

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 May 2011

Public Authority: Ministry of Justice (Tribunals Service)
Address: 102 Petty France
London
SW1H 9AJ

Summary

On behalf of his mother the complainant requested information under the Freedom of Information Act 2000 (the 'Act') from the Tribunals Service of the Ministry of Justice . The Commissioner has investigated and finds that, while a response was provided by a branch of the Tribunals Service which explained that the information could not be provided until the associated appeal process had been concluded, no formal response was provided under the Act. Accordingly, no refusal notice was issued and the complainant was not offered the opportunity to request an internal review of the decision made. The public authority was in breach of its procedural obligations under the Act as a consequence.

The request should be dealt with under the provisions of the Act, and the Commissioner requires the Ministry of Justice to respond to the complainant confirming or denying whether information is held. If information is held the Ministry of Justice should either disclose the information to the complainant or issue a valid refusal notice under section 17 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. This Notice sets out his decision.

Background

2. The complainant submitted a request under the Act on behalf of his mother who was, at the time of the request, involved in a tribunal case.

The Commissioner understands that the request was for the outcome of a judicial complaint investigation which had not then been completed. He further understands that the Investigating Judicial Office Holder (IJOH) has been following the Tribunals President's Protocol 2 (revised October 2009) *Complaints against Judicial Office Holders* and, accordingly, will not conclude the investigation until the complainant's mother confirms that her original tribunal case appeal is at an end and that she does not intend to pursue that case further with a higher court. Once this has been confirmed the IJOH would then be in a position to respond to the judicial complaint in accordance with the Judicial Complaints (Tribunals) Rules 2008.

3. All references to the Tribunals Service in this Notice refer to a specific location, the identity of which has been redacted. The Tribunals Service falls under the umbrella of the Ministry of Justice.

The Request

4. On 14 November 2010 the complainant requested the following information from the Ministry of Justice (the 'MOJ') via its Tribunals Service:

"Under the Freedom of Information Act, I give you 20 working days to disclose the findings against a [location redacted] Tribunal Member whom [sic] discriminated against my Mother and victimised her case from the outset with the un-professional statement of 'There's the door' when my Mother confirmed she was nervous as this is evidence submitted to the Upper Tribunal."

5. This request followed an initial exchange of correspondence between the parties on or around 8 November 2010, copies of which were not forwarded to the Commissioner as part of the complainant's complaint. However, from the complainant's submitted correspondence, the Commissioner understands that the particular branch of the Tribunals Service had advised the complainant that it was investigating a Tribunal panel member and could not respond until the outcome of the Upper Tribunal had been finalised. The complainant advised the Commissioner that the Upper Tribunal had confirmed that the investigation of the panel member dating back to December 2009 *"has in no way to wait for an outcome of the Upper Tribunal in London and with a length of time approaching 8 months"* (as at the time of the complaint) *"they at [location redacted] have had sufficient time to respond with the outcome of their investigation"*.

6. On 15 November 2010 the Tribunals Service replied to the complainant advising that, due to the ongoing judicial complaint investigation, the complainant's mother's complaint could not be processed until such time as she had confirmed her intention not to appeal.
7. The complainant wrote to the Tribunals Service that same day expressing his dissatisfaction with the explanation provided and reminding that it now had 19 working days in which to respond under the Act.
8. To date the complainant has not received a response in accordance with the provisions of the Act.

The Investigation

Scope of the case

9. On 30 December 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled, specifically about the lack of a response to his request under the Act.

Chronology

10. On 4 February 2011 the Commissioner informed the MOJ that he had received a complaint regarding this request. He provided a copy of the request and asked the MOJ to provide its response to both the complainant and to the Commissioner, reminding the MOJ of the requirement to respond within 20 working days.
11. The MOJ wrote to the Commissioner on 21 February 2011 providing a brief explanation of the background and enclosing a copy chain of emails (referenced under The Request section above) between the Tribunals Service and the complainant. The MOJ conceded that, whilst a response had not been provided in accordance with the Act, it had replied to the complainant. It acknowledged that had it followed the correct process, it would have issued a refusal notice citing the exemption at section 40(2) of the Act and advising the complainant that his mother might wish to submit a Subject Access Request under the provisions of the Data Protection Act. The MOJ stated it would *"prepare and send a reply to [the complainant] under the provisions of the Freedom of Information Act"*.
12. On 28 February 2011 the complainant contacted the Commissioner and provided him with copies of an email exchange on 7 and 9 February 2011 between the complainant and the Tribunals Service.

13. The Commissioner wrote to the complainant on 10 March 2011 to advise that he should by then have received a response and asked him to exhaust the internal review process and provide copies of the associated documentation.
14. On 11 March 2011 the complainant contacted the Commissioner to make him aware that no response from the MOJ had been received.
15. The Commissioner wrote to the MOJ and the complainant on 21 March 2011 advising that the complaint had been accepted.

Analysis

16. The full wording of the sections detailed in this Notice can be found in the Legal Annex.

Procedural Requirements

Section 8 - Requests for information

17. Section 8(1) of the Act states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Commissioner considers that the request in this case can be defined as such and therefore constituted a valid request under the Act for recorded information.
18. The Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While the Commissioner notes that in this case the Tribunals Service has provided an explanation, his view is that the MOJ was under an obligation to provide a freedom of information response within the statutory timescale.

Section 10 – Time for response

19. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
20. From the information provided to the Commissioner on this case it is evident that the MOJ did not respond to the complainant under the Act within the statutory time frame, and therefore breached section 10(1).

The Decision

21. The Commissioner's decision is that the MOJ did not deal with the request for information in accordance with the Act. The MOJ breached sections 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days.

Steps Required

22. The Commissioner requires the MOJ to take the following steps to ensure compliance with the Act:
- confirm or deny whether the requested information is held to comply with section 1(1)(a);
 - if information is held, either provide the information to comply with section 1(1)(b), or withhold the information by issuing a valid refusal notice under section 17(1) of the Act.
23. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

24. 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.

Right of Appeal

25. 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

26. 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 17th day of May 2011

Signed

**Jon Manners
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."

Request for Information

Section 8(1) provides that –

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested."

Section 8(2) provides that –

"For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

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 -

"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 -

- (d) states that fact,
- (e) specifies the exemption in question, and
- (f) states (if that would not otherwise be apparent) why the exemption applies."