

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 March 2009

Public Authority: The Chief Constable of Nottinghamshire Police
'The Police'
Address: Sherwood Lodge
Arnold
Nottinghamshire
NG5 8PP

Summary

The complainant made a request for information relating to police investigations of allegations made against members of staff at Rampton Hospital during the late 1970s. In response to the request the Police issued a fees notice requiring payment of £16,362.50. The Commissioner has determined that the Fees Notice was based on the provisions of section 12 of the Act and not for appropriate charges which could legitimately be made under section 9. The Commissioner finds that Nottinghamshire Police breached the requirements of section 1(1)(b) of the Act. The Commissioner also finds that Nottinghamshire Police breached sections 10 and 17 of the Act by failing to issue a refusal notice subject to section 17 within the time for complying with 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 Background to the Request

2. Following the transmission by Yorkshire Television of 'The Secret Hospital' in 1979, an inquiry was undertaken into the alleged ill-treatment and abuse of patients at Rampton Psychiatric Hospital. This culminated in the publication of Sir John Boynton's Report on Rampton Hospital (1980)*. The allegations were also the subject of a large number of separate and individual investigations carried out by Nottinghamshire Police.

*Report of the Review of Rampton Hospital. London HMSO, 1980 (Cmnd 8073) (Boynton Report).

The Request

3. On 30 September 2005, an Advice Supervisor at Penarth Citizens Advice Bureau made the following request on behalf of the complainant:

The complainant asked to be given... 'all the information in your control relating to the investigation into Rampton Hospital circa 1979, including [a] the number of police officers involved, a copy of the final report and [b] any other information relating to the enquiry.'

4. The Police acknowledged receipt of the complainant's request on 5 October 2005, and on 25 October 2005 it informed her that it would be making its response on 28 November 2005.
5. The Police responded to the complainant's request through the Citizens Advice Bureau on 28 November 2005. This response was to inform the complainant that the Police would provide the information if the complainant paid a fee of £16,362.50. The Police explained that the requested information was contained within 2,618 files containing statements, interview records and actions, and that it would take approximately 654.5 hours to locate and extract the information she is seeking. The complainant was invited to discuss her request with the Police with the purpose of modifying her request to bring it within £450.
6. During the following months the complainant and Police continued to correspond with one another. The complainant did not seek an internal review and none took place.
7. The correspondence concerned the complainant's original request and Police's requirement for the £16,362.50 fee. The complainant continued to assert her rights to information and stressed her objections to the fee. During the following months the complainant continued to correspond with the Police. She attempted to amend her original request in an attempt to bring it within the appropriate limit.

The Investigation

Scope of the case

8. On 11 July 2007 the complainant contacted the Commissioner to complain about the failure of the Police to provide the information she had requested. She particularly complained about the requirement of the Police for the £16,362.50 fee.

9. The Commissioner noted the absence of an internal review and decided to use his discretion to investigate the complaint without this. His investigation focussed on the request dated 30 September 2005. In his initial response to the complainant the Commissioner dismissed the complaint in relation to undue delay, but after reconsideration of the particular circumstances and fairness to the applicant he decided he would consider this first request as a complaint.
10. The subsequent requests (at paragraph 7) were refinements of the initial request. The refined requests specified information which could potentially be extracted from the Rampton Hospital investigation files. The Police treated the refined requests as restatements of the original request, i.e. for 'all the information' in its control and considered that this included the more specific elements. The Police did not provide the complainant with a specific response in respect of refined requests and these requests were not part of the complainant's complaint to the Commissioner.

Chronology

11. On 5th February 2008 the Commissioner wrote to Nottinghamshire Police about the complaint he had received. The Commissioner's letter focussed on the presumed application of section 12 of the Freedom of Information Act. He asked the Police to confirm whether the requested information was held and questions relating to the activities that it would have to carry out in order to locate, retrieve and extract the information requested. The Commissioner also asked to be sent a randomly selected and representative file which the Police determined as being relevant to the request.
12. The Police responded to Commissioner's letter on 13 March 2008. The Commissioner was sent the sample file he had requested and detailed answers to his enquiries. These answers are outlined in the 'Findings of Fact' section below.
13. On 18 March 2008 the Commissioner telephoned the Police to discuss the contents of the investigation file it had provided with its letter of 13 March 2008. The primary purpose of this conversation was the apparent absence of a clearly identifiable outcome of that investigation. The Commissioner asked the Police to provide him with an account of the activities it had performed in accessing information in relation to his enquiries.
14. On 8 July 2008 the Police responded to the Commissioner's request for information.
15. On 15 July 2008 the Commissioner emailed the Police to enquire about the purpose of its letter of 28 November 2005. The Commissioner asked whether it was meant to be a refusal notice having failed to cite section 12, or a fees notice under section 9.
16. On 22 July 2008 the Police informed the Commissioner that its letter was a fees notice under section 9 of the Act. The Police added that 'should [the complainant] have paid the fee, research would have been undertaken to find an outcome to

the investigation or a final report, as at the time it could not be ascertained if there was a final outcome. Subject to the content, which would have included sensitive personal data, the appropriate exemptions and redactions would have been applied.'

17. The Commissioner wrote to the Police on 8 October 2008. He asked the Police whether it could have provided the complainant with 'all the information' in its control relating to the Rampton Hospital investigations, within the appropriate limit, and, if this was possible, would it have done so?
18. The Police responded to the Commissioner's enquiry on 11 November 2008. the Police stated:

'In theory if the documentation requested was purely a request for all information held and it could be released in its entirety, then this information could have been located and retrieved within the time constraints and cost threshold. Should this have been the case, then hypothetically the information would be available for release to the applicant. However, to compile all the information for the applicant would require all documents held to be photocopied and collated together these documents are of differing sizes and quantities and would take several days to complete this process.

As the information requested contains personal information exemptions would have to be applied and where necessary redactions made. This would take a large amount of time, which I believe would exceed 18 hours to redact all the 2618 documents in existence (I have not made a calculation for this at this time due to each document being of differing size).'

Findings of fact

19. The Commissioner has established the following facts:
 - The Police investigated the Rampton Hospital allegations separately. The investigations were not part of a single investigation and there was no 'operational name'.
 - The police did not write a report which summarised the outcomes of these investigations.
 - The Police hold 2,618 files consisting of 514 interview records and 2,104 witness statements relevant to the complainant's request.
 - The information is held in paper format bound files, located in seven filing cabinets and many boxes at Retford Police Station.
 - There is a hand-written alphabetical index book containing the names of each person who gave statements relating to the allegations – there are 2,104 names

in the book and each person may have made one or more statements. There is a reference number which corresponds to a file holding these statements.

- There is a second index book which lists the suspects who had allegations made against them. These cases have a reference number which allows the relevant file to be located.
- Each investigation file consists of one or more statements concerning allegations against staff of Rampton Hospital. A file may contain a small number of pages or may contain over one hundred pages depending on the nature of the allegations.
- On the front of each file is a sheet recording the statement numbers listed for each of the allegations made for that individual. On the front of some of the files there are hand-written notes which say 'no further action'.
- The files examined by the Commissioner record the names of police officers who were cited as witnesses during the investigations. The number of these officers can therefore be quantified through the examination of the lists of witnesses. The files also record the names of officers who took statements during the investigations. The number of these officers can also be quantified through the examination of all the witness statements. Notwithstanding these records, the files do not record the names of, or numbers of police officers who also may have been involved in the investigations. It is not possible, through the examination of these records to give a categorical number of police officers involved in the investigations falling within the scope of the complainant's request.

Analysis

Section 1 – general right to access information held by public authorities

20. Section 1 of the Act provides that –

(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.

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

21. The Commissioner is satisfied that the Police complied with its obligations under section 1(1)(a) of the Act: The Police informed the complainant that it held the information relevant to her request.

22. The Police did not provide the requested information to the complainant in reliance of a fees notice issued under section 9 of the Act. Where a fees notice is

given to an applicant the public authority is not obliged to comply with section 1(1). However, because the Commissioner has determined that the fees notice was not appropriately applied, he finds that the Police breached section 1(1)(b) of the Act. The status of the fees notice is discussed below at paragraphs 24 to 31 below.

23. The Commissioner has also considered whether the Police could have relied on the provisions of section 12 of the Act. The application of this section also removes the obligation of the public authority to comply with section 1(1) of the Act. His analysis is set out at paragraphs 32 to 42 below. The Commissioner has concluded that section 12 cannot be applied to the complainant's request of 30 September 2005 and consequently the Police again breached section 1(1)(b).

The Police letter to the Citizens Advice Bureau dated 28 November 2005

24. The Commissioner asked the Police to confirm the status of its letter to the Citizens Advice Bureau dated 28 November 2005.
25. The Police informed the Commissioner that the letter was a fees notice under section 9 of the Act.
26. Section 9 provides that:
- (1) A public authority to whom a request for information is made may, within the period for complying with section 1(1), give the applicant a notice in writing (in this Act referred to as a "fees notice") stating that a fee of an amount specified in the notice is to be charged by the authority for complying with section 1(1).
 - (2) Where a fees notice has been given to the applicant, the public authority is not obliged to comply with section 1(1) unless the fee is paid within the period of three months beginning with the day on which the fees notice is given to the applicant.
 - (3) Subject to subsection (5), any fee under this section must be determined by the public authority in accordance with regulations made by the Secretary of State.
 - (4) Regulations under subsection (3) may, in particular, provide—
 - (a) that no fee is to be payable in prescribed cases,
 - (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and
 - (c) that any fee is to be calculated in such manner as may be prescribed by the regulations.
 - (5) Subsection (3) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.
27. Any fee to be charged under section 9 is subject to *'The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004'*.

28. A public authority is able to charge a fee for informing the complainant whether it holds the information and for communicating the information to her. In determining the level of fee to be charged the public authority may take into account, amongst other things, the costs it reasonably expects to incur in terms of reproducing any document containing the information and the cost of postage (or other form of transmission) of that information to the complainant.
29. The Commissioner is satisfied that the 'fees notice' letter of 28 November 2005 is not an appropriate fees notice under section 9 of the Act. He is drawn to this conclusion for the following reasons set out below at paragraph 30.
30. The Police provided its rationale for the proposed fee of £16,362.50. This was based on the factors which are legitimately considered in relation to a determination of the appropriate limit under section 12 of the Act, not on a determination of the likely costs for the allowable activities under section 9.
31. The Police confirm this in its response to the Commissioner's initial enquiry about this complaint. Referring to its 'fees notice', the Police stated:

The request could not be complied with, as it would exceed the cost threshold to retrieve the information requested'.

Section 10 – Time for compliance with the request

32. Section 10 of the Act requires a public authority to comply with its obligations under section 1(1) promptly and in any event not later than the twentieth day following the receipt of the request. Where a public authority has given a fees notice under section 9 it should comply with the request within 20 days following the receipt of the fee. Under section 9(2) the public authority is not obliged to comply with its obligations under section 1(1) unless the fee is paid within 3 months of the fees notice being given to the applicant.
33. The Commissioner finds the Police in breach of section 10 of the Act having failed to issue a valid fees notice under section 9 within the time for complying with the request. .

The Decision

34. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The Police failed to issue a valid fees notice under section 9 of the Act. The failure of the Police in respect of sections resulted in a breach of section 1(1)(b).

35. The Police breached section 10 of the Act by failing to properly respond to the request within the time for compliance.

Steps Required

36. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Nottinghamshire Police is required to provide to the complainant the information specified in her request of 30 September 2005 or must issue a Refusal Notice in accordance to the provisions of section 17.

37. The Commissioner notes that the Police invited the complainant to refine her original request in order to bring it within the appropriate limit. The Commissioner considers that the refined requests should have been treated as new requests and dealt with appropriately under the Act. The Commissioner requires Nottinghamshire Police to identify the complainant's refined requests contained within her correspondence and to comply with those requests or issue a properly constituted refusal notice under section 17 of the Act.
38. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

39. The Code of Practice issued under section 45 of the Freedom of Information Act, requires each public authority to have a procedure in place for dealing with complaints concerning its handling of requests for information. In relation to this complaint the Commissioner noted the absence of such a procedure.
40. Where a complaint cannot be dealt with swiftly on an informal basis, the public authority should provide the complainant with details of its internal complaints procedure and how he or she can contact the Information Commissioner.
41. If the public authority is refusing a request in reliance of an exemption provision, it is obliged under section 17(7) of the Act to notify the applicant of the particulars of its procedure for dealing with complaints or to notify the applicant that it does not have one. The public authority should inform the applicant of the right to complain to the Commissioner under section 50 of the Act if, following the authority's review, he or she is still dissatisfied.

Failure to comply

42. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

43. 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.
Website: 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 24th day of March 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

General right of access to information held by public authorities

Section (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 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”.

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Time for compliance with the request

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 is paid 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.

Refusal of Request

Section 17 (1) provides 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 17(2) provides that –

Where—

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

Section 17(3) provides that –

A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 17(4) provides that –

A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

Section 17(6) provides that –

Subsection (5) does not apply where—

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

Section 17(7) provides that –

A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.