

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

8 October 2008

**Public Authority:** Commission for Social Care Inspection  
**Address:** 33 Greycoat Street  
London  
SW1P 2QF

#### Summary Decision

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The complainant asked the Commission for Social Care Inspection (CSCI) for information held about the Cheltenham Children's Home in relation to decisions made to authorise the broadcast of parts of a CSCI report, and the relevant CSCI policy and procedures. The Commissioner's decision is that CSCI did not deal with the request for information in accordance with the Act. Under section 10 of the Act, CSCI should have responded within 20 working days of the request having been made. This it failed to do by a wide margin, a failure which merits criticism. However the Commissioner noted, and welcomed, the apology by CSCI and the steps taken to ensure that future requests for information are dealt with faster.

#### The Commissioner's Role

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1. The Commissioner's role 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 14 September 2005 the complainant formally requested from CSCI any correspondence, minutes of meetings or information held by CSCI regarding the Cheltenham Children's Home in relation to decisions made by CSCI, in February 2005, to authorise the use, copying, quoting and broadcast extracts [sic] of a CSCI report, and a copy of the CSCI policy and procedures regarding applications by the press to use CSCI reports. CSCI released some information to the complainant on 13 December 2005 (on 11 January 2007 CSCI provided the complainant with a list of the documents that had been disclosed with that letter).

3. On 21 December 2005 the complainant made an amended request for copies of correspondence held by CSCI, including those received from or sent to representatives of the Press, Police, Parliamentary Affairs Team or any other agencies, regarding CSCI's decision to authorise the use, copying, quoting and broadcasting extracts of the Cheltenham CSCI reports. This should, he said, include copies of the minutes of a meeting held on 10 January 2005, the specific pages provided to the press and the drafts of letters previously withheld. On 22 December 2005 CSCI told the complainant that most of the information had been provided but that it would conduct a general trawl of information to discover if anything else was held. CSCI also advised that an exchange of emails with a journalist fell within the scope of his 21 December 2005 amended request; CSCI asked the journalist's permission to disclose the exchange and subsequently disclosed it to the complainant on 23 December 2005.
4. On 12 January 2006 the complainant told CSCI that full disclosure of the information requested had not been forthcoming. On 16 January 2006 CSCI said that it expected to give a substantive response within 10 working days. On 31 January 2006 the complainant again reminded CSCI of his request. On 6 February 2006, since no further information had been received, the complainant told CSCI that, if it continued to fail to disclose the information requested, he would have no alternative but to make a formal complaint to the Commissioner about the matter.
5. On 23 February 2006 the complainant told the Commissioner that CSCI was deliberately withholding the information requested to avoid possible litigation and/or had failed to maintain adequate records. On 6 March 2006 the Commissioner's Office told the complainant that it had contacted CSCI and that, since CSCI had told the Commissioner that the information had been provided on 21 December 2005, the Commissioner would be taking no further action.
6. On 7 March 2006 the complainant told the Commissioner that he disputed CSCI's assertion that the information had been provided and, on 27 March 2006, CSCI told the Commissioner that it was addressing all of the matters raised by the complainant. CSCI said that its consideration would include an internal review of his requests under the Act along with its responses to them. On 25 April 2006, and again on 26 June 2006, the complainant told the Commissioner's staff that he had not received the further information requested from CSCI, a matter the Commissioner's staff followed up with CSCI on 7 July 2006. The complainant sent reminder letters to the Commissioner's staff on 24 August 2006, and again on 19 September and 26 October.

On 4 September 2006 CSCI told the Commissioner's staff that, as a result of the extended absence of a member of staff, CSCI had decided to contract outstanding freedom of information matters to a named legal firm (the lawyers) for immediate action. On 26 September 2006 CSCI told the complainant that his requests for information had been reviewed by an independent advisor and that an action plan for providing a full response to his request had been put in place. On 31 October 2006, the Commissioner's Office wrote to CSCI to request an update on progress.

7. On 9 November 2006 CSCI responded to the complainant about all aspects of his complaints other than the disputed FOIA request; the complainant provided a full rebuttal to their arguments on 14 November 2006. On 17 November 2006 the lawyers told the Commissioner's staff that they were taking further instructions from CSCI and were awaiting further documents from CSCI to progress the matter.
8. On 28 November 2006 the complainant asked the Commissioner's staff to take enforcement action against CSCI. On 12 December 2006 the Commissioner's staff asked the lawyers how matters now stood. On 13 December 2006 CSCI told the complainant that the specific request for information was being addressed and told the Commissioner's staff that a response to the complainant was imminent, a message which the Commissioner's staff conveyed to him on 15 December 2006.
9. On 11 January 2007 CSCI sent the complainant and the Commissioner's staff a full and detailed response to the information requests and handling issues that had arisen. CSCI explained how the prolonged absence through illness of a key member of staff, and a consequent failure to action the complainant's file, had led to matters being heavily delayed and to the remedial steps that were taken subsequently. CSCI apologised for the extensive delay but confirmed that, following a full search of its relevant files, it now recognised that no further information was held beyond that which had already been disclosed in December 2005 and subsequently.

## The Investigation

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### Scope of the case

10. On 18 December 2006 the complainant complained to the Commissioner about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that:
  - CSCI had not applied an exemption under section 22 of the Act allowing the press to view part of an unpublished report, provided selected extracts of the unpublished report; instructed the press as to what they could or could not use verbatim, and had denied the press access to the provider's response to the said unpublished report, without a Freedom of Information Act request having been submitted (complaint 1)
  - CSCI failed to notify the complainant of its decision to release information to the media under the Act (complaint 2).
  - CSCI had refused to investigate this complaint under its complaints procedure (complaint 3).
11. The matters raised by the complainant (complaints 1 -3) do not relate to a complaint the Commissioner can consider under the Act, under section 50(1) the Commissioner can decide whether a request for information has been dealt with in accordance with Part I of Act . The issues the complainant has raised relate to

information provided (and not provided) to the press, not the complainant's FOI request. The Commissioner does not have jurisdiction to consider these complaints.

12. On 16 January 2007 the complainant told the Commissioner's staff of his extreme dissatisfaction with CSCI's service and that he had demanded an internal review. He said that he was also concerned that specific information requested from CSCI, which had been previously withheld, now appeared not to have been retained on record despite several of the items being attachments to emails previously disclosed. He asked the Commissioner to continue his investigation.

### **Chronology of the case**

13. On 4 April 2007, in response to a related complaint to the Parliamentary Ombudsman made on 1 August 2006, the Ombudsman told the complainant that it had not been possible, from the evidence the complainant had provided, to ascertain prima facie evidence of maladministration by CSCI and the Information Commissioner which had led to an unremedied injustice.
14. On 14 August 2007 the Commissioner's staff asked CSCI for its comments on matters raised by the complainant, including the suggestion that information within the scope of the requests and once held by CSCI was no longer held.
15. On 20 August 2007 CSCI told the Commissioner's staff that there had been a lot of confusion within CSCI, exacerbated by the long term illness of a key member of staff and by inadequate procedures, which had led to the very substantial delay in providing a full response to the request, although a partial response had been provided on 22 December 2005. CSCI believed that its letter to the complainant of 11 January 2007 was a full response to his 21 December 2005 request but as he had not requested a review of it, he had not exhausted its internal complaints procedure. CSCI believed that the 11 January 2007 letter to the complainant provided him with a full response as it confirmed that a search had been conducted and that CSCI did not hold any relevant information other than that which it had already provided to him. CSCI accepted that it had failed by a very significant margin to meet its obligation under section 10 of the Act to respond within 20 working days, an unacceptable delay for which CSCI had apologised to the complainant.
16. On 23 August 2007, the Commissioner's staff told CSCI that: the complainant had made reference, in correspondence with ICO, to having sought a review from CSCI on two separate occasions although it appeared that CSCI had not received the requests. On 27 March 2006 CSCI had promised to conduct an internal review but this had been overlooked subsequently. The Commissioner's staff said that he had decided not to require CSCI to conduct an internal review as: the complainant appeared to have lost confidence in CSCI; the matter had been outstanding for a long time and the Commissioner was reluctant to prolong matters; and, CSCI appeared not to hold more information beyond that already released. The Commissioner's staff asked CSCI to supply him with all of its records relating to this issue.

17. On 10 September 2007 CSCI provided the Commissioner with the relevant information and assured the Commissioner that, had CSCI held further information, it would not seek to avoid complying with the Act by withholding it.
18. On 20 February 2008 CSCI told the Commissioner's staff that it recognised that it had made significant failings in the handling of the request which were likely to have exacerbated an already difficult relationship. Since the original request CSCI had taken a number of steps to improve the way in which it met its obligations under the Act including:
  - recruiting an information governance manager to oversee the handling of requests for information and to take a strategic lead on improving procedures.
  - developing and implementing an information governance strategy
  - introducing new procedures to improve monitoring and oversight of request responses
  - recruiting a Head of Records and Documents Management
  - introducing new Records and Documents Management procedures
  - increased awareness raising and guidance to staff.
19. On 19 August 2008 CSCI provided the Commissioner with further assurance that information searches in December 2006 and January 2007 had resulted in the officers who had attended the 10 January 2005 meeting confirming that they did not hold any notes of it. Other relevant CSCI teams had also searched their records and confirmed that they did not hold any undisclosed relevant information.

## Findings of the case

20. The Commissioner found that CSCI had responded to the 14 September 2005 information request on 13 December 2005 and had then disclosed some relevant information.
21. He found that CSCI had given a partial response to the 21 December 2005 request for information on 22 December 2005 but had not dealt with it fully until 11 January 2007.
22. As regards the 10 January 2005 meeting CSCI said, and the Commissioner accepted, that it had conducted a search of its records. This had included searches of their own records by those present at the meeting; those officers had confirmed that they do not hold any notes of the meeting. CSCI's relevant teams had also conducted searches and confirmed that they did not hold any relevant records that have not already been disclosed to the complainant. All of these searches had been conducted prior to the Children's Services files being transferred to Ofsted
23. (now the responsible public authority) in March/ April 2007.

## Analysis

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24. The Commissioner has considered CSCI's response to the complainant's request for information. The Commissioner accepts on a balance of probabilities that CSCI

have now released all the information held that falls within the scope of the complainant's request

25. Under section 10 of the Act, CSCI should have responded to the requests within 20 working days of the request having been made (annex). This it failed to do by a wide margin, a failure which merits severe criticism. The failure to communicate disclosable information was also a breach of section 1(1)(b) of the Act. However, the Commissioner has noted, and welcomes, the apology given by CSCI and the steps it has put in place to ensure that future requests for information are dealt with much more expeditiously. He sees the apology and steps taken as the only feasible remedy in this case.

## **The Decision**

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26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act by breaching sections 1 and 10.

## **Steps Required**

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27. The Commissioner requires no further steps to be taken.

## Right of Appeal

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28. 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](mailto: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 8<sup>th</sup> day of October 2008**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

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

**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.”