

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 July 2008

Public Authority: National Offender Management Service (part of the Ministry of Justice)
Address: Access Rights Unit
6th Floor
Selborne House
54-60 Victoria Street
London
SW1E 6QW

Summary

The complainant requested information from the public authority that related to communications that passed between the Ministry of Justice, the Probation service and others about the preparation of the answer to a Parliamentary question asked by the complainant's MP on his behalf. The public authority extended the deadline for responding on four occasions. In five months prior to the involvement of the Commissioner no substantive response to the request was provided. The Commissioner gave the public authority a final opportunity to provide a substantive response to the request and heard nothing. The Commissioner has found that the public authority has breached section 10 as it has taken considerably more than twenty working days to comply with section 1(1) of the Act. The Commissioner also found the public authority in breach of section 1(1)(a) and 1(1)(b) of the Act. The Commissioner requires the public authority to either provide the information or issue a valid refusal notice that complies with section 17 of the Act within 35 days of the date of this notice.

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. The Commissioner notes that the National Offender Management Service [NOMS] is not a public authority itself, but is part of the Ministry of Justice. Therefore the public authority in this case is actually the Ministry of Justice not NOMS. However, for the sake of clarity, this Decision Notice refers to NOMS as if it were the public authority.

3. On 23 December 2007 the complainant made the following request by email for information in accordance with section 1 of the Act:

'My MP Frank Dobson received a reply from Mr Straw to a written question he had posed on my behalf. Ref 172094 dated 18th November 2007.

I request minutes &/or a record of all communications, phone calls, emails, meetings, letters etc that passed internally both in the Ministry of Justice and the Probation service and between the two and any other parties involved in preparing the information and answer to Mr Dobson. Thankyou in advance for your comprehensive help.'

4. On 7 January 2008 the public authority acknowledged receiving the request and informed the complainant that it aimed to provide a response by 24 January 2008. On 25 January 2008 the public authority informed the complainant that it would not be possible to respond by the original deadline. It then set a new deadline of 29 February 2008.

5. On 26 February 2008 the complainant reminded the public authority that its deadline was coming up and asked for the information to be provided. He also asked the public authority to provide details of its complaints procedure.

6. On 29 February 2008 the public authority wrote to the complainant and informed him that once again it could not respond within the designated time limit and provided a new target date of 4 April 2008. It also offered to conduct an internal review into the handling of his request for information at this point.

7. On 3 March 2008 the complainant emailed the public authority and asked for an internal review of the handling of the request for information. This was acknowledged by the public authority on 13 March 2008. The complainant complained that the responses he had received from the public authority were in an unclear format, about the delay to the substantive response and asked for the information requested to be provided to him. As of 14 July 2008, the Commissioner is not aware of the public authority conducting an internal review after receiving this request for one.

8. On 3 April 2008 the public authority wrote to the complainant again and informed him that it was processing his request. It set a new target date of 7 May 2008. The public authority reminded him that he could request an independent internal review of the handling of his request if he chose to.

9. On 7 May 2008 the public authority wrote to the complainant and informed him that 'the processing of your request is still ongoing and has taken longer than anticipated'. It informed the complainant, in an apparent typographical error, that it 'no aim to reply by 7 June 2008.'

The Investigation

Scope of the case

10. On 13 March 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to ensure that the public authority complied with its obligations under section 1 of the Act and provide him with a full response to his request for information. The focus of this investigation is the delay by the public authority in the provision of a substantive response to this request.

Chronology

11. On 20 May 2008 the Commissioner called the public authority and asked it what was happening in relation to this request. The case officer of the public authority informed him that he was unsure and would call the Commissioner back.
12. On 27 May 2008 the Commissioner wrote to the complainant and informed him that the complaint had been allocated to a complaints officer who would investigate this complaint.
13. On 27 May 2008 the Commissioner wrote a letter to the public authority after it had not returned a telephone call. The public authority was informed that it should issue a substantive response to this information request within twenty working days. This set a deadline of 25 June 2008.
14. The Commissioner informed the public authority that the legislation requires that a substantive response to an information request must be provided within 20 working days of receipt of the request. He then informed the public authority that in view of the delay without a substantive response he would be minded to issue a Decision Notice on this case.
15. On 4 June 2008 the Commissioner sent a reminder. On 13 June 2008 the Commissioner informed the public authority that he would be reluctant to extend this deadline without good reason. By the date of this notice, the Commissioner had not heard further from the public authority in connection with this case.

Findings of fact

16. The Commissioner is also aware of this public authority dealing with a number of other information requests in a similar way and issued NOMS with a Practice Recommendation on this issue on 10 March 2008. This can be found at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/notices/noms_s45_pr_final_4_mar_08.pdf

Analysis

Section 1(1)(a)

17. Section 1(1)(a) (full wording in the legal annex) requires a public authority to confirm or deny whether requested information is held.
18. In light of the Information Tribunal Decision in *King v Department for Work and Pensions* [EA/2007/0085] the Commissioner now determines whether there have been procedural breaches at the time of the internal review and if there has been no review, then at 20 working days from the date of the request.
19. The public authority has not indicated explicitly that it holds any information that is relevant to the request and six months have passed.
20. The Commissioner therefore finds a breach of section 1(1)(a) of the Act as the public authority failed to confirm or deny whether it held information falling within the scope of the request within twenty working days of receiving the request.

Section 1(1)(b)

21. Section 1(1)(b) (full wording in the legal annex) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued. The public authority has more than six months from the date of the request still failed to either disclose the requested information or provide a valid refusal notice.
22. The Commissioner therefore finds the public authority in breach of section 1(1)(b) of the Act as it has failed to either provide the requested information or a valid refusal notice within the statutory time limits.

Section 10

23. Section 10(1) states:

'... 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.'

The information request in this case was made on 23 December 2007. The public authority had failed to comply with section 1(1) in respect to this request by the date of this notice. In failing to provide a response compliant with section 1(1) within 20 working days of receipt of the request, the public authority breached section 10(1).

The Decision

24. The Commissioner's decision is that the public authority did not comply with section 1(1)(a) of the Act as they failed to inform the complainant whether they held information relevant to his request within twenty working days.
25. The public authority also did not comply with section 1(1)(b) of the Act as it failed to either provide the complainant with the information or indicate that an exemption applies to the information within the statutory timeframe.
26. The public authority also breached section 10(1) by failing to provide a response compliant with sections 1(1)(a) and 1(1)(b) of the act within twenty working days of receipt of the request.

Steps Required

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

Provide a response to the request that is compliant with section 1(1). This should either disclose the requested information to the complainant, or should constitute a refusal notice valid for the purposes of section 17.

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

Failure to comply

29. Failure to comply with the steps described above 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.

Right of Appeal

30. 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.
Website: www.informationtribunal.gov.uk

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.

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 28th day of July 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

General Right to Access

Section 1(1) provides that:

“(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.”

Time for compliance with request

Section 10 provides that:

(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 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 with 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 this subsection does not affect the time by which any notice under section 17(1) must be given.