

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 November 2009

Public Authority: The Home Office
Address: Ground Floor, NW Quarter
Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The complainant made a request to the public authority for a list of all funding provided to the Association of Chief Police Officers (ACPO) by the Home Office, together with any associated contracts or other documents detailing what the funding is for. The public authority's response was initially unsatisfactory to the complainant and the complainant requested an internal review. The internal review was delayed, and only conducted following the intervention of the Commissioner, but the complainant declares himself satisfied with the outcome. This Decision Notice therefore records the procedural delays in the Home Office's response to the complainant's request for information. The Commissioner finds that, in its response, the public authority breached sections 10(1) and 17(5) of the Act.

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 10 March 2009 the complainant sent a request to the Home Office via the www.whatdotheyknow.com website, for:

“Please provide a list of all funding provided to the ACPO by the Home Office, together with any associated contracts or other documents detailing what the funding is for.”

3. On 9 April 2009 the complainant sent a further message to the Home Office, advising it that its response was overdue and requesting an immediate response with an indication of when it expected to provide a reply to his request.
4. On 14 April 2009 the Home Office responded, advising that it intended to conduct a review into the delayed response to his request for information.
5. On 24 April 2009 the Home Office sent the complainant the result of its enquiry into the delay. It explained that the request had been received by the public authority on 10 March and its response was delayed due to unexpected absences within the department. It acknowledged the breach of section 10(1) of the Act and apologised for this, indicating that a response to the request would be forthcoming within two weeks.
6. On 24 April 2009, the Home Office also sent its response to the request for information. It referred the complainant to a website where some of the information could be found. It further explained that, in respect of the remaining aspects of his request, it was unable to comply with his request because it estimated that the cost of complying would exceed the statutory limit of £600. It advised him that if he were able to refine his request, it would be considered further.
7. On 28 April 2009 the complainant responded, requesting details of the public authority's cost estimate, so he could refine his request.
8. On 3 May 2009 the complainant emailed the Home Office to request an internal review of its response, complaining that it had not provided any advice and assistance so he could refine his request.
9. On 7 June 2009 the complainant emailed the Home Office to remind it that its response to his request for internal review was overdue.
10. On 27 July 2009 the Home Office provided the complainant with an explanation for its estimate that the cost limit would be exceeded, because his request would have required separate searches of each of the 53 Directorates within the Home Office. It advised him that if he focused his request upon a specific area, it might be able to refine its searches.
11. The complainant responded on 27 July, commenting that the information already provided suggested the existence of approximately 30 contracts, so he

questioned the need to search 53 directorates. He re-stated his request for an estimate of how the Home Office had calculated the time required to collate the contracts. He also reminded it that its internal review was overdue.

12. On 19 October 2009 the Home Office sent the complainant a letter with the outcome of its internal review. It upheld the previous decision to refuse to provide a response under section 12 of the Act because the original request did not specify a range of dates for the information. As ACPO was formed in 1948 and had been in receipt of grants from the Home Office over an extended period, the searches required to collate the information would be extensive. It estimated, as an example, that the time required in collating the contracts for just the last financial year would exceed 40 hours.

The Investigation

Scope of the case

13. On 26 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 following points:
 - The matter of the delays in the Home Office's response to his request for information, and request for internal review.
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

15. On 8 August 2009 the Commissioner wrote to the Home Office to request it to complete the internal review, requested by the complainant on 3 May 2009, within 20 working days. The Commissioner also wrote to the complainant, advising him that he had contacted the Home Office to request it to complete its internal review.
16. On 25 August 2009 the Home Office contacted the Commissioner to explain that it had no record of receiving the original request for internal review. It explained that its letter of 27 July did not constitute an internal review. It agreed to conduct a review but expressed doubt that this could be undertaken within the Commissioner's deadline of 7 September.
17. On 10 September 2009 the complainant contacted the Commissioner to advise him that he had not received a response to his request for internal review.
18. The Commissioner acknowledged this on 23 September 2009 and also wrote to the public authority on the same date to advise it that the case was considered eligible for formal consideration under the Act.

19. On 29 September 2009 the Home Office replied, indicating that it hoped to be able to respond to the complainant in early October.
20. On 19 October 2009 the Home Office sent its internal review response to the complainant.
21. On 29 October 2009 the Commissioner wrote to the complainant, asking him if he was satisfied with the response and wished to withdraw his complaint.
22. On 29 October the complainant replied, indicating that he was content that the internal review response addressed his request, and provided advice and assistance, but he declined to withdraw his complaint.
23. On 5 November the Commissioner wrote to the Home Office to request its explanation for the failure to respond to the request for internal review prior to the intervention of the Commissioner.
24. On 9 November, the public authority replied. It explained that:
 - the complainant's request for internal review was not sent to the email address which it had advised him to use if requesting an internal review, but rather to a general 'contact' email address;
 - the email had been received, but was incorrectly processed and had been linked to earlier correspondence from the complainant rather than being passed to the staff member dealing with his request;
 - the Home Office was unable to locate the 'reminder' email of 7 June 2009 in its system. It cannot say for certain that it was not received but, given the way its system operates, that is the most likely explanation.

The Decision

25. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
 - The response to the initial request for information took 31 working days, which is a breach of section 10(1) of the Act.
 - By its refusal to provide information on the grounds of section 12 of the Act, outside the statutory 20 working-day period provided by section 10 of the Act, the public authority also breached section 17(5) of the Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

27. 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 30th day of November 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Other matters

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

Section 12 – costs breakdown

29. The public authority did not provide the complainant with any breakdown of the estimated costs of complying with the request in the refusal notice. Although the Act does not require a public authority to provide a costs breakdown when refusing a request under section 12, the Commissioner considers that it is good practice to do so. He would advise the public authority that including a costs breakdown in a section 12 refusal notice is likely to make it easier to comply with the section 16 duty to advise and assist an applicant on what could be provided within the cost limit.

Section 45 code of practice – internal reviews

30. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *Good Practice Guidance No 5*¹ published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

31. The Commissioner notes that the complainant's request for internal review was not sent to the email address specified for the purpose by the Home Office, and does not quote the reference number provided by the public authority to help it to clearly identify the correspondence. The complainant has not followed the advice given by the public authority and consequently his request for review did not reach the correct recipient.

32. The complainant, for his part, contends that clause 38 of the Code of Practice issued under section 45 of the Act states:

“Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf

is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application”.

It is his view that as his 3 May complaint was received by the Home Office, and the content makes clear that it is expressing dissatisfaction with the response to his request, this should have been taken as a request for internal review.

33. The Commissioner would agree with this principle, however a failure to comply fully with the section 45 Code of Practice is not a breach of the Act. The Commissioner notes that the complainant feels that clause 38 of the Code of Practice places no *“requirement on requestors to submit internal review requests through whatever specific procedures an authority may wish to impose”*. The Commissioner observes that the verb ‘impose’ carries a pejorative meaning in that it implies an unreasonable or unwelcome level of compulsion. Nevertheless, the procedures adopted by the Home Office are neither unreasonable nor onerous and are clearly designed to facilitate its handling of internal review requests. The Commissioner therefore does not consider these to constitute an ‘imposition’.

34. Furthermore, clause 36 of the section 45 Code of Practice states:

“Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information. The same procedure could also usefully handle complaints in relation to the authority's publication scheme. If the complaints cannot be dealt with swiftly and satisfactorily on an informal basis, the public authority should inform persons if approached by them of the details of its internal complaints procedure, and how to contact the Information Commissioner, if the complainant wishes to write to him about the matter”.

35. The Commissioner therefore considers that, contrary to the complainant’s view that there is no requirement for a complainant to observe specific procedures, clause 36 of the same Code of Practice requires a public authority to adopt specific complaints-handling procedures and advise complainants of those procedures. It follows that complainants can be expected to comply with these.

36. The complainant has offered no explanation for, and the Commissioner makes no judgement about, his reasons for not adopting the procedure provided by the Home Office, but if a complainant elects not to comply with these procedures and the public authority’s response is less satisfactory, the Commissioner observes that this might reasonably be an anticipated consequence.

37. Given the volume of public correspondence which can be expected to pass through a major central government department, the procedures adopted by the Home Office, namely the provision of a nominated email address and specific reference number for such complaints, appear to the Commissioner to be

sensible, reasonable and appropriate. He therefore would not wish to criticise a public authority for adopting reasonable procedures intended to facilitate its handling of freedom of information requests or complaints.

38. The Commissioner is, nevertheless, concerned that in this case, following his intervention and forwarding of the complainant's request for internal review, it took 49 working days for an internal review to be completed, despite the publication of his guidance on the matter. The public authority has commented that it believes the Commissioner's correspondence was received on 25 August (and the Commissioner notes an acknowledgement was received on that date from the Home Office). In that case, the Home Office took 38 working days to conduct its review and the Commissioner is not satisfied that the circumstances of the case were exceptional, such that the internal review should have taken more than 20 working days to conduct.

39. The complainant provided a copy of the message logs, understood to have been provided by the support staff at the whatdotheyknow.com website, which appear to indicate that the complainant's email messages of 3 May, 7 June and 27 July were received by the addressee. The Commissioner notes that this information, if correct, would indicate that the 7 June reminder message was lost by the Home Office after receipt, rather than undelivered as it has suggested. The evidence also appears to support the Home Office argument that the messages were not sent to the appropriate email address. It is not considered conclusive, however, because its origin has not been verified.

Legal Annex

S.1 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.'

S.12 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.'

S.10 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.'

The Code of Practice issued in under s.45 of the Act states:

VI Complaints procedure

36. Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information. The same procedure could also usefully handle complaints in relation to the authority's publication scheme. If the complaints cannot be dealt with swiftly and satisfactorily on an informal basis, the public authority should inform persons if approached by them of the details of its internal complaints procedure, and how to contact the Information Commissioner, if the complainant wishes to write to him about the matter.

37. When communicating any decision made to refusing a request, in reliance on an exemption provision, public authorities are obliged, under section 17(7) of the Act notify the applicant of particulars of the procedure provided by the public authority for dealing with complaints (or to state that it does not have one). In doing so, they should provide full details of their own complaints procedure, including how to make a complaint and inform the applicant of the right to complain to the Commissioner under section 50 if he or she is still dissatisfied following the authority's review.

38. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.