

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 July 2008

Public Authority: Commission for Social Care Inspection
Address: 33 Greycoat Street
London
SW1P 2OF

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to the Commission for Social Care Inspection (the "CSCI") for a copy of a care report for the Cottage Christian Nursing Home (the "CCNH") dated 17 July 2002. The Commissioner's decision is that the CSCI breached section 1(1)(a) of the Act in failing to deny that it holds a report of the date specified by the complainant in his request. The Commissioner is satisfied that the CSCI does not hold the information requested and therefore that it does not have an obligation to provide it to the complainant under section 1(1)(b) of the Act. The Commissioner has also found that the CSCI did not comply with the requirements of section 10 of the Act, in that it did not respond to the complainant's request within twenty working days.

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. In a letter dated 4 October 2007 the complainant made a request to the CSCI for a copy of a care report for the CCNH dated 17 July 2002. On 17 October 2007 the CSCI acknowledged the complainant's request. On 18 October 2007 the CSCI provided the complainant with a copy of a care report dated June 2003. On 25 October 2007 the complainant sent a letter to CSCI pointing out that the June 2003 report was not the report he had requested on 4 October 2007.
3. In a letter to the complainant dated 7 December 2007 the CSCI stated that there was no inspection carried out of the CCNH in June 2002 (this was a

typing error as it should have referred to July 2002). The CSCI did however divulge that their records showed that an inspection of the CCNH was carried out in the October of 2002.

4. In a letter dated 11 December 2007 the complainant brought to the CSCI's attention a reference contained within the June 2003 report to an inspection having been carried out on 17 July 2002 of the CCNH. The CSCI responded on 14 December and explained that they can only assume that the inspector who wrote the June 2003 report had made a mistake as their systems showed that an inspection took place in October 2002 but that no inspection was carried out on 17 July 2002.
5. On 19 December 2007 the complainant wrote to the CSCI and requested that they conduct an internal review. On 8 April 2008 the Information Governance Manager for the CSCI responded to the complainant's request and confirmed that an inspection report dated 17 July 2002 was not held as an inspection was not carried out at that time. It was further clarified that the reference to an inspection having taken place on 17 July 2002 in the June 2003 report was an error.

The Investigation

Scope of the case

6. On 15 November 2007 the complainant contacted the Commissioner to complain about the way his request for information of 4 October 2007 had been handled. The complaint was not progressed at this stage because the complainant had not provided all of the requested documentation to the ICO. The complainant repeated his complaint to the ICO on 14 March 2008 after he had requested an internal review and had still not received a response from the CSCI. The complainant specifically asked the Commissioner to investigate whether the CSCI's statement that it did not hold the information was correct. The Commissioner has therefore reviewed the CSCI's compliance with section 1(1) of the Act.
7. The Commissioner also considered whether the CSCI had responded to the complainant's request in compliance with section 10 of the Act.

Chronology

6. The Commissioner contacted the complainant on 27 November 2007 and asked for a copy of his initial request to the CSCI, the CSCI's initial response, the complainant's request for an internal review and the CSCI's review of the decision. On 30 November 2007 the initial request and initial response was provided to the Commissioner by the complainant. At this point the complainant had not made a request to the CSCI to conduct an internal review. Following the

- complainant's request for an internal review on 19 December 2007, the CSCI provided the ICO with a copy of its response on the 8 April 2008.
7. The Commissioner contacted the CSCI on 3 June 2008 in order to discuss its handling of the complainant's request and to establish whether the CSCI held the information covered by the complainant's request. The Commissioner asked the CSCI to provide him with a copy of the CSCI's records of when inspections had been carried out for the CCNH. He also enquired whether the CSCI is subject to any policy or legal obligations as to the frequency of when inspections should be carried out.
 8. The CSCI provided the Commissioner with a copy of their database which records when inspections were carried out for the CCNH. The database does not show that an inspection was carried out on 17 July 2002 which is the basis of the complainant's request.
 9. Furthermore the CSCI explained to the Commissioner that at the relevant time (2002-2003) it was required to carry out two inspections (one announced and one unannounced) in every 12 month period under Part III section 6(1)(a) of the National Care Standards Commission (Fees and Frequency of Inspections) Regulations 2001. This legislation is now outdated but did apply during the relevant time period. The CSCI also confirmed that the 12 monthly period ran from the date on which the CCNH was first registered which was 26 April 1995. Therefore the CSCI were required to carry out two inspections from 26 April 2002 to 25 April 2003 of the CCNH. The database provided by the CSCI shows that an announced inspection took place on 21 October 2002 and an unannounced inspection took place on 7 January 2003. It does not record that any inspection was carried out on or around 17 July 2002. The database does show that one further inspection was carried out within that 12 month period on 23 April 2003 as a result of a complaint.
 10. After carefully considering the information provided by the CSCI the Commissioner wrote to the complainant on 4 June 2008 and provided him with the details of the CSCI's response. He explained that the CSCI's database recording when inspections had been carried out confirmed that no inspection took place on 17 July 2002. He also clarified that the CSCI was under a legal obligation to carry out two inspections during the period 26 April 2002 and 25 April 2003. The Commissioner explained that an announced inspection took place on 21 October 2002 and an unannounced inspection took place on 7 January 2003. The complainant was informed that in cases where a public authority is alleging that the requested information does not exist, the burden of proof to be applied is not certainty but on the balance of probabilities. On this basis the complainant was asked whether he wished to withdraw his complaint. The complainant was also asked to inform the Commissioner if he disagreed with the CSCI's response, and whether he could supply any further information to show that the CSCI did indeed hold the requested information.
 11. The complainant responded on 6 June 2008 and informed the Commissioner that he had no intention of withdrawing the complaint. The complainant did not submit

- any further evidence to suggest that the information requested was held by the CSCI.
12. In a letter dated 19 June 2008 the Commissioner informed the complainant that he would begin to draft a decision notice in relation to his complaint.
 13. On 30 June 2008 the Commissioner contacted the CSCI to make a couple of final queries in relation to the case. The Commissioner asked the CSCI to explain how the complainant had known about and therefore made a request for a 17 July 2002 report before the CSCI had disclosed the June 2003 report which made reference to a 17 July 2002 inspection? The CSCI explained that on 19 July 2007 the complainant requested several inspection reports from the CSCI's Customer Service Team. The reports were dated 21 October 2002, 17 June 2003, 16 December 2004 and 21 May 2005. The CSCI's document request database showed that a copy of the 17 June 2003, 16 December 2004 and 21 May 2005 were provided to the complainant on 23 July 2007. The complainant therefore had a copy of the 17 June 2003 report which referred to a 17 July 2002 inspection before he made his request for that report on 4 October 2007. The Commissioner notes that the complainant was therefore provided with the same report twice.
 14. Finally the Commissioner asked why the June 2003 report referred to an inspection of 17 July 2002 and 3 January 2003, but the CSCI's database recorded that inspections took place on 21 October 2002 and 7 January 2003? Whilst the CSCI had previously explained that the 17 July 2002 reference was due to human error it was asked to explain the basis of the 3 January 2003 reference? The CSCI stated that similarly the reference to a 3 January 2003 report was due to human error and that the database was correct in that the inspection took place on 7 January 2003.

Analysis

Procedural matters

Section 1

15. Section 1(1) of the Act states 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.”*

16. The Commissioner has considered whether the CSCI has complied with section 1(1)(a) of the Act in failing to deny that it held a report of the date specified in the complainant's request. On 18 October 2007 the CSCI provided the complainant with a copy of a care report dated June 2003. On 25 October 2007 the

complainant sent a letter to CSCI pointing out that the June 2003 report was not the report he had requested on 4 October 2007. In a letter to the complainant dated 7 December 2007 the CSCI stated that there was no inspection carried out of the CCNH in June 2002 and therefore that it did not hold the information requested. In the Commissioner's view CSCI were in breach of section 1(1)(a) of the Act in failing to deny that it held the report specified in the complainant's request in its response of 18 October 2007.

17. In considering the matter the Commissioner has also considered whether CSCI holds a report for the date specified by the complainant in his request. The Commissioner has therefore undertaken to consider whether the information requested by the complainant is held by the CSCI.
18. In reaching a decision on this case the Commissioner has considered the CSCI's response set out at paragraphs 8 and 9 above. In particular he has noted that the CSCI has provided him with a copy of the database which records when inspections have been carried out and it does not record that an inspection was carried out on 17 July 2002. The Commissioner has considered that if an inspection was not carried out on 17 July 2002 it follows that the information requested by the complainant does not therefore exist. Furthermore the Commissioner has considered the CSCI's explanation of the legal requirements it was subject to at that time relating to the frequency of inspections. The Commissioner notes that the inspections which the CSCI has confirmed were carried during the relevant period appear to be in accordance with the CSCI's explanation of its statutory obligations in respect of the timing of such inspections.
19. The Commissioner has also noted that the complainant has not been able to provide any evidence to support his belief that this information is held by the CSCI.
20. In reaching a decision the Commissioner was mindful of the Information Tribunal decisions in *Bromley v The Information Commissioner and The Environment Agency (EA/2006/0072)* and *Fortune v Information Commissioner and National Patient Safety Agency [EA/2008/0004]*. The Commissioner considers that on a balance of probabilities having considered the explanation provided by the CSCI, the information requested, namely a care report relating to an investigation carried out on 17 July 2002 is not held.

Section 10

21. Section 10(1) of the Act requires that 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 of the request.
22. The CSCI acknowledged the complainant's request of 4 October 2007 on 17 October 2007. However, the CSCI did not confirm that the information is not held until 7 December 2007. In not confirming or denying until the 7 December 2007 the CSCI's response did not comply with its obligations under section 10 of the Act.

The Decision

23. The Commissioner's decision is that the CSCI breached section 1(1)(a) of the Act in failing to deny that it holds a report of the date specified by the complainant in his request. The Commissioner is satisfied that the CSCI does not hold the information requested and therefore that it does not have an obligation to provide it to the complainant under section 1(1)(b) of the Act.
24. The Commissioner has also decided that the CSCI did not comply with the requirements of section 10 of the Act, in that it did not respond to the complainant's request within twenty working days.

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. 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.

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 3rd day of July 2008

Signed

**Nicole Duncan
Head of FOI Complaints**

**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.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”