

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 January 2008

Public Authority: Brighton and Hove City Council
Address: Kings House
Grand Avenue
Hove
BN3 2LS

Summary

The complainant requested information held in relation to the public authority's alcohol policy. The Commissioner decided that one element of the request was not a valid request for recorded information under the Act. In relation to the remaining element of the request, the Commissioner found that the public authority did not hold the information. Whilst the public authority's response to the complainant had not explicitly stated that the information was not held, the Commissioner does not now require the public authority to issue such a response, especially in light of his finding that the information is not held.

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 20 November 2005, the complainant requested the following information in relation to the public authority's alcohol policy:
 - A) "I do not see that the Council has the legal right unilaterally to change the conditions of employment of a person who is already employed by the Council. By what legal authority does the Council seek to do so?"
 - B) "How much has the framing and introduction of this policy cost to date, and how much has been set aside for the implementation of the policy?"

3. On 14 December 2005, the public authority provided the following response to the two elements of the complainant's request:
 - A) "All employers may alter contracts of employment. Brighton & Hove City Council don't regard this issue as contractual. Many employers have similar policies."
 - B) "The policy has cost nothing to develop and introduce. No additional expenditure was set aside for implementation."
4. On 18 January 2006, the complainant wrote to the public authority requesting a review of the decision. On 2 March 2006, the public authority responded to the complainant upholding its initial decision.

The Investigation

Scope of the case

5. On 1 March 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 whether the public authority had correctly informed him that no information was held in relation to his request.

Chronology

6. On 25 May 2006, the Commissioner wrote to the public authority asking it to confirm whether it held any information which may provide a response to the request.
7. On 20 June 2006, the public authority responded to the Commissioner and provided the policy, messages to staff and a meeting minute about the implementation of the policy. Specifically in relation to element B of the request, the public authority repeated the response it had initially provided to the complainant outlined at paragraph 3 above.
8. On 28 June 2006, the Commissioner informed the complainant that element A of the request was not valid under the Act, the reasons for which are outlined at paragraphs 14 to 17 of this Decision Notice. The public authority had nevertheless provided a response to element A as a consequence of its customer service responsibilities. The Commissioner therefore informed the complainant that any issue with this response would have to be taken up directly with the public authority.
9. The Commissioner informed the complainant that element B of the request was an enquiry and not a request for specific, held information. A response would require the public authority to undertake research and generate new information. He did however acknowledge that there were grey areas concerning valid requests. The Commissioner stated that, even if he were to accept that the request was valid, it could be logically implied that the public authority does not

hold this information. The Commissioner then suggested that the complainant could rephrase his request to the public authority and, if a response was not forthcoming, he could raise a new complaint.

10. On 4 July 2006, the complainant wrote to the Commissioner to say that he did not accept the conclusions of the letter of 28 June. He stated that he still considered element A of the request to be valid. As regards element B, the complainant stated that he did not accept that the public authority had informed him whether the information was held.
11. The Commissioner treated the complainant's letter of 4 July 2006 as a new complaint. However, the scope of the case as outlined at paragraph 5 above remains the same since the complainant did not raise any substantive new issue of complaint in his letter of 4 July.
12. On 7 September 2007, the Commissioner was in a position to handle the complaint and subsequently wrote to the public authority on that same day. He asked the public authority to confirm whether it held any recorded information in response to elements A and B of the complainant's request.
13. On 5 October 2007, the public authority wrote to the Commissioner with confirmation that it held no recorded information in relation to either element A or B of the request.

Analysis

Procedural matters

Which elements of the request are valid

14. In deciding this issue, the Commissioner has reviewed his letter to the complainant of 28 June 2006. That letter was written based on his interpretation of the Act in relation to the complaint at that time. It should be appreciated that the Commissioner has had over 15 months of complaint handling experience since that letter and therefore he has reached the following conclusion in light of his current interpretation of the Act in relation to the complaint.
15. The Commissioner has concluded that element A of the request is not valid under the Act, whereas element B is. In reaching this conclusion, the Commissioner has had regard to section 8(1) of the Act, in which it states that a valid request for information is a request which, among other criteria, "describes the information requested." Information is defined in section 84 of the Act as "information recorded in any form." If the Commissioner were to take a narrow interpretation of the Act, it could be argued that neither element of the request was valid, since both elements are posed as questions of the public authority and do not actually describe recorded information. However, the Commissioner appreciates it is often difficult to phrase requests for information and does not wish to penalise complainants in cases where it is reasonably clear that recorded information is sought. In doing so, the Commissioner recognises the duty of a public authority to

- provide advice and assistance to persons who propose to make or have made requests to it.
16. On reflection, the Commissioner has therefore decided that the validity of the request for information in this case should be objectively based on the reasonable expectation of receiving recorded information in response.
 17. On this basis, the Commissioner has decided that, in response to element A of the request, a complainant would reasonably expect a public authority to respond with its legal justification, in other words an explanation, for altering conditions of employment but not with specific recorded information. The public authority therefore has no obligation to respond to element A under the Act and the Commissioner therefore has no obligation to consider a complaint about this element of the request.
 18. On the other hand, a complainant would reasonably expect a public authority to provide recorded information from its accounts and projected budget in response to a request for the cost of the framing, introduction and implementation of its alcohol policy. Therefore, the Commissioner has decided that element B of the request is valid. Consequently, the remainder of this Decision Notice focuses on element B of the request.

Whether information is held on element B of the request

19. The public authority has informed the Commissioner that the development and implementation of the alcohol policy had been part of the normal duties of the officers involved. The public authority stated that no additional expenditure was set aside for implementation and there is no legal obligation to hold information on the costs of the policy. Based on this explanation from the public authority and the absence of any evidence from the complainant to the contrary, the Commissioner is satisfied that the public authority does not hold this information.

Whether a valid response was provided to element B of the request

20. On 14 December 2005, the public authority responded to the complainant on element B of the request by stating that “the policy has cost nothing to develop and introduce. No additional expenditure was set aside for implementation.” Whilst it could be implied from that response that the public authority did not hold any information, the Commissioner notes that this was not explicitly stated by the public authority, as is required by the Act. However, this Decision Notice has already found that the information is not held and therefore the Commissioner does not consider that it is necessary to require the public authority to explicitly state this to the complainant now.

The Decision

21. The Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act:

- the public authority did not explicitly state to the complainant that information was not held and did not therefore comply with section 1(1) of the Act

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. 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@tribunals.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 2nd day of January 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal annex

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 8(1) provides that –

“In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence,
and

(c) describes the information requested.”

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.