

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 1 September 2011**

**Public Authority:** The Department of Health  
**Address:** Richmond House  
79 Whitehall  
London  
SW1A 2NS

#### **Summary**

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The complainant requested a considerable amount of information about the public authority's procedures regarding Summary Care Records. The public authority did not originally treat it as a request for information under the Act and tried to respond to the request under normal course of business. The complainant referred the request to the Commissioner who advised the public authority to issue an appropriate response. It did then do so.

The complainant subsequently refined his request, but asked for the Commissioner to issue a formal decision notice about the delays that he experienced in obtaining a substantive response from the public authority.

The Commissioner finds that the public authority breached the procedural requirements of sections 10(1) and 17(5) in this case. However, he requires no remedial steps to be taken.

#### **The Commissioner's Role**

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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**

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2. On 20 April 2010 the complainant made the following request for information:

- *'Please provide all information on confidentiality, integrity, logging and how I may prevent access relating to the records, especially how these will be enforced.*
  - *Please provide all information relating to what happens if I decide not to agree [sic] / authorise changes/access/storage, and the same if I cannot.*
  - *Please provide all information on the exceptional circumstances mentioned in the letter that was sent with this; for I could have information removed; why the reluctance to do so.'*
3. On 28 April 2010 the public authority wrote to the complainant and referred him to the standard material on the website. It did not consider its position under the Act.
  4. After the Commissioner's intervention, the public authority issued a response under the Act to the request on 25 February 2011. It explained that it was too costly to locate all the recorded information that may be covered by the three parts of the request and it was relying on section 12(1) [the costs exclusion] not to provide further information. However, it explained to the complainant that there was some information of interest on its website, and provided links to it as part of its duty to provide advice and assistance. It also explained that it would have been entitled to apply section 21(1) to the information.
  5. The public authority explained its internal review details and also that the complainant could consider making a refined request. It provided assistance about how the complainant could bring his request within the cost limit.
  6. On 8 March 2011 the complainant made a refined request. The Commissioner is considering this refined request in a separate case (Commissioner's reference **FS50395506**).

## The Investigation

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### Scope of the case

7. On 28 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he hadn't received the information that he was entitled to, and wished the Commissioner to take enforcement action against the public authority.

8. On 28 July 2011 the complainant agreed that the Commissioner would issue a Decision Notice to provide a formal record of the delays that he had experienced with this request. It was noted that his substantive concerns would be addressed in the second case **FS50395506**.

## **Chronology**

9. On 11 June 2010 the Commissioner wrote to the complainant advising that he should seek an internal review if he was not happy with the standard response that was issued.
10. Further correspondence ensued. It became apparent that the public authority had not answered the request in accordance with the Act and, on 13 December 2010, the Commissioner asked the public authority to issue a response that accorded with the Act.
11. Further correspondence ensued. The public authority did then issue a response under the Act on 25 February 2011.
12. On 27 July 2011 the Commissioner wrote to the complainant to advise that he had received two connected complaints. He advised that he proposed that he would consider the procedural aspects of the first request and the substantive position in relation to the refined request and asked whether the complainant was content with this approach.
13. On the following day, the complainant confirmed that he was content with this approach.

## **Analysis**

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### **Procedural Requirements**

#### *Section 10(1)*

14. Section 10(1) requires that a public authority complies with its obligations under section 1(1)(a) [to confirm whether or not relevant recorded information is held] and section 1(1)(b) [providing the information that is not exempt] in 20 working days.
15. The public authority failed to issue a response that accorded with the Act in 20 working days and so breached section 10(1).

#### *Section 17(5)*

16. Section 17(5) requires that where a public authority is relying on the costs limit that it issues a notice saying so within the time of compliance (in this case 20 working days).

17. As the public authority did not issue its response in twenty working days and did not explain that it was relying on the costs limit, then the Commissioner finds that it also breached section 17(5).

## **The Decision**

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18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. It breached sections 10(1) and 17(5) by not issuing an appropriate response within 20 working days.

## **Steps Required**

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19. The Commissioner requires no steps to be taken. This is because he is considering a similar substantive complaint and there are no steps that can be taken to remedy the time breaches in this case.

## Right of Appeal

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20. 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@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

21. 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.
22. 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 1<sup>st</sup> day of September 2011**

**Signed .....**

**Pamela Clements  
Team Leader Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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'.

### Section 17 - Refusal of request

(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.