



FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 24 July 2006

Public Authority: The Lord Chancellor's Advisory Committee for Cheshire on Justices of the Peace.

Address: County Hall
Chester
Cheshire
CH1 1SF

Summary Decision and Action Required

The Information Commissioner's decision in this matter is that the public authority ("the Advisory Committee") has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 17(3)(b) of the Freedom of Information Act 2000.

In view of the matters referred to below the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require the public authority to take any action.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.



- 1.3 The Commissioner has a duty to either notify the complainant that he has not made a decision (and his grounds for not doing so) or to serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that, on 1 January 2005, the following request for information was submitted to the public authority in accordance with section 1 of the Act:

“That material created as a result of the complainants correspondence with the Assistant Clerk to the Lieutenancy and Deputy Secretary to the Advisory Committee in 2003/2004 touching the manner in which the Chester, Ellesmere Port and Neston Magistrates’ Court deals with its business. This includes, but is not limited to, any notes of conversations or meetings.”

- 2.2.1 The complainant requested that his request be dealt with under the Data Protection Act 1998 as well as the Act. Insofar as the requested information was personal data of which the complainant was the subject, the Advisory Committee has responded in an appropriate manner. This element of the request is not, therefore, considered in this Notice.
- 2.2.2 On 3 February 2005, the Advisory Committee disclosed some information to the complainant. However, the complainant was not satisfied as the information did not include “any report put to either the Business Panel or the Advisory Committee in March/April/May 2003” and so he asked it to review its refusal.
- 2.2.3 The Advisory Committee then identified the “notes of a meeting of the Advisory Committee Business Panel” held on 17 April 2003 as the information pertinent to the request. The document was disclosed on 22 April 2005 although two sentences were redacted as the Advisory Committee believed that the disclosure of the information they contained would be likely to prejudice law enforcement, in these particular circumstances the administration of justice.
- 2.2.4 On 1 May 2005 the complainant asked the Advisory Committee to confirm how the disclosure of the redacted information would prejudice the administration of justice. The Advisory Committee replied on 5 May 2005, explaining that the information related to the suitability of certain magistrates for judicial office and had been made available in confidence to the Panel in response to a complaint lodged by the complainant with the then Lord Chancellor’s Department. The Advisory Committee considered that, while it was appropriate for the complainant to see that his complaint had been properly dealt with, that did not extend to discussions about the magistrates themselves. The Advisory Committee believed that, if such information were to be released, then private discussions would be likely to be inhibited in the future (and certainly not minuted or evidenced).



3. Relevant Statutory Obligations under the Act

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.”

Section 17(3)(b) provides that –

“A public authority ... 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-

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

Section 31(1)(c) provides that –

“-(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(c) the administration of justice”

4. Review of the case

4.1.1 The complainant believes that the Advisory Committee's interpretation of section 31 of the Act is unduly restrictive and therefore, in his letter of 2 June 2005, he asked the Commissioner to ensure that section 31 had been properly applied.

4.1.2 In his investigation of the complaint, the Commissioner obtained a copy of the redacted information and received a fuller explanation from the Advisory Committee in respect of its application of section 31.

4.1.3 The Advisory Committee has advised that it believes there to be a significant risk of prejudice to the administration of justice as the information withheld relates to the appointment and performance of magistrates and to make such information publicly available could easily lead to a breakdown in the respect and trust placed in the bench.

4.1.4 In applying the public interest test, the Advisory Committee believes that the weight of interest must lie in having a judicial system that continues to function effectively. In the view of the Advisory Committee, the safeguards which currently exist within



the Department for Constitutional Affairs to deal with concerns about magistrates could well be undermined if the individuals involved felt inhibited in what they were able to say and if their comments were to go unrecorded. Such an outcome would seem to be a real risk if a decision was made to release information of the kind which has been redacted in this case.

5. The Commissioner's Decision

5.1.1 The Commissioner is satisfied that section 31 is engaged in relation to the redacted information as he accepts that the administration of justice would or would be likely to be prejudiced if comments concerning the appointment and performance of magistrates were to be released into the public domain.

5.1.2 Section 31 of the Act is a qualified exemption: once the exemption is engaged, the release of the information then becomes subject to the public interest test and the relevant body is required to apply that test to the information at issue. The Commissioner has reviewed the application of the public interest test. His decision is that the Advisory Committee has not dealt with the complainant's request in accordance with Section 17(3)(b) in that, when refusing the complainant's request for information, the Advisory Committee failed to state to the complainant the reasons for claiming,

“ that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

The Commissioner finds that the Advisory Committee did not apply (or, in the alternative, failed to inform the complainant that it had applied) the public interest test.

However, during the Commissioner's investigation of the complaint, the Advisory Committee set out in more detail its reasons for claiming that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Consequently, the Commissioner is satisfied that this breach has now been remedied.

5.1.3 The Commissioner has also considered the withheld information and the reasons put forward by the Advisory Committee as to why the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

5.1.4 The Commissioner accepts that there is an inherent public interest in ensuring that, in order to promote accountability, public authorities are transparent in the decisions they take. He also accepts that there is a strong public interest in disclosing information where to do so would help determine whether or not public authorities are acting appropriately. Further, he recognises that there should be confidence in the legal system, with the public needing to be satisfied that persons appointed and performing as magistrates are suitable for that position.



5.1.5 However, having examined the information that has been withheld in this case, the Commissioner does not believe that the public interest as set out above would be best satisfied by the release of the information, particularly bearing in mind that release under the Act means release into the public domain. It is the Commissioner's view that placing into the public domain information relating to the performance of individual magistrates, with no control as to how and in what circumstances that information might subsequently be deployed, could affect the proper functioning of the judicial system. The information at issue relates specifically to particular individuals, and procedures and safeguards already exist within the system to ensure that the performance of all those acting as magistrates is monitored effectively. While recognising that the public interest requires the assurance that those monitoring systems are working effectively, it is the Commissioner's view that putting into the public domain information about the performance of individual magistrates would not achieve that objective and, for the reasons set out above, would be likely to prejudice the administration of justice.

5.1.6 It is therefore the Commissioner's decision that the information has been correctly withheld.

6. Action Required

6.1 The Commissioner does not require the Advisory Committee to take any action.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Reference: FS50078010



Information Commissioner's Office
Promoting public access to official information
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Dated the 24th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
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