

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 October 2009

Public Authority: Ministry of Justice
Address: Selborne House
Victoria Street
London
SW1E 6QW

Summary

The complainant requested information from the public authority and did not receive a response within 20 working days. Two months after the request was originally made the public authority provided a response apologising for the delay however this response was later found to be related to a previous request. Following the complaint then made to the Information Commissioner the public authority eventually provided a refusal notice some five months after the initial request stating that the information was already available in the public domain and citing the exemption in section 21 of the Act. The Commissioner has found that the public authority has breached sections 17(1)(a)(b) and (c) of the Act in failing to issue a refusal notice prior to his involvement.

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. On 20 May 2009 the complainant made the following request for information in accordance with the Act:

"I would wish to request under the provision of the Freedom of Information Act copies of notifications to the Secretary General of the measures taken to ensure conformity of the law in respect of the European Convention on the Legal Status of Children Born out of Wedlock, article 9 and 10, in respect of the rights of illegitimate children in succession to the Crown."

3. The complainant's request was acknowledged by the public authority via email on 20 May 2009.
4. On 23 June 2009 the complainant emailed the public authority stating that no response in light of the request had been received.
5. On 06 July 2009 the complainant emailed the public authority wishing to complain about the delay of the public authority in responding to the request.

The Investigation

Scope of the case

6. On 07 July 2009 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 the failure of the public authority to respond to the information request.

Chronology

7. On 07 July 2009 the complainant contacted the Information Commissioner wishing to make a formal complaint against the public authority.
8. On 21 July 2009 the public authority wrote to the complainant apologising for the delay in responding citing an extensive search for the information requested as the cause and that the relevant file could not be found.
9. On 28 July 2009 the Commissioner wrote to the public authority informing it of the complaint made against it and reminding it of its duty to respond within 20 working days. He instructed the public authority to respond to the complainant (providing a copy of the response to the Commissioner's Office) within ten working days.
10. On 31 July 2009 the public authority acknowledged the complaint made against it to the Commissioner's Office.
11. On 11 August 2009 and 17 August 2009 the complainant confirmed to the Commissioner that no response had been provided by the public authority following the Commissioner's instruction to respond within ten working days.
12. On 18 August 2009 the Commissioner wrote to the public authority further to a telephone call the same day informing them that the complainant had confirmed there had been no response received and asked the public authority to clarify their latest position.
13. On 20 August 2009 the public authority wrote to the Commissioner making him aware that a response had been provided to the complainant on 21 July 2009

- regarding the information request made on 20 May 2009 and attached the response.
14. On 24 August 2009 the complainant contacted the Commissioner to inform him that the response from the public authority dated 21 July 2009 related to a previous request made on 05 May 2009. Therefore the request of 20 May 2009 had not been responded to.
 15. On 24 August 2009 the Commissioner responded to the complainant. The public authority had correctly referred to the case reference details of the information request of 20 May 2009 but had provided the response to a request of 05 May 2009 made to the same complainant.
 16. On 24 August 2009 the Commissioner contacted the public authority again asking for clarification as to whether a response to the request of 20 May 2009 had been provided and if not for a timescale stating when the public authority expected the matter to be resolved. The Commissioner provided details of the information request.
 17. On 15 and 24 September 2009 the Commissioner wrote to the public authority making further enquiries.
 18. On 06 October 2009 the Commissioner telephoned the public authority to enquire as to the progress of the information being provided to the complainant. The public authority informed the Commissioner that progress had been made and a response was due to be ready in draft form by 07 October 2009.
 20. On 13 October 2009 the Commissioner received confirmation from the public authority that a response had been provided to the complainant on 07 October 2009 (dated 28 September 2009) stating that the requested information was accessible to the complainant by other means and therefore exempt under section 21 of the Act.

Analysis

Procedural Matters Section 17

21. Section 17(1) (full wording in legal annex) states:

“A public authority which, in relation to any request for information, is to any extent relying 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.”*

The information request in this case was made on 20 May 2009. A refusal notice stating section 21 as the exemption was not provided by the authority until 07 October 2009 after the Commissioner had intervened.

The Decision

22. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The public authority has breached sections 17(1)(a)(b) and (c) in failing to provide a refusal notice compliant with the requirements of that section until after the Commissioner became involved.

Right of Appeal

23. 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 28th day of October 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

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) states –

“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 whether the 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 section (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.”