

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 October 2009

Public Authority: Home Office
Address: Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested information about a specific test carried out on a laser speed meter, used for detecting speeding offences. The Home Office responded that it had had no involvement in the test and therefore held no information about it. When the complainant challenged this, the Home Office disclosed a link to an online copy of a report that it had been sent by a third party, which contained information about the test. However, it maintained that it held no other relevant information. The complainant insisted that logic dictated the Home Office would hold more information on the test. The Commissioner decided that, in failing to confirm that it held information covered by the request within 20 working days, and by failing to supply the information which it did hold or apply a relevant exemption within 20 working days, the Home Office breached section 10(1) of the Freedom of Information Act 2000. However the Commissioner decided on the balance of probabilities that the Home Office did not hold any further recorded information which was covered by 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.

Background

2. The Home Office houses the Home Office Scientific and Development Branch, which is responsible for approving the use of speed meters by UK Constabularies.

3. The test which the complainant enquired about (“the Elvington test”) was conducted at the request of a judge, for evidential purposes in connection with a court case.
4. The complainant considers that the results of the Elvington test raise questions about the accuracy of the speed meter, and that this is information which would be of special interest to the Home Office, regardless of whether it was directly involved in the testing.

The Request

5. On 8 May 2008 the complainant submitted the following request:

“This request concerns the testing performed by the Police on a laser speed meter at Elvington airfield on 2 December 2006...

Please provide a copy of the test plan.

Please provide a copy of the results report.

Please provide a copy of the video test results.

Please identify which operating procedures were used for the tests.

Please confirm that the P.C. in question was trained to operate the Speed meter.

Please confirm that the speed meter was a UK type approved model.

Please state the method used to cross check the speed readings delivered by the Speed meter.”

6. On 3 June 2008 the Home Office responded, stating that it had not been involved in the Elvington test and that it consequently held no information about it.
7. On 21 June 2008 the complainant asked for the request to be reviewed, stating that the results of the Elvington test were so significant that logic dictated that some information about it would have found its way into the Home Office’s possession.
8. On 8 August 2008 the Home Office responded, stating that it had been sent, unsolicited, a copy of a report (“the Lee report”) which included some information about the Elvington test. The report had been independently authored and the Home Office had had no involvement in its creation. The Home Office included in its response what it claimed was a link to an independent internet site where a copy of the report could be viewed. In fact it supplied a link to an internet forum which, in one of the posts, contained a link to the web page. Access to the page was contingent upon the reader registering for a free Yahoo account. This is addressed in the “Other Matters” section of this Decision Notice.
9. The Home Office stated that it had consulted several officials and that it was satisfied that the Home Office had had absolutely no involvement in the Elvington tests. Furthermore, it pointed to the fact that the report’s list of attendees did not

include any Home Office officials. The Home Office referred to the report as “Mr Hall’s” report, Mr Hall being a Chief Constable and senior member of ACPO, who was present at the test.

The Investigation

Scope of the case

10. On 8 September 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that he believed the Elvington test would have been of considerable interest to the Home Office, and that he found it inconceivable that it held no further information about it. He pointed to the fact that it held information reported to it by other departments, about matters with which it had had no direct involvement. He also voiced his belief that a separate report on the test existed, written by Mr Hall, a Chief Constable and senior member of ACPO who was present at the test, and that the Home Office must also have a copy of this.
11. The thrust of the complainant’s concern was that the Home Office held information about the Elvington test, in addition to the Lee report, which it had not disclosed. The Commissioner established that the complainant held a copy of the Lee report at the time he submitted his complaint (he enclosed a copy in support of his complaint). The Commissioner has therefore excluded any consideration of the communication of the Lee report to the complainant from the scope of this Decision Notice. It is, however, considered in the Other Matters section of this Decision Notice.

Chronology

12. On 16 June 2009 the Commissioner wrote to the Home Office, setting out the request and the complainant’s concerns about the Home Office’s response. The Commissioner asked the following questions:
 - *“What information the Home Office holds about the December 2006 Elvington testing, other than the report previously mentioned.*
 - *If the Home Office claims that no information is held, please provide information about the extent and scope of any searches that have been conducted to locate possible information. If appropriate, please offer any other reasons to explain why the information would not be held.*
 - *Do you have reason to believe that the information requested by [the complainant] would be held by another public authority to whom a Freedom of Information request could be submitted?”*
13. The Home Office responded on 17 July 2009, addressing each of the three questions.

What information does the Home Office hold about the Elvington test?

14. The Home Office stated that it had no involvement in the testing, and no interest in the results. It reiterated that the only information it held about the test was the Lee report, which included a section on the test.

Information about searches conducted and reasons why the information would not be held.

15. The Home Office stated that the tests it undertook related to devices used in accordance both with manufacturers' instructions and also the ACPO code for their operational use. It had no involvement or interest in tests in which the device was used contrary to instructions. It considered the Elvington test fell into this category.
16. Nonetheless, a search for information about the Elvington test was made of the Home Office Scientific and Development Branch (HOSDB), which has responsibility for approving the use of speed meters by UK Constabularies. This included a search of the Head of Unit's emails (both sent and received) between 2000 and 2008. As the individual responsible for this area of work, any test that was conducted by or involved the Home Office in any way would have been known to him. The search found no information relating to the Elvington test other than that generated in connection with the handling of the complainant's request for information about it.
17. The Home Office explained that the HOSDB was the only unit responsible for testing and licensing speed meters on behalf of the Secretary of State and that as such, information about the Elvington test would not reasonably be expected to be held in any other location within the Department.
18. The Home Office stated that the copy of the Lee report was received unsolicited, and also that it was not until the complainant asked for his request to be reviewed that it realised that the Lee report contained information about the Elvington test. It considered that the report contained information about the speed meter when it was not being deployed correctly. The Home Office had no involvement or interest in such tests and no reason to be aware of their results.

Would the requested information be held by another public authority?

19. The Home Office stated it was unaware of what other public body would be expected to hold the information.
20. On 27 July 2009 the Information Commissioner wrote to the Home Office asking it to clarify the reference in its letter of 8 August 2008 to "Mr Hall's" report, which the complainant had interpreted as meaning that a separate report, authored by Mr Hall, existed. He also asked for clarification as to whether Her Majesty's Court Service ("HMCS") routinely reported information about court cases to the Home Office, as the Elvington test was conducted for evidential purposes in connection with a court case.

21. The Home Office responded on 7 August 2009, categorically stating that it held no separate report on the Elvington test. It also confirmed that HOSDB did not hold any information relating to the Elvington test, reported to it by HMCS. It reiterated that given the subject matter, HOSDB would be the only part of the Home Office which could reasonably be expected to hold such information.
22. The Commissioner asked for further clarification as to precisely why Mr Hall's name had been mentioned in connection with the report, on 12 October 2009. The Home Office advised that the reference to Mr Hall in its letter of 8 August 2008 was a typographical error, and that it should have read as "Mr Lee's" report. It clarified that it had no knowledge as to whether Mr Hall had written a separate report based around his observations of the test.

Findings of fact

23. The Lee report can be viewed on an internet website. The author himself includes a link to it in a post on the internet forum to which the Home Office directed the complainant.
24. The complainant has a copy of the Lee report.

Analysis

Substantive Procedural Matters

Is further relevant recorded information held?

25. 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 *Linda Bromley & Others and 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.
26. The Commissioner made detailed enquiries of the Home Office on 16 June 2009 and 27 July 2009. These enquiries were focussed on establishing whether there were reasons for believing that further information was held and the process that was undertaken by the Home Office to locate any further information.

Reasons for believing further information is held/not held

27. The complainant did not offer any proof that the Home Office held further information about the Elvington test. His arguments are based around conjecture that, as the regulating agency, the Home Office would be likely to hold information about the testing of the device, and from his concern that it was attempting to ignore information which called into question the accuracy of that device.

28. The Home Office stated that to its knowledge the Elvington test focussed on the use of the speed meter other than in accordance with manufacturers' instructions and ACPO guidance, and that it simply had no interest in participating in or knowing of the results of such tests. It pointed to the fact that no Home Office officials were present at the testing, and that there is no routine reporting mechanism between the HOSDB and HMCS (which requested the testing for evidential purposes in connection with a court case).

Attempts made to locate any further information

29. Setting to one side its claim that no further information was held, the Home Office nevertheless conducted a search of HOSDB, and could find no further information about the Elvington test, except that which had been generated in connection with the complainant's request. The HOSDB is the unit with responsibility for testing and licensing speed meters on behalf of the Secretary of State and as such the requested information would not reasonably be expected to be held in any other location within the Department.

Balance of probabilities

30. The Commissioner has considered the above information and is content to determine that on the balance of probabilities the Home Office holds no further recorded information that is relevant to the complainant's request.

Procedural Requirements

31. In failing to confirm that it held information which was disclosable within twenty working days, and in failing to provide that information to the complainant or apply a relevant exemption within twenty working days, the Commissioner finds the Home Office committed two breaches of section 10(1).

The Decision

32. 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 does not on the balance of probabilities hold any further relevant recorded information in respect of the Elvington test and is therefore not obliged to provide any further information under its obligations found in section 1(1)(b).*
33. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- *the Home Office failed to confirm that it held some relevant recorded information within twenty working days, thereby breaching section 10(1);*

- *the Home Office failed to provide the relevant recorded information it did hold, or apply a relevant exemption, within twenty working days, which is also a breach of section 10(1).*

Steps Required

34. The Commissioner requires no steps to be taken.

Other Matters

35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Communicating the disclosable information to the complainant

36. Having ascertained that it held information covered by the request, in its letter of 8 August 2008 the Home Office provided the complainant with a web page address at which he was told he could view the Lee report:

*"I have copied a link to the internet page on which it can be found -
<http://forums.pepipoo.com/lofiversion/index.php/t29596.html>"*

37. In fact, the link directed the complainant to an internet forum thread where, contained within one of the posts, there was a link to a separate web page which housed the Lee report. The web page was contained in a restricted access area of Yahoo. In order to access the page, it was necessary to be a member of Yahoo. Membership was free, but required the provision of personal data (name, gender, date of birth and email address) for registration purposes.
38. It is not clear whether the complainant already had a Yahoo account, or whether he was forced to register in order to view the Lee report. However, since he was clearly in possession of a copy of the Lee report at the time he complained to the Commissioner, this has not been addressed in the body of the Decision Notice. It is unlikely, however, that the Information Commissioner would consider the approach adopted by the Home Office to be compliant with section 1(1)(b) (specifically that information has been "communicated" to a person making a request).
39. The Commissioner considers that a more appropriate response would have been for the Home Office to have cited the exemption at section 21 (which applies in respect of information which is reasonably accessible to the applicant, otherwise than under section 1) and taken steps to ensure that accessing the Lee report via a web page for which he may need to register was acceptable to the complainant. Furthermore, it should have ensured that it provided clear instructions as to how to access the report. The Commissioner considers that the information given to

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Information Commissioner's Office

the complainant was not sufficiently precise as it was not a direct link to the report.

Right of Appeal

40. 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 20th day of October 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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.'

Section 21(1) provides that –

'Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.'

Section 21(2) provides that –

'For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.'*

Section 21(3) provides that –

'For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.'