

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 06 September 2010

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4SA

Summary

The complainants requested copies of rules and guidance which applied to the Local Government Pension Scheme in 2001. The public authority provided the requested information outside the 20 working day limit stipulated by the Freedom of Information Act 2000. The Commissioner finds Warwickshire County Council in breach of sections 1(1)(a), 1(1)(b) and 10(1) for failing to provide the information within the legal time for compliance; however he does not require the public authority 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 May 2009 the complainants wrote to Warwickshire County Council (WCC) asking it to provide explanations in relation to a discrepancy in one of the complainant's pension fund. In this letter the complainants asked for the following information:

".....We will need to see a copy of some definite rules or guidelines set down for these circumstances. Obviously we will need to see proof that these existed before the settlement....."

The Investigation

Scope of the case

3. On 20 July 2009 the complainants contacted the Commissioner to complain about the way their request for information had been handled. The complainants specifically asked the Commissioner to consider the following points:
 - Warwickshire County Council's failure to respond to their request dated 26 May 2009
4. The complainants also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

5. In a letter dated 1 October 2009 the Commissioner asked WCC to provide the complainants with a response within 10 working days.
6. WCC did not respond to the complainants request and the complainants wrote to the Commissioner on 22 October 2009 to alert him to the fact.
7. The Commissioner wrote to WCC on 2 November 2009 stating that the complainants had informed him that no response had been received and asking WCC for an update.
8. WCC wrote to the complainants on 5 November 2009 stating that WCC considered that it had answered this request previously as a result of an ongoing complaint between the public authority and the complainants. WCC provided the complainant with a copy of the guidance requested and directed the complainant to the relevant paragraph. WCC advised the complainants of their right to request an internal review if they were unhappy with the response provided by WCC.
9. The complainants wrote to WCC on 10 November 2009 stating that the information provided was not correct as it did not cover the time period they were interested in. The complainants requested a review.

10. In a letter dated 14 January 2010 the complainants contacted the Commissioner to state that WCC had failed to carry out the review requested on 10 November 2009.
11. In a letter dated 28 January 2010 WCC provided a history of the complaint to the Commissioner along with copies of information which had been provided.
12. On 16 February 2010 the Commissioner contacted WCC by telephone and asked it to check for any information which may be caught by the complainants' request, specifically covering the time period in question.
13. WCC telephoned the Commissioner on 3 March 2010 and confirmed that it did not hold any further information relevant to the request. WCC confirmed that the relevant guidance was a statutory instrument (SI 2001 No. 3401). WCC confirmed that the SI had been in place since 2001 and therefore relevant to the request as it covered the time period in question (2003). The public authority also informed the Commissioner that copies of pension guidance were available from the Government Actuary's Department and the statutory instrument was available at The Office for Public Sector Information. WCC stated that both documents had been provided to the complainants previously as per paragraph 8 above.

Analysis

Procedural Requirements

Section 1

14. Section 1(1) of the Act states 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."*

15. The Commissioner has considered whether WCC has complied with section 1(1)(a) and (b) of the Act.

16. The Commissioner considers that WCC has breached section 1(1)(a) and section 1(1)(b) of the Act as it failed to confirm or deny that it held the requested information and provide information to the complainants within the statutory time for compliance.

Section 10

17. Section 10(1) of the Act states 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."

18. The Commissioner considers that WCC has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.
19. The failure of WCC to carry out an internal review is addressed in the "Other Matters" section below.

The Decision

20. WCC did not comply with sections 1(1)(a) and 1(1)(b) of the Act as it failed to confirm or deny that it held requested information and provide it to the complainants within the statutory time for compliance.
21. WCC has breached section 10(1) of the Act in failing to comply with sections 1(1)(a) and 1(1)(b) within twenty working days following receipt of the request.

Steps Required

22. The Commissioner requires no steps to be taken.

Other matters

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

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'*, 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. The Commissioner is concerned that in this case, that no internal review was completed, despite the publication of his guidance on the matter.

Right of Appeal

24. 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 06 day of September 2010

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

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."