

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: The Department of Work and Pensions
(‘The DWP’)
Address: The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested copies of Expression of Interest (“EoI”) and Sift forms for the eight successful candidates who applied to be Project Advisers in a Community Outreach programme.

The DWP replied to the request for the EoI forms, providing heavily redacted forms. It did not reply to the request for the Sift forms.

The complainant asked for an internal review and the DWP disclosed more information from the EoI forms. The complainant asked again for the Sift forms and the DWP provided redacted copies.

The complainant requested a Decision Notice in relation to the delays he had experienced.

The Commissioner finds that the DWP breached sections 10(1), 17(1) and 17(1)(b) of the Act. He does not require any remedial steps to be taken because the complainant has already received the information to which he was entitled.

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 Department of Work and Pensions ("the DWP") invited members of staff to submit Expression of Interest ("EoI") forms to be considered for the role of Project Adviser in a Community Outreach programme.
3. The EoI forms were considered and sifted by the DWP. During the sifting process, Sift forms were filled out for each applicant. Eight applicants were successful on the basis of this process, but others were not.
4. The complainant was interested in understanding how the sifting process was undertaken and asked for both the EoI forms and the Sift forms. He originally requested the information privately as a member of staff, but was told that he could not have it. He then made a request under the Act.
5. The complainant received two complete EoI forms from the individuals who completed them during the course of this investigation.

The Request

6. On 18 June 2010 the complainant requested the following information from the DWP:

'[1] The information I require is the 8 EOI forms submitted by the successful candidates in the Project Adviser – Community Outreach EOI exercise carried out by [Individual A redacted] and [Individual B redacted] in the Wigan area. Closing date early May 2010 (04/05/10?) Sift Chair [Individual C redacted].

'[2] I also require the feedback forms relating to these EOIs.'

7. On 29 June 2010 the DWP issued its response to part [1] of the request. It confirmed that it held the requested information and provided highly redacted copies of the EoI forms ("the first disclosure"). It explained that it could not provide any of the other information because it was caught by the exemption at section 40 of the Act. It explained that the information was the personal data of third parties and in its view could not be supplied to the public in compliance with the principles of the Data Protection Act 1998 ("the DPA") without their consent.
8. A dialogue followed between the complainant and the DWP. He received the advice that was given to the person who handled part [1] of his original request about how to handle his request in compliance with the Act and the DPA.

9. On 6 August 2010 the complainant expressed his dissatisfaction at the DWP's handling of part **[1]** of his request. He explained that he was only interested in the forms in his private capacity and only wanted the content of the forms, rather than the names of those concerned. He also explained that in his view the forms could be anonymised less zealously without the information losing its anonymity.
10. On 31 August 2010 the DWP conducted its internal review into the handling of part **[1]** of the original request. It explained that it had now sought further legal advice and was prepared to disclose less redacted EoI forms ("the second disclosure") to the complainant.
11. On 8 October 2010 the DWP issued a response to part **[2]** of the request. It apologised for the delay and provided redacted copies of the Sift forms. It also explained that it had considered part **[1]** again and maintained its position.

The Investigation

Scope of the case

12. On 14 October 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 following points:
 - At that time, he had not received a response to part **[2]** of the request.
 - He still believed that the redactions to the EoI forms were too extensive.
13. On 9 May 2011 the Commissioner agreed with the complainant that he would consider the following three things in his investigation:
 - [i]** Whether it was possible for the DWP to provide a consistent identifier to link the EoI forms to the Sift forms that had been provided.
 - [ii]** Whether the remaining EoI forms (those the complainant had not already got in full) had been redacted appropriately (so whether section 40(2) (third party personal data) applies to them), or whether further information from them could be disclosed to the public.
 - [iii]** The DWP's timeliness.
14. On 9 June 2011 the complainant accepted the Commissioner's preliminary verdict about the operation of section 40(2) to the remaining

withheld information and asked the Commissioner to issue a Decision Notice just on the delays he had experienced.

15. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner cannot consider the fairness or otherwise of a promotion procedure.

Chronology

16. On 23 February 2011 the Commissioner wrote to the complainant and the DWP to explain that he had received an eligible complaint.
17. On 4 April 2011 the Commissioner asked the DWP for the withheld information and was provided with it the same day. The information indicated that part **[2]** had now been answered by the DWP.
18. On 8 April 2011 the Commissioner wrote to the complainant to explain his remit and to establish the scope of the complaint. He also asked the complainant to confirm whether he had received an answer to part **[2]** of the request.
19. On 19 April 2011 the complainant indicated that he was dissatisfied that the two forms could not be tied together and agreed the scope of the investigation. He provided the Commissioner with further evidence on 21 April 2011.
20. On 7 May 2011 the Commissioner confirmed the scope of the case with the complainant. He spoke to the DWP on the same day and it agreed to rerelease the redacted information with consistent identifiers informally resolving part **[i]** of the scope of the case. It rereleased the first disclosure along with the Sift forms (so it was clear which EoI form related to which Sift form) on 17 May 2011.
21. On 11 May 2011 the Commissioner made detailed enquiries about the operation of section 40(2). He received answers to those enquiries on 23 May 2011.
22. The complainant expressed dissatisfaction that the second disclosure wasn't released alongside the Sift forms. The Commissioner discussed this with the DWP and it then rereleased the second disclosure along with the Sift forms on 26 May 2011.
23. On 25 May 2011 the Commissioner wrote to the complainant explaining in detail his preliminary verdict about the operation of section 40(2) to the rest of the EoI forms. He asked the complainant to consider his comments and whether he wanted this case to continue.

24. On 9 June 2011 the complainant explained that he wanted the Commissioner to issue a formal Decision Notice about the delays he had experienced. He confirmed his position in writing.

Analysis

Procedural Requirements

Section 10(1)

25. 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'.

26. Section 1(1)(a) requires that a public authority confirms or denies that it holds information and section 1(1)(b) requires that non-exempt information is provided.
27. The DWP failed to address request **[2]** within 20 working days (taking nearly four months) and therefore did not comply with section 1(1)(a), section 1(1)(b) or section 10(1) of the Act.
28. The DWP also failed to provide all the non-exempt information for request **[1]** within 20 working days and did not comply with section 1(1)(b) of the Act. Its failure to disclose this information until 31 August 2010 was also a breach of section 10(1) of the Act.

Section 17(1)(b)

29. Section 17(1)(b) explains that a public authority must explain what exemption it is relying on. In the Commissioner's view this means that it must state the exemption down to its subsection.
30. In this case, the DWP applied section 40, but failed to state the correct subsection (section 40(2)) in either its refusal notice or the two internal reviews it conducted. In the Commissioner's view this was a breach of section 17(1)(b).

Section 17(1)

31. Section 17(1) requires a complete refusal notice to be issued within 20 working days. As the refusal notice for part **[2]** of request was not issued in 20 working days and all the refusal notices failed to comply with section 17(1)(b), the Commissioner also finds a breach of section 17(1) in this case.

The Decision

32. The Commissioner's decision is that the DWP did not deal with the request for information in accordance with the Act. In particular, there were procedural breaches of sections 10(1), 17(1) and 17(1)(b).

Steps Required

33. The Commissioner requires no steps to be taken in this case.

Right of Appeal

34. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

35. 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.
36. 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 29th day of June 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'.

Refusal of request

Section 17(1) provides that -

(1) 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.