Decision in *King v Department for Work and Pensions* [EA/2007/0085] the Commissioner now determines whether there have been procedural breaches at the time of completion of the internal review and if there has been no review, then at 20 working days from the date of the request.
45. Section 1(1)(a) provides that a public authority must confirm or deny whether information within the scope of a request is held within twenty working days unless an exemption applies. In this case the public authority incorrectly denied holding any information as it later transpired, after completion of the internal review, that in fact it did. It therefore breached section 1(1)(a) in this regard. In failing to supply the relevant information by completion of the internal review the public authority also breached section 1(1)(b). However the Commissioner is satisfied that no further information is held. He has not ordered any remedial steps in this case.

## Section 10

46. In failing to provide the information that it did hold which was within the scope of the request within twenty working days the public authority breached section 10(1).
47. In his letter to the Commissioner dated 22 September 2007 the complainant asked him to consider the amount of time the public authority took to respond to his request for internal review. The Commissioner has made further comments about this issue in the other matters section below.

## The Decision

---

48. The Commissioner has decided that the public authority breached section 1(1)(a) in denying that it held relevant information. After processing the request it located a letter which was in fact within the scope of it.

---

<sup>1</sup> Although the public authority did not seek to rely upon section 12, the Commissioner notes that even if he had concluded that further information was likely held, he considers that searching the public authority's records further to confirm whether that was the case would have exceeded the appropriate limit in section 12 of the Act. This provides that public authorities can refuse to comply with section 1(1)(a) if locating the information would exceed the appropriate limit. In this case, the limit for the public authority would have been £450 based on a cost of £25 per hour.

It also breached section 10(1) in failing to comply with section 1 within twenty working days of the request and section 1(1)(b) in failing to provide the relevant material by the completion of the internal review.

However, the Commissioner has further concluded that on a balance of probabilities the public authority does not hold any further information of relevant to the request.

## Steps Required

---

49. The Commissioner requires no steps to be taken.

## Other matters

---

50. In relation to the internal review the public authority took eighteen working days. While there is no time limit specified in the Act for an internal review to be done, the section 45 Code of Practice outlines that the complainant must be informed of a target time and this must be reasonable in the circumstances. The Code of Practice can be found at:  
<http://www.dca.gov.uk/foi/reference/imp/imp/codepafunc.htm>
51. The Commissioner has published Good Practice Guidance which states that in most cases he would expect an internal review to be completed within 20 working days. He recognises that in some cases it may take longer but in no case does he consider it reasonable to take longer than 40 working days. In line with this guidance he is satisfied that in this case eighteen working days was a reasonable amount of time in which to complete the internal review.



## Right of Appeal

---

52. 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)

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 29<sup>th</sup> day of July 2008**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## **Legal Annex**

### **Section 1 - General right of access to information held by public authorities**

- (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.

### **Section 10 - Time for compliance with request**

- (1) 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.

...