

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 September 2006

Public Authority: Wansbeck District Council
Address: Town Hall
Station Road
Ashington
Northumberland
NE63 8RX

Summary

The complainant requested information on 5 December 2005 about payments made by the Council for legal advice relating to a specific issue. The Council claims to have responded to this request, however the complainant has alleged that he has not received the information. On 10 July 2006 the complainant asked for this information to be resent. He did not receive a response. The Commissioner asked for the information to be sent again to the complainant, and for copies to be sent to him. The Council claims to have sent the information again, to both the complainant and the Commissioner, however neither party has received it. The Commissioner considers that the Council has failed to respond to the request of 10 July 2006 and has therefore breached the Act. The Commissioner considers that it is more likely than not that the Council has failed to comply with its obligations under the Act in relation to the request of 5 December 2005. The Commissioner requires the Council to supply the complainant with the information requested.

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.

The Request

2. On 7 November 2005 the complainant contacted Wansbeck District Council ('the Council') by email. He requested the following:

“Please furnish me with copies of all invoices and details of all payments made by and on behalf of Wansbeck District Council for legal advice from internal or external solicitors or barristers between the period January 2001 and November 2005.”

3. The complainant was sent an acknowledgement letter from the Council dated 14 November 2005.
4. Later on 14 November 2005 the Council responded to the complainant's request. The Council confirmed that it held information that answered the request, however it stated that:

“The scope of the request is very broad and covers a large time period. This information is held by each individual department on a case by case basis and will take a substantial amount of work to collate. Therefore in an effort to expedite matters for you and to ensure that you receive the information that you are specifically interested in I would respectfully request that you clarify exactly what information you are looking for. Any help you can give in narrowing the scope of your enquiry would greatly assist us in dealing with your enquiry promptly and effectively.”

Although the Council did not state so specifically, it appears to the Commissioner that the Council was relying upon section 12 of the Act, which allows public authorities to refuse to provide information in response to requests where to do so would exceed the appropriate limit.

5. The complainant responded on 5 December 2005. He stated:

“I would like copies of invoices received by Wansbeck District Council for legal advice and services received from internal or external Solicitors and Barristers for all matters relating to the Lavery v Thompson libel case heard in the Royal Courts of Justice in July 2002 and relating to the complaint that I made to the political and administrative leadership of Wansbeck District Council in July 2002 about the consequences of evidence given in the Royal Courts by Ian Leech and Ian Lavery. This will include invoices from Eversheds pertaining to the services of Mr Denis Cooper of Eversheds, Solicitors and invoices pertaining to all matters relating to the activities of the Independent Panel of four commissioned to look into my complaint in the autumn of 2002 who submitted their report explaining their incomplete investigation in the spring of 2004.

This request should show all invoices and payments referred to by Cllr Nicholson in his Lavery v Thompson letter dated September 2004 that was circulated to all Councillors about the report by the Independent Panel of four”.

6. The complainant received an acknowledgement on 6 December 2005.
7. The Council claims to have responded to the complainant on 4 January 2006 and enclosed copies of invoices.

8. The complainant contacted the Council by email on 29 January 2006 to state that he had not received the information and asked when it would be made available.
9. The Council replied by email on 30 January 2006. The complainant was informed that the request was "passed to the appropriate officer who has responded on behalf of Wansbeck District Council".

The Investigation

Scope of the case

10. On 27th February 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:
 - The Council's alleged failure to supply the information requested.
11. The complainant asked the Commissioner to consider his email to the Council of 7 November 2005 as the request for information which forms the subject of this complaint. The Commissioner noted that the complainant narrowed his request for information following the Council's invitation to do so. Had he wished to pursue the request of 7 November 2005 the complainant should have asked for internal review of the decision that his request would have involved "a substantial amount of work to collate". As he did not do so, the Commissioner has considered the email of 5 December 2005 as the request for information upon which this investigation is based.

Chronology

12. The Commissioner wrote to the Council on 21 March 2006. He provided a copy of the complainant's request for information and asked that the Council respond to the request within twenty working days.
13. The Commissioner also wrote to the complainant on 21 March 2006. He informed the complainant that the Council had been asked to respond to the request. The complainant was reminded that, should he be dissatisfied with the Council's response, he might write back to the Commissioner but only once he had exhausted the Council's internal review procedure.
14. The complainant wrote to the Council by email on 18 April 2006 as he stated had not received a response. He asked that the email be treated as a formal request for internal review of the handling of his complaint.
15. This was acknowledged by the Council on 18 April 2006.
16. The Council contacted the complainant by email on 26 April 2006 and informed him that the details of his request for internal review had been "registered...within the official complaints system" and that he would receive a response within ten days.

17. On 9 May 2006 the Council wrote to the complainant. The Council enclosed a copy of its letter dated 4 January 2006 to demonstrate its compliance with the Act.
18. On 11 May 2006 the complainant emailed the Council as he had not received a response to his request for internal review.
19. The council responded on 12 May 2006 stating it would "look into the matter".
20. The complainant emailed the Council twice on 7 July 2006 as he had not received a conclusive response to his request for internal review.
21. The Council responded by email on 10 July 2006 and attached a copy of the letter from the Council dated 9 May 2006. The complainant replied on the same day and informed the Council that he had "never at any time" received the correspondence referred to in the attachment. The complainant asked for the "letters and copy invoices" to be sent again. This constitutes a fresh request for information under the Act.
22. The Commissioner wrote to the Council on 31 July 2006 and asked the Council to resend the information it claimed to have provided on 4 January 2006. The Commissioner asked to be copied into both the covering letter and the information requested so that he could satisfy himself that the Council had complied with its obligations under the Act. The Commissioner asked if this could be carried out within ten working days.
23. The Commissioner telephoned the Council on 24 August 2006 to ask why it had failed to respond to his letter of 31 July 2006. The Commissioner was informed that the officer handling the complaint was out of the office. The Commissioner asked to be called back. The Commissioner repeated this process on 25, 29 and 30 August 2006 as the Council had failed to return his telephone calls.
24. On 30 August 2006 the Council telephoned the Commissioner. He was informed that the Council had responded to his letter of 31 July 2006 by sending the information requested to both the complainant and the Commissioner, within the ten working days specified. The Commissioner informed the Council that he had not received the information requested. The Council suggested that it email the information requested to both the complainant and the Commissioner. The Council stated a preference for email as a 'read receipt' could be attached to ensure the email had been opened by the complainant. The Commissioner agreed to this course of action, however as a contingency asked that the Council set out in a covering email to him that he may pass on the information to the complainant if necessary. It was agreed that the Council would forward the information by 31 August 2006 at the latest.
25. The Commissioner followed up the telephone call of 30 August 2006 with an email of 31 August 2006, to remind the Council of what had been agreed.

26. By 5 September 2006 the Commissioner had not received a response from the Council. He telephoned the Council and was informed that the officer handling the complaint was not in the office. The Commissioner left a message to remind the Council to respond. The Commissioner followed this telephone message with an email of the same date.
27. On 7 September 2006 the complainant telephoned the Commissioner to confirm that he had not yet received the information requested.

Findings of fact

28. The complainant has stated that he has not received the information requested. The Council asserts that this information has been supplied, although it has not submitted proof of posting in support of its claim. The Commissioner has not received the information the Council claims to have sent him.

Analysis

Procedural matters

29. The Commissioner has considered whether the Council has complied with its obligations under section 1 of the Act.
30. Section 1 states:
 - (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."
31. The complainant has stated to the Commissioner that he has not received the information requested in his email to the Council of 5 December 2005.
32. The Commissioner has not received the information requested in his letter to the Council of 31 July 2006.
33. The complainant has not received any communication from the Council in response to his request of 10 July to be provided with the letters and copy invoices again. The Council has neither provided the information nor a refusal notice and therefore must respond to this request. If the Council were to respond by stating that this request is repeated under section 14(2) of the Act the Commissioner would not consider this to be acceptable. This is due to the fact that, taking into account all of the correspondence that has passed between him, the Council and the complainant, it appears more likely than not that the Council has failed to provide the information requested on 5 December 2005 and has therefore failed to comply with its obligations under section 1.

34. Section 10 states:

- (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."

35. The complainant requested information on 10 July 2006. He has not received a response. The Council has therefore breached section 10 of the Act.

The Decision

36. The Commissioner's decision is that the public authority did not deal with either the request for information of 5 December 2005 or 10 July 2006 in accordance with the Act.

Steps Required

37. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

The public authority must supply the information requested to the complainant. By stating that the information has already been supplied to the complainant, the Council has confirmed that the information is not exempt under Part II of the Act. In addition, as there is no evidence that the Council has supplied the information originally requested, this request cannot be considered to be repeated within the meaning of section 14(2).

The Commissioner requires the public authority to post the information by special delivery in order to be able to produce proof of postage and delivery if necessary.

38. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

39. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 27th day of September 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

- (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 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

- (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 public authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning 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 in 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 in accordance with, the regulations.”

(5) “Regulations under subsection (4) may –

- (a) prescribe different ways 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.”