

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 June 2010

Public Authority: Information Commissioners Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Note: The complaint in this case was made against the Information Commissioner Office. Since the Commissioner himself is a public authority for the purposes of the Freedom of Information Act 2000 (the Act), he is unusually under a duty to make a formal determination of a complaint made against himself. It should be noted, however, that the complainant has the right of appeal against the Commissioner's decision, details of which are given at the end of this notice.

Summary

The complainant made a request for the records that Information Commissioners Office (ICO) held about Crawley Borough Council's non compliance with the Act. The complainant confirmed that his request excluded third party personal data. The ICO provided the requested information in the form of a synopsis of each case plus redacted case closure letters written by the ICO. A disagreement then arose as to what had actually been asked for and a formal complaint was raised to resolve matters. The ICO disclosed further information during the Commissioner's investigation. The Commissioner finds that the ICO was correct to interpret the request as it did, however, finds the ICO in breach of sections 1, 10 and 17. The Commissioner does not require the ICO to take any further action.

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 26 August 2008 the complainant submitted the following request:

"Your robust case handling policy states that "It will be important, therefore, to ensure that we have proper records of all cases of non-compliance by public authorities, even if those cases have not led to the serving of a formal decision notice": please send a copy of these records relating to Crawley Borough Council"

3. The ICO acknowledged the request on 1 September 2008.

4. On 9 September 2008 the ICO responded to the complainant, stating that the request had been treated as a subject access request under the Data Protection Act 1998 (DPA), as it was assumed that the request was concerned with his own case. The complainant was also provided with some information relating to eight other complaints the ICO had received from other parties. The ICO refused to provide copies of correspondence with Crawley Borough Council as it was considered a repeated request, the information having already been provided previously as a result of a subject access request under DPA, submitted by the complainant on 4 August 2008.

5. On 22 September 2008 the complainant requested an internal review and clarified his request as follows:

"Of the information requests made to Crawley Borough Council to which you refer, one was made by me..... The remaining were not made by me. My request for information relates to the substance of these cases and not for details of any individual. Should there be any reference to any identifiable individual these can be deleted as they do not form the subject of my request"

6. The ICO responded to the complainant in a letter dated 7 October 2008, stating that his letter of 22 September had been treated as a new request under both the Freedom of Information Act 2000 and the Data Protection Act 1998. The ICO provided a brief explanation of the

substance of the seven complaints which did not relate to the complainant, along with a copy of his original complaint to the ICO about Crawley Borough Council, and copies of all correspondence between the ICO and Crawley Borough Council in relation to the complaint lodged by the complainant.

7. On 3 November 2008 the complainant wrote back to the ICO. In his letter the complainant stated:

"You have confused substance with synopsis..."

The complainant then repeated his request of 26 August 2008 and his clarification of 22 September 2008. He then stated:

"I therefore require the above information with just the personal details of identifiable individuals removed in order not to contravene the Data Protection Act; I did not ask for a brief explanation. Please comply with my Freedom of Information request."

8. In a letter dated 6 November 2008 the ICO responded by refusing to disclose further information by virtue of the exemption contained at section 44 of the Freedom of Information Act – prohibitions on disclosure. The ICO explained that section 59 of the Data Protection Act 1998 prohibited disclosure in this case.
9. The complainant responded on 30 November 2008 requesting an internal review of the ICO's refusal to disclose the information he had requested.
10. On 22 December 2008, the ICO wrote to the complainant with the outcome of the internal review, the ICO provided the complainant with copies of the closing letters sent from the ICO to Crawley Borough Council on each of the eight complaints in question, along with copies of file notes. The information was redacted to remove third party personal data.

The Investigation

Scope of the case

11. On 19 January 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 decision to refuse to disclose all of the documents on each of the

casefiles, which he felt fell within the scope of his request. The parties disagree on what was actually requested. This notice will therefore focus on whether the ICO was correct to interpret the request as it did. The complainant specifically stated that any reference to any identifiable individual can be deleted as they do not form the subject of the request, therefore this Decision Notice does not address the redacted information as it was clearly excluded from the request.

Chronology

12. In a letter dated 14 May 2009, the Commissioner wrote to the Internal Compliance Team at the ICO asking it to re-visit the request and review its response.
13. The ICO provided a full response to the Commissioner in a letter dated 26 June 2009. In this letter the ICO acknowledged that it had failed to deal with the complainants request correctly in the following ways:
 - a. The ICO incorrectly applied section 44 and no longer wished to apply this exemption.
 - b. The ICO failed to carry out the internal reviews requested by the complainant in his letters dated 22 September 2008 and 3 November 2008, instead treating these letters as new requests.

The ICO also provided the Commissioner with three appendices. Appendix A had already been provided to the complainant and had been suitably redacted, Appendix B contained the un-redacted information, and Appendix C consisted of further information, suitably redacted, which the ICO wished to provide to the complainant in an attempt to fulfil his initial request and resolve his subsequent complaint. The Commissioner has not assessed the information which has been supplied to the complainant; the only issue being taken into consideration for the purposes of this notice is the ICO's handling of this request.

14. The information contained in Appendix C was sent to the complainant on 1 July 2009.
15. On the 20 July 2009 the complainant wrote back to the Commissioner stating that he felt that his complaint had not been fully resolved. In this letter the complainant stated the following:

"My original request was for all records relating to complaints against Crawley Borough Council. You have, with one exception, only supplied copies of documents originating from the Information Commissioner's Office....."

.....Therefore, please deal with my complaint concerning those documents withheld under section 40(2) of the Freedom of Information Act 2000, i.e. documents from the individuals making complaints and from Crawley Borough Council for each of the seven complaints which have been made against Crawley Borough Council"

The Commissioner is aware that the original request was for the substance of the cases, and that in his letter dated 3 November 2008, the complainant refined his request to exclude third party personal data.

Analysis

Procedural Requirements

Section 1(1) – general right of access

Information held

16. For the purposes of this notice the Commissioner has considered the dispute in the reading of the request and the clarification that the complainant was seeking the "substance" of the cases of non compliance.
17. The Oxford English Dictionary defines substance as:

"The essential nature or part of a thing etc."
18. In considering the above definition it is apparent that the information the complainant is seeking at paragraph 15 does not correspond with the original request at paragraph 2 and further clarification at paragraph 5.
19. In its initial handling of the request the ICO provided the complainant with a synopsis of each complaint along with the closure letters which confirm the action taken by the ICO for each of the 7 cases in question.
20. A further disclosure was made by the ICO on 1 July 2009 which consisted of redacted letters and telephone notes generated by the ICO in each case.
21. The Commissioner considers that the ICO has correctly provided the complainant with all the information it held that fell within the request.

Section 1(1) – general right of access

22. The Commissioner has considered whether the ICO has complied with section 1(1) of the Act.
23. Section 1(1) provides –
- “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.”
24. The ICO confirmed to the complainant on 9 September 2008 that it held the information requested, provided some information on 7 October 2009, further information following the internal review and the last disclosure was made on 1 July 2009 during the course of the Commissioner’s investigation. The ICO breached section 1(1)(b) of the Act, as they had failed to provide disclosable information at the time of the completion of the internal review.

Section 10(1) – time for compliance

25. The Commissioner has considered whether the ICO dealt with the complainant’s request for information on time.
26. Section 10(1) provides –
- “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.”
27. The complainant made its request for information on 26 August 2008. The ICO has stated that it received this request on 28 August 2008. The twentieth working day following the date of receipt was therefore 25 September 2008. In disclosing information after this date it therefore breached section 10(1)

Section 17 – Refusal of Request

28. The Commissioner has considered whether the ICO complied with the requirements of section 17 of the Act when issuing the complainant with its initial refusal dated 9 September 2008.

29. 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.”

30. In providing a refusal notice citing section 44 on 6 November 2008 the ICO breached section 17(1) of the Act by failing to issue the complainant with a refusal notice within twenty working days following the date of receipt of the request.

The Decision

31. The Commissioner’s decision is that the ICO dealt with the following elements of the request in accordance with the requirements of the Act:

- It has provided all the information it held within the scope of the request

However, the Commissioner has also decided that the ICO breached the following sections of the Act in its handling of the request.

- section 1(1)(b)
- section 10(1);
- section 17(1);

Steps Required

32. The Commissioner requires no steps to be taken.

Other Matters

33. As the ICO has readily accepted, it neglected to carry out the internal reviews requested by the complainant on the 22 September and the 3 November 2008, instead treating these letters as new information requests. In so doing, the ICO failed to conform to paragraph 38, Part VI of the section 45 Code of Practice which 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 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 under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or handling of the application.

Right of Appeal

34. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 17th day of June 2010

Signed

Steve Wood
Head of Policy Delivery

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”.”

Request for Information

Section 8(1) provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.”

Section 8(2) provides that –

“For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference.”

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."

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."