

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 September 2011

Public Authority: Sheffield College
(the 'College')
Address: Granville Road
Sheffield
S2 2RL

Summary

The complainants requested a number of items of information under the Act about an incident relating to a security barrier. The College failed to provide the relevant recorded information to the complainants within 20 working days. Originally, it explained that it believed that a third party would provide the information to them. The complainants confirmed that they did receive the relevant recorded information, but that they remained concerned about the delays that were experienced. The Commissioner agreed that he would issue a Decision Notice on those delays. He finds that the delays constituted a breach of section 10(1) of the Act. However, he requires no remedial steps in this case as the requested information has already been provided.

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. On 20 September 2010 there was an incident at the College when a security barrier damaged the complainants' car. The complainants' representative made a number of requests about this incident under the Act.

3. The complainants had a representative acting on their behalf. This individual will be called 'the complainant's representative' in this Notice. At the same time as the request an insurance claim about the incident was being dealt with by a third party. They will be called 'the third party' in this Notice.

The Requests

4. On 29 October 2010 the complainants' representative requested the following seven items under the Act on their behalf (the Commissioner has redacted the name of the member of staff in this publicly available Notice):

[1] A copy of the CCTV that shows the incident;

[2] A copy of the risk assessment regarding the use of the equipment [the security barrier];

[3] A copy of the safety check that was conducted by the installation company after work had been completed;

*[4] A copy of the report **[Individual A redacted]** instigated on 20.9.10 after the malfunction;*

[5] A copy of the safety check that was conducted after the malfunction;

[6] Names of the security guards that were on duty that day and the training they have received in respect of using the barrier; and

[7] ... A copy of the maintenance contractors [sic] written inspection report.

5. On 2 November 2010 a third party provided the complainants' representative with the information requested in [1] on the College's behalf. On 3 November 2010 the College wrote to the complainants' representative to explain that the request had been passed to the third party and would be dealt with by them. The College wrote to the third party on the same day to explain its approach. The third party subsequently provided the complainants with the requested information for request [5].
6. On 17 December 2010 the complainants' representative wrote to the third party to chase the progress in providing the complainants with the rest of the information requested.

7. On 10 May 2011 the College issued a response to the complainants' representative. It explained that it understood that the information for [1] had been passed to the complainants' representative by the third party. It confirmed that it held no relevant recorded information for [2] or [3] and that it had passed a copy of items [4] and [5] to the third party. It provided the names for request [6].
8. On 19 May 2011 the complainants wrote to the College to formally request an internal review into the handling of their request. They explained that the information requested in [4] and [6] was still outstanding and had not been disclosed by the third party. On 23 May 2011 the College replied and explained what had happened to the request, confirming that for [6] no relevant training had been provided.
9. On 26 May 2011 the complainants wrote to the College to express their continued dissatisfaction about not being provided with what they had requested under the Act. They also explained that request [7] had not been addressed at all.
10. On 3 June 2011 the College issued another response to the complainants. It explained that it had passed the information to the insurance company for requests [1], [4] and [5] and believed that they had passed the information to the complainants. It provided the names for part [6], confirmed that it held no relevant recorded information for requests [2] and [3] and finally explained for request [6] that the relevant individuals received no training. It confirmed that there was no further relevant recorded information for request [7] that was not covered by request [5].
11. On 9 June 2011 the complainants wrote to the College again to express their dissatisfaction at the handling of the request. In particular, they explained that they had not received the information for request [4] and made another request for information – request [8] (in relation to a letter sent to the third party on 3 November 2011):

'Please confirm the nature of the clarification in your letter dated 8 November 2010.'
12. On 20 June 2011 the College issued a further response. It provided the information requested for [4] to the complainants. It also answered request [8].
13. On 11 July 2011 the complainants wrote to the College to explain that they regarded the request as being satisfied, but that they remained concerned about the problems in the processing of the request that its handling evidenced.

14. On 21 July 2011 the College replied to explain that they considered this matter to now be closed.

The Investigation

Scope of the case

15. On 24 March 2011 the complainants contacted the Commissioner to complain about the way their request for information had been handled. The complainants specifically explained to the Commissioner that they were missing the information for requests [2] to [7].
16. On 23 August 2011 the Commissioner telephoned the complainants. He explained that in light of the letter dated 11 July 2011 he understood that the complainants had now received what they had requested. The complainants confirmed that this was so, but that they continued to want a Decision Notice about the delays that they had experienced. The Commissioner agreed to draft this Notice.
17. 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 actions of insurance companies and how they handle their claims.

Analysis

18. Section 1 of the Act imposes obligations on public authorities to answer requests for information that they receive.
19. In this case, the Commissioner has noted that confusion has been caused by the College appearing to delegate the responsibility to answer the requests to the third party and then the third party not providing all of the information. The Commissioner wishes to make it clear that the public authority remains responsible for ensuring that it complies with its obligations under the Act. He does note that this was complicated by the complainants apparently insisting that the insurance company dealt with them rather than the College.

Section 10(1)

20. Section 10(1)¹ provides that public authorities should comply with the requirements of section 1 within 20 working days.
21. Section 1 requires that a public authority confirms or denies that it holds relevant recorded information [1(1)(a)] and that it provides the information when it is not exempt [1(1)(b)].
22. In this case the College failed to issue any valid response to requests [1] to [7] for 131 working days. It therefore failed to comply with section 10(1) in 20 working days and breached section 10(1) of the Act.
23. The Commissioner does not require any remedial steps to be taken in respect of this procedural breach because the information has been provided to the complainants.

The Decision

24. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. It breached section 10(1) because it did not issue a response in 20 working days.

Steps Required

25. The Commissioner requires no steps to be taken.

Other matters

26. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. The introduction to the code of practice issued under section 45 of the Act (the "Code") states:

"All communications 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 in many cases such requests will be dealt with in the course of normal business, it is

¹ All sections of the Act that are mentioned in this Notice are found in full in the Legal Annex attached to it.

essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard."

27. Although the introduction does not form part of the Code itself, the Commissioner echoes its recommendations and expects that, in its future handling of requests, the public authority will ensure that it has regard for its responsibilities under the Act and the recommendations of the Code. It is not adequate for it to delegate its responsibilities under the Act to third parties without making sure that they comply with the obligations that the Act imposes on it.

Right of Appeal

28. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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 27th day of September 2011

Signed

**Pamela Clements
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1 - General Right of Access

Section 1 of the Act provides that:

- (1) 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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) Where a public authority –
 - (a) reasonably requires further information in order to identify and locate the information requested, and
 - (b) 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.”
- (4) 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.”
- (5) 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).”
- (6) 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”.”

Section 10 - Time for Compliance

Section 10 of the Act provides that:

(1) 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."

(2) 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."

(3) 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."

(4) 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."

(5) Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner."

(6) 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.”