

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 May 2011

Public Authority: Stockport Metropolitan Borough Council
Address: Town Hall
Edward Street
Stockport
Cheshire
SK1 3XE

Summary

The complainant requested information relating to the monitoring of children with special educational needs. This was refused under section 12 of the Freedom of Information Act 2000 (the "Act"), on the grounds of the cost for compliance. The complainant submitted refined requests for information which the public authority stated it did not hold. The Commissioner's decision is that, with the exception of one item, the public authority does not hold the requested information. In failing to confirm that information was held, the public authority breached section 1(1)(a) of the Act, and in failing to disclose that information within 20 working days, the public authority breached section 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 Act. This Notice sets out his decision.

The Request

2. On 11 March 2010, the complainant emailed Stockport Metropolitan Borough Council (the council) to make three itemised requests. Two were dealt with under the provisions of the Data Protection Act 1998 (the DPA) and one (listed as item (2) in the complainant's email) under the Act. That particular request was as follows:

"I am writing under the Freedom of Information Act to request the following documents and information from Stockport Council:

[...]

2) The statistics for how many Statemented cases, when discussed at the Statement Monitoring Panel, have ended up with more, less and the same provision after discussion by the Panel, since 2005."

3. The council replied on 12 April 2010. It was explained that the statement monitoring panel began in 2006, so no information for 2005 was held. For the remainder of the period, the council holds six sets of minutes from a total of nine meetings of the panel which were held. It provided some information on the numbers of children assessed, explained that 27 children were referred to the special educational needs (SEN) panel to have their level of support reviewed but refused information on whether their level of support went up or down, on the grounds that it estimated that the cost for compliance would exceed the statutory limit, under section 12(1) of the Act.
4. The complainant corresponded further with the council, explaining on 12 April 2010 that:

"how many of those 27 were being referred to SEN Panel with a view to having their level of support increased and how many were referred with a view to having their level of support decreased. I'm not asking for what the SEN Panel said about each case, just what the Monitoring Panel decided in those 27 cases."

and on 14 April 2010, that:

"I'm asking for the reasons/ recommendations of the Statement Monitoring Panel for sending those 27 children's case to the SEN Panel i.e. did the Statement Monitoring Panel send the cases to the SEN Panel because they thought that the support needed increasing or decreasing?"

5. The council responded on 22 April 2010, explaining that the requested information is not held in the Statement Monitoring Panel minutes and, in order to find the outcome (ie, whether in each of the 27 cases, the level of support was increased, decreased or stayed the same) it would need to search through all the SEN panel minutes. This is the element which, it estimated, would exceed the statutory cost limit.
6. The complainant requested an internal review on 1 May 2010. The council conducted its internal review and wrote to the complainant on 25 May 2010. That review upheld the previous decision to refuse the

original request on grounds of cost and provided more details of the estimate of costs which it had produced.

The Investigation

Scope of the case

7. On 25 May 2010, the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider that she had requested information but this had been refused.
8. Subsequently the complainant confirmed that her complaint did not relate to the refusal of information under section 12 of the Act (costs for compliance), but related to the refusal of her subsequent, refined requests.
9. The Commissioner therefore makes no findings in respect of the council's initial refusal of the original request under section 12 in any detail, but he has examined that refusal to the extent necessary to understand the background to the complaint. He has therefore examined the council's response to the refined request.

Chronology

10. The Commissioner wrote to the council on 15 September 2010, requesting further details relating to its estimate of the costs for compliance with the request. This information was received on 18 October 2010.
11. The Commissioner also wrote to the complainant on 15 September 2010, confirming that the scope of his investigation would be to examine whether the council was entitled to rely on section 12 of the Act.
12. The Commissioner wrote again to the council on 6 December 2010 to enquire what consideration had been given to the provision of advice and assistance to the complainant.
13. The complainant replied on 6 December, commenting that:

*"the estimate that they have given is for something different from what I actually asked them to do: I asked them to tell me the **recommendations** made by the Statement Monitoring Panel; they estimated how much time/ money it would take to find out what **outcomes** were finally put through the SEN Panel"*

14. The Commissioner has examined the complainant's correspondence and considers the relevant element is contained in the clarification provided in the complainant's emails of 12 and 14 April 2010, quoted at paragraph 4 above, with particular reference to her email of 14 April:

"I'm asking for the reasons/ recommendations of the Statement Monitoring Panel for sending those 27 children's case to the SEN Panel i.e. did the Statement Monitoring Panel send the cases to the SEN Panel because they thought that the support needed increasing or decreasing?" [sic]

Findings of fact

15. The term 'statementing' or references to 'statement' refer in this context to a 'Statement of special educational needs', described on the www.direct.gov website¹ as:

"A statement of special educational needs (SEN) sets out [a] child's needs and the help they should have. It is reviewed annually to ensure that any extra support given continues to meet [the] child's needs."

16. The Statement Monitoring Panel (SMP) and SEN panel are separate entities. The SMP independently monitors the actions of schools in the area, to make strategic judgments 'at a macro level' about what needs to happen in the Stockport Metropolitan Borough Council (SMBC) area in order to improve schools' actions in meeting the needs of 'statemented' children. The SEN panel is more closely associated with the actual schools within the SMBC area. Its role is to review individual cases, when these are referred to it by the school.

Analysis

Substantive Procedural Matters

Section 1

17. The council explains that the SMP is not provided with sufficient information to make specific recommendations about the child's needs. It provides, in effect, an 'overview' or 'quality control' function. When the SMP reviews a child's case it only makes a recommendation for a

¹ See

http://www.direct.gov.uk/en/Parents/Schoolslearninganddevelopment/SpecialEducationalNeeds/DG_4000870

school to hold a review, in cases where the information it has seen suggests that such a review is necessary. That recommendation does not make suggestions about the expected outcome of the subsequent review.

18. The minutes of the SMP therefore do not record any recommendation as to the outcome of that review. The minutes of the SMP do record which of five possible letters is sent to the school in each child's case. Those five letters are summarised by the public authority as follows:
 - Letter 1 – statement criteria still met, no need to review
 - Letter 2 – statement criteria still met but school review needed to see if support levels/type remain appropriate
 - Letter 3 – statement criteria no longer met and school review needed to see if School Action Plus stage more appropriate
 - Letter 4 and 5 – individualised letters to school commenting on specific procedural issues e.g. pupil participation etc.
19. In this case, 27 children were referred to the school (and, ultimately, to a SEN panel) via a 'Letter 2' and it is these outcomes which are of interest to the complainant. The council explains that while information about the outcome for any individual child is held by it, it is not held within the minutes of the SMP, which record only which of the five letter types were sent in each child's case. The Commissioner has examined the minutes of the SMP and is satisfied that the minutes make no specific recommendations as to the outcome of any review, but are largely confined to recording the letter type to be sent in each case.
20. The complainant has confirmed to the Commissioner that her interest is in the *"recommendations made by the Statement Monitoring Panel"* and that this is a refined request submitted following the council's response to her initial request. She argues that any estimate based on the outcomes of the individual SEN panels is irrelevant and therefore the council's estimate of costs is based on a misunderstanding of her requirements.
21. The Commissioner has re-examined the complainant's emails of 12 and 14 April 2010, in the context of her initial 11 March 2010 request. The relevant extracts from each email are quoted below:

The original 11 March 2010 request:

"The statistics for how many Stated cases, when discussed at the Statement Monitoring Panel, have ended up with more, less and the same provision after discussion by the Panel, since 2005."

The first refinement, of 12 April 2010:

*"how many of those 27 were being referred to SEN Panel **with a view to** having their level of support increased and how many were referred **with a view to** having their level of support decreased. I'm not asking for what the SEN Panel said about each case, just what the Monitoring Panel decided in those 27 cases." (ICO emphasis added) [SMBC had confirmed that 27 cases were sent for review].*

The second refinement, of 14 April 2010:

"I'm asking for the reasons/ recommendations of the Statement Monitoring Panel for sending those 27 children's case to the SEN Panel i.e. did the Statement Monitoring Panel send the cases to the SEN Panel because they thought that the support needed increasing or decreasing?" [sic]

22. It is clear, from the explanations given above, that in order to answer the complainant's 12 March request for "[...] *how many Stated cases [...] have **ended up** with more, less and the same provision after discussion by the Panel*" (ICO emphasis added), the council would need to research the outcome of each case, after the SEN panel had considered it, and therefore its arguments for refusing the request on grounds of cost will apply. The complainant argues that her later emails indicate her area of interest and constitute a refinement of the request.
23. The Commissioner considers that an objective reading of the request, as refined by the complainant on 12 and 14 April 2010 can fairly be summarised as follows:

What reasons the Statement Monitoring Panel (SMP) had for referring the 27 cases for review (to the SEN panel), with particular emphasis on any recommendations it made for increasing or decreasing the level of support.

24. The complainant's 14 April 2010 email was replied to. The council gave its explanation that the information requested is not held in the minutes of the SMP. The subsequent internal review concerns itself chiefly with examining the estimate of costs which it undertook, for the purposes of its refusal of the complainant's 11 March 2010 request. It makes no reference to her 12 April and 14 April 2010 refinements to her request and these do not therefore appear to have been addressed at internal review.
25. There is one entry in the SMP minutes for March 2008 which reads:

"Attainment fantastic, very independent. Need to look at Yr 9 review re: reduction in support. Letter 2."

The Commissioner requested clarification of the meaning of this entry, as it appeared possible that this was a recommendation for a reduction in support. The council has explained that the school simply receives the 'Letter 2' which carries no recommendation. While the extract may be thought to suggest the SMP considered a reduction in support to be appropriate, no such indication is passed to the SEN panel, which makes its own assessment based on the (more comprehensive) information provided to it by the school. The 'year 9 review' referred to will be the next scheduled review to be undertaken by the school for that child and it is to this review that the reference is made.

26. It appears to the Commissioner that, in this isolated instance, the SMP minutes may record an indication of its views on whether the level of support should be reduced, but that there is no evidence to suggest that this indication was ultimately passed to the SEN panel. He is aware that this information has been disclosed to the complainant, during the course of his investigation.
27. The public authority's submissions to the Commissioner explain that the SMP does not make any recommendations to the SEN panel as to increasing or decreasing the level of support, as this is not its role. It simply assesses whether, on the basis of the information available to it, the current level of support is appropriate and fair. If it appears that the current level of support is too high or too low, the SMP advises the school to undertake a review, which review will then lead to a decision on referral of the case to a SEN panel.
28. With the possible exception of the entry described at paragraph 25, above, the minutes of the SMP do not record its reasons for recommending a review by the school (or, by extension, the SEN panel), but largely confine themselves to recording which of the five letter types described above is sent, in each child's case. The Commissioner is satisfied that the minutes of the SMP is where such information would be located if it were held and therefore that, on the balance of probabilities, the requested information is not held by the council.
29. The Commissioner finds that, aside from one entry which has already been disclosed to the complainant, the requested information is not held by the council. In failing to confirm that this one item of information was held, the council has breached section 1(1)(a) of the Act.

Procedural Requirements

Section 10

30. The complainant informed the Commissioner that, during his investigation, she had requested copies of the SMP minutes themselves. The council confirms that these minutes (with personal data redacted) have been disclosed to the complainant in response to that, more recent, request. The Commissioner is therefore aware that the information contained in the minutes quoted at paragraph 25, above, has been disclosed to the complainant, albeit not as part of the outcome to this particular complaint.
31. That element is the only information held which may be considered to be caught by an objective reading of the complainant's refined request, and which ought therefore to have been considered for disclosure to the complainant at the time of that (14 April 2010) request. The information was disclosed to the complainant outside the 20 working day timescale for response required at section 10(1) of the Act and therefore the council breached section 10 of the Act.

Section 16

32. The Information Tribunal has linked a refusal under section 12 of the Act to a corresponding duty under section 16 of the Act to provide advice and assistance as to any ways in which the applicant may refine his or her request to permit a response to be made within the cost limit.
33. The Commissioner asked the council to explain whether any advice and assistance had been offered to the complainant. It confirmed that it had not done so, but that it was of the view that there was no advice which it could offer, given its understanding of the complainant's requirements.
34. The Commissioner has seen little to suggest that the council has addressed the matters in the objective summary of the complainant's refined requests which he proposes at paragraph 23, above. It appears to him, rather, that the council focussed on the initial (11 March 2010) request and did not fully appreciate the change of emphasis implicit in the complainant's 12 April and 14 April emails. Therefore, he is not satisfied that the council has properly addressed an objective reading of the complainant's (refined) request.
35. For the reasons explained above, this does not materially affect the outcome of the request as, with one exception, the Commissioner agrees that no information is held.

36. It might be argued that, in the light of the refined requests, some advice and assistance would have been possible in order to help the complainant better understand the nature of the information contained within the SMP minutes. However, the duty to provide advice and assistance relates specifically to advice and assistance which would enable the applicant to submit a request, to which a public authority would be able to provide a response. It is not a general duty to provide advice and assistance in the broader sense of helping the applicant to understand the response which has been given.
37. Because the Commissioner finds that the requested information is not held, there is no clear advice and assistance which would assist the complainant in submitting a request for the information she requires, consequently there is no breach of section 16 of the Act.
38. To the extent that the public authority failed to extract and disclose the information described at paragraph 25, that is dealt with under the analysis for sections 1 and 10 of the Act, above. This failure is not a breach of section 16 because, had the public authority recognised that information to be caught by an objective reading of the request, the duty would be under section 1 (ie to disclose or withhold it), not under section 16 to advise the complainant how to request it.

The Decision

39. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
 - In its failure to identify information held, and caught by the complainant's refined request, the council breached section 1(1)(a) of the Act.
 - In failing to disclose the information it held within 20 working days, the public authority breached section 10(1) of the Act.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. 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

42. 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.
43. 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 31st day of May 2011

Signed

**Andrew White
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."

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 –

- (c) reasonably requires further information in order to identify and locate the information requested, and
- (d) 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."