

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 January 2011

Public Authority: Attorney General's Office
Address: 20 Victoria Street
London
SW1H 0NF

Summary

The complainant made a request for information to the public authority consisting of 10 separate elements. The complainant's complaint to the Commissioner has focused only on part 10 of the request. The Commissioner finds that the public authority breached section 17(1) of the Act by failing to handle part 10 as a request under FOI and not citing a relevant exemption in a timely manner. The Commissioner finds that section 40(5) of the Act should have been applied to part 10. The information requested, if held, would be the personal data of the complainant and as such the public authority is under no obligation to confirm or deny under the FOI Act whether it holds the relevant information.

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. The complainant made the following request on 19 September 2010:

'By virtue of the Freedom of Information Act I now request all documents, records and information in your possession regarding the undermentioned matters: -

1 - a list of UK Attorney Generals from 1995 to now

2 - the exact dates Jack Straw and Ken Clarke became the UK Ministers of Justice and accountable for the actions of the Attorney Generals

3 - the respective amounts of public money expended from the date[s] of original insertion[s] until now on publishing on the internet "Attorney General v Wheen EAT on 18th April [2000] Employment Appeal Tribunal" and the Court of Appeal decision re the same case

4 - the exact dates such internet advertising began

5 - on the authority of which UK Government Minister[s] and/or individual did this advertising begin?

6 - the law which permits anyone to publish this information 10 years after the event

7 - if you deny responsibility, who is responsible and what evidence do you have?

8 - against how many other individuals has the EAT issued similar orders to that referred to in 3 above?

9 - if those cases are on the internet, where and under what headings?

10 - the amount of money expended by the UK Government on intercepting, recording and hacking into communications to and from myself and the legal authority for doing so.'

3. The public authority responded to the complainant's request on 20 September 2010. The public authority provided a response to all 10 parts of the complainant's request. In order to meet its obligation to provide advice and assistance under section 16 of the Act, the public authority also confirmed that information regarding employment tribunals would be held by the Ministry of Justice.
4. The complainant responded to the public authority on 20 September 2010, by questioning the responses of the public authority and by requesting further advice and assistance.

The complainant asked to be advised who would hold the requested information if the public authority did not. The complainant stated that he believed part 10 not to be an accusation of criminal activity (asserting this action to be going on) but a request for the figure of expenditure, he believes to exist.

5. The public authority provided further advice and assistance to the complainant on 21 September 2010. In this it reiterated that information regarding employment tribunals would be held by the Ministry of Justice. It maintained its stance that part 10 was an accusation of criminal activity. Finally, the public authority provided a further copy of the list of Attorney Generals, following the complainant being unable to locate the previous list provided to him.
6. On 22 September 2010, the complainant requested an internal review, focussing solely on part 10. He maintained his position that the information could be considered a request under the Act, as it related to a specific figure (this assumed that the accused activity had occurred).
7. The result of the internal review was provided to the complainant on 22 September 2010. The public authority restated its position that part 10 was an accusation of criminal activity and was therefore unable to treat it as an FOI request.

The Investigation

Scope of the case

8. On 23 September 2010 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 public authority's handling of part 10 of his request.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
10. The Commissioner (for the reasons set out below) has determined that part 10 of the request is a valid request for information. On that basis, the Decision Notice and its analysis is directed solely towards that part.

Chronology

11. On 04 November 2010 the Commissioner wrote to the complainant to provide a preliminary view on the case. He explained to the complainant that the public authority should have applied the exemption under section 40(1) of the Act, as the requested information, if held, would likely be considered the complainant's personal data as defined by section 1(1)(d) of the Data Protection Act 1998 (the DPA). However in circumstances where the information sought by the complainant is likely to be that person's personal data, the Commissioner would treat this as being a valid subject access request under section 7 of the DPA.
12. The public authority wrote to the complainant on 26 November 2010 to explain that it had conducted a review of its initial decision. It explained that it had been incorrect in stating that part 10 of the request fell outside of the Act and had now considered it.
13. The public authority informed the complainant that it neither confirmed nor denied that it held information relevant to part 10 of the request. In making this response, the public authority explained that it was relying on section 44(1)(a) and 44(2) of the Act (Prohibitions on disclosure). It further explained that, in order to intercept personal communications (as the public authority was alleged to have done by the complainant) a warrant would be necessary under the Regulation of Investigatory Powers Act 2000. Section 19 of this Act prohibits the disclosure of the existence of such a warrant. The public authority therefore asserted that this provided a statutory bar to the confirmation or denial of the existence of the information and of its release, if held.
14. The complainant made a further complaint to the Commissioner on 30 November 2010 about the public authority's refusal to confirm or deny holding the information he seeks. The Commissioner responded, explaining that the requested information, if held, would still be the personal data of the complainant under section 40(1). The Commissioner explained that section 40(1) of the Act is an absolute exemption and therefore encouraged the complainant to make a subject access request under the Data Protection Act.
15. The complainant raised further arguments regarding the case on 30 November 2010. On the basis that the complainant was not content with the explanation provided to him in relation to

part 10 of his request, the Commissioner decided to make a formal decision on this part and issue a Decision Notice.

Analysis

Substantive Procedural Matters

16. Section 17(1) states 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.

17. Section 10(1) of the Act states that a request for information made under section 1 of the Act must be complied with not later than the twentieth working day following the date of its receipt.

18. The Commissioner is satisfied that the wording of part 10 of the complainant's request constitutes a request for information. He gains support for this view in the decision of the Information Tribunal in *Barber v IC* (EA/2005/0004) which confirmed that a request which makes an accusation or is based on an assumption which the authority disputes is still a valid request.

19. Therefore in failing to issue a valid refusal notice within 20 working days of the request in respect of part 10 of the complainant's request the public authority failed to comply with section 17(1) of the Act.

Exemptions

20. The Commissioner considers that the public authority should have cited section 40(5)(a) in its response to part 10 of the complainant's request, on the basis that the information he seeks would constitute his own personal data.

21. Section 40(1) states that:

'Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject.'

Subsection (5)(a) states that:

'The duty to confirm or deny:

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)'.

22. For this exemption to apply, the data referred to must, if held, constitute personal data under the DPA. The DPA defines personal data as:

'...data which relate to a living individual who can be identified

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual'.

23. The Commissioner has considered the terms of the complainant's request for information against the context provided by this request and is satisfied that the information the complainant seeks, would, if held, amount to his 'personal data'. The information sought in respect of part 10 of the request would relate to the complainant: It is information referenced to himself, relating to his interaction with third parties in a context which is personal to the complainant.

24. Furthermore the Commissioner has decided that the public authority is not obligated under the Act to confirm or deny whether or not any information is held by it (following section 40(5)) or to supply any information if so held (section 40(1)). The Commissioner has determined that part 10 of the complainant's request should be considered under the provisions of the DPA. He will now go on to do this separately.

25. Because of the above, the Commissioner feels it is unnecessary to consider the later application, by the public authority, of section 44(1)(a) and (2) of the Act.

The Decision

26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act: the public authority did not initially recognise part 10 of the request as a valid request for information and did not issue a refusal notice citing an exemption for this part of the request within 20 working days.

Steps Required

27. The Commissioner requires no steps to be taken.

Other matters

28. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following:
29. The Commissioner wishes to emphasise that the disclosure of information under the FOI Act constitutes the disclosure of information into the public domain, without restriction. Furthermore, apart from whether determining whether a request is vexatious or repeated, a public authority cannot take into account the identity of a requestor when dealing with a request made under the Act.
30. Therefore the Commissioner expects public authorities, when responding to requests for information which would, if held, constitute the personal data of the requestor, to handle the request in the first instance as a Subject Access Request under section 7 of the Data Protection Act 1998.

Right of Appeal

31. 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

32. 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.
33. 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 11th day of January 2011

Signed

Alexander Ganotis

Group Manager – Complaints Resolution

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Legal Annex

Freedom of Information Act 2000

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.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Refusal of Request

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."

Personal information

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(5) provides that –

"The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Prohibitions on disclosure

Section 44(1) provides that –

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or
(c) would constitute or be punishable as a contempt of court.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

Data Protection Act 1998

Basic interpretative provisions

Section 1(1) provides that -

In this Act, unless the context otherwise requires—

“data” means information which—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or

(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);

“data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

"data processor", in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

"data subject" means an individual who is the subject of personal data;

"personal data" means data which relate to a living individual who can be identified—

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

Right of access to personal data

Section 7 provides that –

(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

- (i) the information constituting any personal data of which that individual is the data subject, and
- (ii) any information available to the data controller as to the source of those data, and

Regulation of Investigatory Powers Act 2000

Offence for unauthorised disclosures

Section 19 provides that -

(1) Where an interception warrant has been issued or renewed, it shall be the duty of every person falling within subsection (2) to keep secret all the matters mentioned in subsection (3).

(2) The persons falling within this subsection are—

- (a) the persons specified in section 6(2);
- (b) every person holding office under the Crown;
- (c) every member of the staff of the Serious Organised Crime Agency;
- (ca) every member of the Scottish Crime and Drug Enforcement Agency;
- (e) every person employed by or for the purposes of a police force;
- (f) persons providing postal services or employed for the purposes of any business of providing such a service;
- (g) persons providing public telecommunications services or employed for the purposes of any business of providing such a service;

(h) persons having control of the whole or any part of a telecommunication system located wholly or partly in the United Kingdom.

(3) Those matters are—

(a) the existence and contents of the warrant and of any section 8(4) certificate in relation to the warrant;

(b) the details of the issue of the warrant and of any renewal or modification of the warrant or of any such certificate;

(c) the existence and contents of any requirement to provide assistance with giving effect to the warrant;

(d) the steps taken in pursuance of the warrant or of any such requirement; and

(e) everything in the intercepted material, together with any related communications data.

(4) A person who makes a disclosure to another of anything that he is required to keep secret under this section shall be guilty of an offence and liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

(5) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that he could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.

(6) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that—

(a) the disclosure was made by or to a professional legal adviser in connection with the giving, by the

adviser to any client of his, of advice about the effect of provisions of this Chapter; and

(b) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client.

(7) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was made by a legal adviser—

(a) in contemplation of, or in connection with, any legal proceedings; and

(b) for the purposes of those proceedings.

(8) Neither subsection (6) nor subsection (7) applies in the case of a disclosure made with a view to furthering any criminal purpose.

(9) In proceedings against any person for an offence under this section in respect of any disclosure, it shall be a defence for that person to show that the disclosure was confined to a disclosure made to the Interception of Communications Commissioner or authorised—

(a) by that Commissioner;

(b) by the warrant or the person to whom the warrant is or was addressed;

(c) by the terms of the requirement to provide assistance; or

(d) by section 11(9).