

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2014

Public Authority: Civic Procedure Rule Committee
Address: c/o Mr A Caton
Room E214
Royal Courts of Justice
The Strand
London
WC2A 2LL

Decision (including any steps ordered)

1. The complainant requested information from the Civic Procedure Rule Committee ('CPRC') which is listed as a separate public authority in Schedule 1 of the FOIA. The CPRC disclosed some information, but failed to address the three key points of the request. The Commissioner's decision is that the CPRC breached section 1 and section 10 of the FOIA by failing to confirm or deny whether it held the information in question within 20 working days.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - issue a fresh response to the complainant under the FOIA in respect of the information described in paragraph 8 of this decision notice.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 3 March 2014 the complainant wrote to the CPRC and requested information in the following terms:

"Section IV of CPR 45 introduced by the Civil Procedure (Amendment number 2) Rules 2004 (SI2004/2072) and Section V of CPR 45 introduced by the Civil Procedure (Amendment number 3) Rules (SI 2005/2292)

I have also discovered the Civil Justice Council Annual Report for 2005 the link to which (for your ease of reference is this)

<http://www.judiciary.gov.uk/JCO%2FDocuments%2FCJC%2FPublications%2FAnnual+reports%2FCJC+Annual+Report+2005.pdf>

The penultimate bullet point on page 21 of that report includes the following

- Success fees in industrial disease cases: as a result of further mediation work the Civil Justice Council was pleased to be able to report to the Department for Constitutional Affairs in April 2005. An 'industry' agreement on levels of success fees to be paid in conditional fee cases in claims relating to industrial disease caused by asbestos, vibration white finger and industrial deafness among others. After receiving ministerial approval the agreement was implemented by the Rules Committee in CPR Part 45 effective from October 2005.*

I shall be grateful if you will provide copies of the document or documents which evidence the "Industry Agreement" as well as a copy of the report from the Civil Justice Council to the Department for Constitutional Affairs referred to above.

Can you also provide copies of the document which evidences "Ministerial approval" of the agreement.

Can you also provide copies of the documents which set out the intentions of the Civil Justice Council, the Civil Procedure Rules Committee and the Minister for the purposes of the rule identified in the heading of this letter."

5. The CPRC responded on 4 April 2014. It provided a zip file of information containing various CPRC documents which it said had been prepared for meetings in 2003-2005 on costs, and the associated minutes. It stated that it had:

"not had time to look closely at the documents and have just pulled out everything that looks relevant to your request. If there are documents mentioned in the text or other CPRC papers noted which I have not included and you would like to see please let me know and I will retrieve them. Please let me know if I can assist further".

Scope of the case

6. The complainant contacted the Commissioner on 16 April 2014 to complain about the way his request for information had been handled. Having secured a copy of the CPRC's response and the contents of the zip file which were provided to the complainant on 4 April 2014, the Commissioner asked the complainant to clarify the grounds of his complaint.
7. The complainant said that neither the response nor the contents of the zip file contained the information he requested in parts 1-3 of the request, such that he considered that the CPRC had not answered his request fully.
8. The complainant said that the CPRC omitted to:
 - provide copies of the document or documents which evidence the "Industry Agreement" as well as a copy of the report from the Civil Justice Council to the Department for Constitutional Affairs referred to; and
 - provide copies of the document which evidences "Ministerial approval" of the agreement; and
 - provide copies of the documents which set out the intentions of the Civil Justice Council, the Civil Procedure Rule Committee and the Minister for the purposes of the Rule identified in the heading of his request of 3 March 2014 (Section IV of CPR 45 introduced by the Civil Procedure (Amendment number 2) Rules 2004 (SI2004/2072) and Section V of CPR 45 introduced by the Civil Procedure Amendment number 3) Rules (SI 2005/2292)).
9. The CPRC is listed in Schedule 1 of the FOIA as a public authority in its own right. As such the breaches of the FOIA were committed by it. The Commissioner has considered the CPRC's compliance with section 1 and section 10 in dealing with this request.

Reasons for decision

Section 1 and section 10 - general right of access and time for compliance

10. The Commissioner notes the statement quoted at paragraph 5 above and takes this as an indication that the CPRC did an inadequate job of establishing what information was held that fell within the scope of the request. Stating that there was insufficient time to spend on the request, and inviting the requester to identify missing information, is not an acceptable approach to dealing with an information request. As a result of this poor handling of the request, the Commissioner is of the view that the response to the request did not address the three points identified above at paragraph 8. Section 1(1) provides that:

“Any person making a request for information to a public authority is entitled –

to be informed in writing by the public authority whether it holds information of the description specified in the request”.

11. By failing to confirm or deny whether it holds the information identified in paragraph 8, the CPRC breached section 1(1)(a) of the FOIA.
12. Section 10(1) provides that 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 of a request. By not complying with section 1(1) (in respect of the information identified in paragraph 8) within twenty working days of receipt of the request, the CPRC breached section 10(1).
13. At paragraph 2 above the CPRC is now required to issue a fresh response to the request, which must accurately identify what information is held that falls within the scope of the complainant's request. In relation to any information that is held, this should either be disclosed, or the complainant advised of the valid grounds under the FOIA under which this information is not disclosed.

Other matters

14. The Commissioner has made a record of the delay in this case. This may form evidence in future enforcement action against the CPRC should evidence from other cases suggest that there are systemic issues within the CPRC that are causing delays.
15. The Commissioner would also remind the CPRC that it is its responsibility to identify accurately what relevant information it holds upon receipt of an information request; there must be no repeat of the poor handling of the request seen in this case.

Right of appeal

16. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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