

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 July 2010

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant made a request to the Ministry of Justice on 21 October 2009, resubmitting the request on 17 November 2009 owing to its misdirection. Following receipt of the request the public authority investigated and found that the information was not held by the authority. The public authority failed to provide this response within twenty working days of receipt of the information request and therefore the Commissioner finds the authority to have breached sections 1(1)(a) and 10(1) 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.

Background

2. The request of 21 October 2009 (received 18 November 2009) is linked to a previous request sent to the Ministry of Justice dated 05 May 2009 which in turn is part of the complainant's ongoing gathering of information concerning a specific set of circumstances and the associated legal position.

The Request

3. On 21 October 2009 the complainant requested the following information:

"I would ask under freedom of information for copies of all correspondence with the Council of Europe since the file of correspondence was lost."

4. This request was linked to a previous request made to the Ministry of Justice. The complainant stated the following in his request of 21 October 2009:

"The correspondence referred to was that asked for in my FOI request dated 05/05/09, made in the following terms;

'I would wish to apply under freedom of information legislation for all correspondence with the Council of Europe or any other related European body and related records on the subject of the reservation by the United Kingdom government in respect of the European Convention on the legal status of children born out of wedlock and their rights of succession to the Crown, or a title of honour, or any right of inheritance to an entailed interest under article 9 as set out below since or prior to the original implementation of the Convention in 1981.

I would also wish to apply for any correspondence generally in respect of related matters including declarations and confirmation of the position of the United Kingdom in respect of the legal status of children born out of wedlock and their rights of succession to the Crown, or a title of honour, or any right of inheritance to an entailed interest.'

The response to the FOI request was that the file had been lost. I have asked for any correspondence after the file was lost and based on [further] correspondence it is clear there has been some."

5. The complainant contacted the public authority by telephone on 17 November 2009 and noted that he had not received a response from the Ministry of Justice within the twenty working day time limit.
6. The Ministry of Justice informed the complainant that it had not received his request dated 21 October 2009 as the email had been directed to a person no longer working at the department. The Ministry of Justice advised the complainant on the relevant department to submit his requests to in future in an attempt to avoid further delays.

7. The complainant redirected his request to the relevant department on 17 November 2009. The public authority received this resubmitted request on 18 November 2009.

The Investigation

Scope of the case

8. On 22 December 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 fact that the twenty working day time limit had past since his request was resubmitted.

Chronology

9. The Commissioner commenced his investigation and contacted the public authority on 08 January 2010 to clarify the main focus of the case.
10. The Ministry of Justice responded to the Commissioner on 14 January 2010 to inform him that the public authority had provided the complainant with a response to his resubmitted request on 29 December 2009 and details surrounding the reasons for its delay.
11. The public authority detailed the fact that the department involved in searching for and retrieving the information were late in responding to the request for two reasons. Three relevant Parliamentary questions received by the department had added a burden to its workload and initial information identified was later found not to fall within the scope of the request.
12. The Commissioner noted these reasons and asked for a copy of the public authority's response dated 29 December 2009 to be sent to him.
13. The response provided to the complainant by the Ministry of Justice on 29 December 2009 stated the following:

"Thank you for your Freedom of Information request dated 21 October 2009 in which you asked for copies of all correspondence with the Council of Europe since the file of correspondence was lost..."

I have processed your request and I am sorry to inform you that the department does not hold the information you have requested..."

14. The Ministry of Justice provided details of how the complainant could request an Internal Review should he remain dissatisfied with the response. The public authority also answered questions relating to a request dated 08 October 2009 and enclosed Hansard records of Parliamentary questions.

Analysis

Procedural Requirements

15. Section 1(1)(a) of the Act (full wording in Legal Annex) states:

"Any person making a request 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..."

In this case the public authority failed to confirm that the information was not held within the statutory time period.

16. Section 10(1) of the Act (full wording in Legal Annex) states:

"...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."

By providing a response to the complainant on 29 December 2009 the public authority has failed to comply with the provisions laid out in section 10 of the Act.

The Decision

17. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. He has found that the public authority has breached sections 1(1)(a) and 10(1) of the Act in failing to provide a substantive response within the statutory time limit.

Steps Required

18. A response to the complainant's information request has now been provided. The Commissioner has not received a complaint about the content of that response. Therefore he does not require the public authority to take any further remedial steps.

Right of Appeal

19. 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 22nd 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."

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"."

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.”