

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 July 2010

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

### Summary

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The complainant requested information on which councils had applied for, and been awarded, the Customer Service Excellence Mark ('CSE') along with those councils previously holding a Charter Mark. The public authority's initial response was that some of the information was not held, some was already in the public domain and some was exempt by virtue of section 12 of the Act. The public authority suggested that a refinement of the request would enable some information to be provided. The complainant agreed to refine the request during the course of the Commissioner's investigation. The Commissioner investigated and was satisfied that some of the information was not held at the time of the request, although the public authority went on to obtain and provide this information on a goodwill basis, some of the information was already in the public domain and the remaining information could be provided following the refinement of the original request. The Commissioner requires no steps to be taken.

### The Commissioner's Role

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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

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2. On 25 June 2009 the complainant requested the following information:
  - “The names of which Councils are currently in the application stage for CSE (Customer Service Excellence Mark)?
  - Which Councils have currently been given a certification under the scheme?
  - Have Bolton Council made an application to your assessment centre?
  - Please provide the names of Councils you hold records for that previously held a Charter Mark and for which years.”
3. On 17 July 2009 the Cabinet Office responded refusing to provide the requested information stating that it did not hold information on those councils applying for the CSE mark and similarly the Cabinet Office did not hold information specifically on Bolton Council. It went on to explain that information on those councils holding the CSE mark was available on the Cabinet Office website. It also explained that information on the Charter Mark was held but the cost of compliance would exceed the appropriate limit as specified in ‘The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. The Cabinet Office went on to suggest:

“If you were to make a new request for a more narrow category of information, it may be that we could comply with that request within the appropriate limit.”
4. On 17 July 2009 the complainant requested an internal review.
5. On 14 August 2009 the internal review upheld the original response. The Cabinet Office went on to explain that the information refused in its original response as ‘not held’ was held by those external commercial organisations who managed the process of CSE assessment.

## The Investigation

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### Scope of the case

6. On 14 August 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:

- Consideration of section 3(2)(b) with regard to the Certification Bodies.
  - Justification of the cost of compliance.
7. During the course of the Commissioner's investigation the complainant agreed to refine the scope of his complaint to exclude the part of his request concerned with the early years of records of those councils holding the Charter Mark. The Cabinet Office was able to respond to this point within the appropriate limit and therefore this is not addressed in this Notice.
8. The Commissioner's investigation therefore focussed on consideration of section 3(2)(b) with respect to the first and third points of the request.

### **Chronology**

9. On 23 October 2009 the Commissioner contacted the Cabinet Office and asked it to clarify a number of issues in relation to section 3(2)(b) and section 12(1) of the Act.
10. On 2 December 2009 the Cabinet Office provided the Commissioner with further arguments in support of its initial response in relation to information not held.
11. On 17 December 2009, following a request from the Commissioner, the Cabinet Office provided copies of the licence and service level agreement in place between the Certification Bodies and the Cabinet Office.
12. On 19 February 2010 the Cabinet Office confirmed to the Commissioner that all the information requested would be provided to the complainant.
13. On 1 April 2010, post-provision of the information, the Commissioner requested further information from the Cabinet Office in determining if the requested information was held on its behalf and the nature of the provision of information between it and the Certification Bodies.
14. On 22 April 2010 the Cabinet Office wrote to the Commissioner and provided a full response.

## Analysis

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### Procedural Requirements

#### Section 1(1)

15. In accordance with section 1(1)(a) of the Act the Cabinet Office has an obligation to state whether it holds recorded information of the description specified in the request. The Commissioner notes that the Cabinet Office's initial response informed the complainant that the information in relation to those councils applying for the CSE mark was not held.
16. Following discussion with the Commissioner the Cabinet Office reviewed the information held and determined that from the incomplete information held it was not possible to establish an accurate list of all councils, and specifically Bolton Council, that had applied for the CSE assessment. However, the Commissioner finds that some information was held at the time of the initial request and the Cabinet Office breached section 1(1)(a) by not informing the complainant that some information appertaining to his request was held.
17. In not providing the information referred to in paragraph 16 the Cabinet Office is in breach of section 1(1)(b). The Cabinet Office subsequently provided this information as indicated in paragraph 25.

#### Section 3(2)(b)

18. The complainant asked the Commissioner to investigate the Cabinet Office's position that the information he requested regarding the names of councils in the application stage for CSE (including Bolton Council) was not held by the Cabinet Office.
19. The complainant contended that the assessment bodies undertaking the CSE assessments held the information on behalf of the Cabinet Office by virtue of section 3(2)(b). During the Commissioner's investigation the Cabinet Office maintained its position that this part of the information sought by complainant was not held on its behalf by the Certification Bodies.
20. The Commissioner asked the Cabinet Office to explain its relationship with the Certification Bodies managing the assessment of applications for accreditation with the CSE mark.

21. The Cabinet Office explained that it maintains a concession arrangement with the Certification Bodies. The provisions of this arrangement are managed through a licence and service level agreement. The Cabinet Office also explained that the four Certification Bodies share information with it on a voluntary basis as required and as stipulated by the terms of the licence. The Commissioner was informed that the bodies are not commercial partners or agents of the Cabinet Office and no public money is involved in the relationship. The information on CSE applicants is held by the Certification Bodies for their own purposes.
22. The Cabinet Office provided the Commissioner with copies of the licence and service agreement. The Commissioner examined the documents and saw no evidence of any contractual obligation between the two parties. Also, it is these bodies that award the CSE Marks and the decision to do so is theirs alone.
23. The Cabinet Office explained that any information provided by the Certification Bodies as part of the licences and service level agreements in place was only to provide a 'snapshot' for marketing purposes. This snapshot of upcoming assessments in different sectors was not intended to create an ongoing record of CSE applicants or to form an accurate list of assessments.
24. In the Commissioner's view, information would be held on behalf of the Cabinet Office if the Certification Bodies were contractually obliged to gather that information to provide to the Cabinet Office and held the information primarily for the Cabinet Office's purposes rather than their own. However the Commissioner concluded that the agreements in place between the parties do not form a contract and that the Certification Bodies held the information primarily for their own purposes and not for those of the Cabinet Office. Therefore the information was not held on behalf of the Cabinet Office.

### **Section 10(1)**

25. The Commissioner finds that the Cabinet Office breached section 10(1) in not providing the information detailed in paragraph 16 within twenty working days following receipt of the request.

### **Section 17(1)(b)**

26. In responding to the second point of the request the Cabinet Office referred the complainant to its website and provided a specific weblink to the requested information. However, the Cabinet Office did not rely on the exemption provided by section 21(1) and therefore the

Commissioner finds the Cabinet Office to be in breach of section 17(1)(b) in not providing a refusal notice on this point in accordance with the Act.

## The Decision

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27. 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:

- It correctly interpreted section 3(2)(b) by stating that it did not hold some of the information requested, therefore refusing to provide the information held by the Certification Bodies.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The Cabinet Office breached section 1(1)(a) and (b) by not stating that incomplete information was held and not providing that information to the complainant by the date of its internal review.
- The Cabinet Office breached section 10(1) of the Act for not providing the held incomplete information in the first point of the request within the statutory time limit of twenty working days.
- The Cabinet Office breached section 17(1)(b) in not providing a refusal notice specifying the exemption relied on in respect of the second point of the request.

## Steps Required

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28. Whilst reserving its position of not holding the complete data set, the Cabinet Office went on to request a full record of all applications from each of the Certification Bodies which enabled the data to be collated in a complete and accurate format for the complainant. Therefore, as the complainant now has the requested information, the Commissioner requires no steps to be taken. The Commissioner welcomes the Cabinet Office's efforts to obtain this information for the complainant.

## Right of Appeal

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29. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 29<sup>th</sup> day of July 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**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."

### Public Authorities

**Section 3(1)** provides that –

"in this Act "public authority" means –

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which –

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6"

**Section 3(2)** provides that –

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

### 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 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.'