

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 3 March 2011

Public Authority: Royal Mail Group PLC
Address: 148 Old Street
London EC1V 9HQ

Summary

The complainant made a request for information concerning the costs to the Royal Mail of maintaining the Postcode Address File (PAF), and the geographic coordinates of each code as contained in the PostZon product. Royal Mail Group PLC responded on the twentieth working day stating that the information requested was being withheld under section 43(2) of the Act.

The complainant requested an internal review of that decision. This was provided on the fortieth working day after the request. Royal Mail Group PLC upheld the use of section 43(2) and also applied section 41 to the request. It also disclosed a limited amount of information to the complainant. Following a further exchange of correspondence, and more than eight months after receiving his initial request, Royal Mail Group PLC disclosed further costs information to the complainant.

The Commissioner has concluded that Royal Mail Group PLC responded within the time for compliance. However, he finds that it was in breach of section 1(1)(b) by not disclosing the partial information to the complainant in either its original response to his request, or its internal review decision. The Commissioner also finds that Royal Mail Group PLC was in breach of section 10(1) in not providing the partial information within the statutory time limit.

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 15 October 2009 the complainant made a request for the following information: -

'Information about the costs to the Royal Mail of maintaining the Postcode Address File (PAF) and the geographic coordinates of each code as contained in the PostZon product'.

The complainant explained that he would like a detailed breakdown of the annual costs to maintain the sets of data, and the associated computing/IT costs. The complainant also requested details of the income generated from the two data sets, and details relating to staffing and data supply.

3. On 13 November 2009 Royal Mail Group PLC ('Royal Mail') responded to the complainant's request for information. It advised that the information requested was being withheld under section 43(2) of the Act.
4. On 13 November 2009 the complainant requested an internal review of Royal Mail's decision and asked why it had not told him that some of the information he had requested was already in the public domain.
5. Royal Mail provided the complainant with its internal review decision on 13 January 2010. It upheld the application of section 43(2) to the request and advised that section 41 was also being applied to some of the withheld information. The internal review decision included a basic financial breakdown of the PAF product for 2008/2009.
6. Royal Mail disclosed further costs information relating to the request to the complainant on 8 February 2010 and 30 June 2010.

The Investigation

Scope of the case

7. On 29 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the following points:
 - 1) The overall handling of the request by Royal Mail, including a lack of helpfulness and its response times.
 - 2) That some of the information requested remained withheld.

8. During the course of the Commissioner's investigation the following matters were resolved informally and so are not addressed in this Notice:
 - i) The lack of helpfulness on the part of Royal Mail in relation to the complainant's request.
 - ii) Whether additional held information should be released.
9. The complainant also raised a '*general response-timing*' issue, in that he informed the Commissioner of his suspicion that Royal Mail may be deliberately delaying its responses to freedom of information requests, rather than providing such responses promptly (where possible) under section 10(1) of the Act.
10. The Commissioner informed the complainant that his investigation of Royal Mail's response times to requests was strictly limited to those of the present case, specifically, the original response to the complainant's request and the subsequent provision of the internal review decision.

Chronology

11. On 24 November 2010, following discussions with the Commissioner, Royal Mail wrote to the complainant to apologise for its handling of his request, and to address the points of concern he had raised with the Commissioner. It addressed the fact that Royal Mail had failed to acknowledge public interest factors in favour of disclosing the information requested, and acknowledged that,

'In hindsight, if we had discussed your requirements with you directly and at an earlier stage in the process, the information which was later disclosed to you could have been provided much sooner and the matter hopefully resolved to your satisfaction'.

Royal Mail expressed its regret that although it meets its response time targets in the majority of requests received, and recognises that responses should be provided promptly within the stipulated 20 working day period, it had not been possible to provide a more prompt response to the request in this instance. With regard to the length of time taken to provide an internal review decision, Royal Mail advised that a number of factors had contributed to this, but accepted that *'the time taken on this occasion was not acceptable and that a decision should have been reached much sooner'.*

12. On 26 November 2010, the complainant wrote to the Commissioner and advised that,

'Royal Mail acknowledge that their initial response and lack of helpfulness fell short of their obligations under the FOIA. They also acknowledge the time taken for the internal review was longer than appropriate. I am happy for you to mark these aspects of my complaint as resolved, along with the issue of whether or not additional information should be released'.

The complainant noted, however, that he still wished the Commissioner to investigate the *'general response-timing issue'*.

13. On 10 December 2010, the Commissioner wrote to the complainant confirming that his investigation would not relate to Royal Mail's general response times to requests; but would focus on its response time in this particular case. To do this, the Commissioner advised that he would need to obtain further information from Royal Mail as to how it processed the complainant's request of 15 October 2009.
14. The Commissioner requested the necessary information from Royal Mail on 13 December 2010 and Royal Mail provided the information on 5 January 2011 and 21 January 2011.

Analysis

Procedural Requirements

Section 1(1)(b)

15. Section (1)(1) 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.

16. Royal Mail responded on the twentieth working day after receiving the request. The response confirmed that Royal Mail held information within scope of the request, but that this information was being withheld on account of section 43(2). Following a subsequent exchange of correspondence with the complainant, Royal Mail disclosed some of the costs information to the complainant on 13 January 2010, 8 February 2010 and 30 June 2010.
17. During the course of his investigation, the Commissioner contacted Royal Mail to clarify why it had made the partial disclosures of

information to the complainant, despite having originally withheld all the information under section 43(2). Royal Mail confirmed that having reconsidered the request throughout the correspondence process, it had decided that section 43(2) did not apply to some of the information held and so this information was disclosed.

18. Whilst the Commissioner would always commend a public authority for taking a proactive approach to the disclosure of information, he would agree with the complainant's contention that,

'It should not have taken over eight months, six letters to Royal Mail and a complaint to the ICO to get the response I finally got on 30th June. This should have been the sort of response I should have got from my first enquiry'.

Section 10(1)

19. Section 10(1) 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'.

20. Although it is acknowledged and accepted that Royal Mail provided a response to the complainant's request within the twenty working days stipulated in section 10(1), the issue the Commissioner must consider, given that there is also a duty to respond 'promptly' to a request, is whether the time taken by Royal Mail was appropriate in this case. The Commissioner therefore asked Royal Mail exactly how it had processed and managed the complainant's request.
21. Royal Mail advised that it received the complainant's request at 9.20pm on 15 October 2009 and acknowledged it on the following day. On 16 October, it identified the Address Management Unit as the department responsible for the information in question and forwarded the request to the department on the same day in order to establish what relevant information was held and the impact of releasing that information.
22. Royal Mail advised that at the time of processing the complainant's request, they were experiencing wide-scale industrial action which had a significant impact on resources and resulted in some delays to FOI casework. During this period, every effort was being made to respond to requests within the required timescales and to clear a backlog of cases which had developed. The receipt of information relevant to the complainant's request was delayed by the absence of the manager to whom the request had initially been referred. This necessitated the identification of an alternative contact by the FOI Unit.

23. Royal Mail confirmed that the relevant information was provided to the FOI Unit on 5 November 2009, but it was necessary for the Unit to request additional information from the Address Management Unit in order to establish whether exemptions were applicable to the information held. As the FOI Unit was advised that some of the information was confidential or highly commercially sensitive, they were required to make further enquiries about data provided by third parties.
24. Having received the further requested information, Royal Mail drafted a response to the complainant on 11 November 2009. This was checked and signed off the following day. The response to the complainant was issued by the FOI Unit on the morning of 13 November 2009.
25. In submissions to the Commissioner, Royal Mail expressed its belief that it had dealt with the complainant's request as quickly as was reasonably possible, given the problems it was experiencing at the time and the need to also manage other casework. Royal Mail confirmed that the complainant's request was one of a number of requests received in October 2009 which was responded to later than it would have liked, but that it issued a response as soon as it reasonably could.
26. The Commissioner acknowledges that on receipt of the request the FOI Unit at Royal Mail had to make enquiries to identify which part of the organisation held the requested information and to obtain advice as to what the impact was likely to be of disclosing the information. Therefore, it was necessary and appropriate for Royal Mail to determine this by following its own processes.
27. These processes provide the mechanism for dealing with requests within the time for compliance detailed in the Act. Consequently, in the Commissioner's opinion, given that Royal Mail had to determine whether it held the information, it was appropriate to make its response within the twenty working days.
28. The Commissioner is satisfied that Royal Mail's procedures are reasonable in respect of the volume of FOI requests it receives and the varying degrees of complexity of these requests.
29. The question to be addressed is whether Royal Mail could have responded earlier to the complainant's request in accordance with the requirement to respond '*promptly*' under section 10(1). As the Information Tribunal confirmed in *Gradwick v The Information Commissioner and the Cabinet Office* [EA/2010/0030],

'The plain meaning of the statute is that requests should be responded to sooner than the 20 working days deadline, if it is reasonably practicable to do so'.

30. The Commissioner has examined the chronology of this request from its receipt by Royal Mail on 15 October 2009, to the response to the complainant by Royal Mail on 13 November 2009. Given the nature of the information requested, and the requirement for further enquiries to be made with regard to the same, coupled with the fact that the processing of this request was taking place against a background of industrial action that affected resources, the Commissioner is satisfied that the response of Royal Mail in this case was as prompt as was reasonably practicable and within the time for compliance.

The Decision

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

- Royal Mail responded promptly and within the time for compliance.

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

- The public authority breached section 1(1)(b) by not communicating the non-exempt information to the complainant as speedily as it ought to have done.
- It also breached section 10(1) in not providing the aforementioned information within the statutory time limit.

Steps Required

32. The Commissioner requires no steps to be taken.

Failure to comply

33. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

34. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter:

- 1) Royal Mail provided an internal review 40 working days after the request. Part VI of the section 45 Code of Practice makes it desirable 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 notes that in this case, Royal Mail has acknowledged, in its letter to the complainant of 24 November 2010, that an internal review decision should have been reached much sooner. The Commissioner would commend Royal Mail for having provided the complainant with the aforementioned apology letter, recognising as it does, the value and importance of attempting to reach informal resolution of complaints where possible.

Right of Appeal

35. 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

36. 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.
37. 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 3rd day of March 2011

Signed

**Faye Spencer
Group Manager
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."

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'.