

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 October 2009

Public Authority: Department for Children, Schools and Families
Address: Sanctuary Buildings
Great Smith Street
Westminster
London
SW1P 3BT

Summary

The complainant made a number of requests to the then Department for Education and Skills, now the Department for Children, Schools and Families (DCSF). DCSF did provide an appropriate response to these requests, but this was nine months after the requests were received.

DCSF clearly failed to respond to the complainant's requests within the time limit specified in the Act. Therefore the Commissioner finds that DCSF breached section 10 of the Act. The Commissioner does not require DCSF to take any remedial steps in this case.

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 Requests

2. The complainant has advised that on 20 January 2006 he made four requests to DCSF in accordance with section 1 of the Act. These requests, which are set out in full at Annex 2, generally concerned "List 99". Under section 142 of the Education Act 2002, the Secretary of State has the power to bar an individual from working in schools, Further Education colleges and Local Education Authority education services. Educational organisations are under an obligation not to allow an individual to work in contravention of the bar. The list of those individuals subject to a bar is known as "List 99".

3. DCSF acknowledged the complainant's requests on 23 January 2006. DCSF wrote to the complainant on 2 March 2006 to apologise for being unable to provide a substantive response at this stage. DCSF explained that this was due to the high numbers of information requests received by the department. DCSF advised the complainant that a response was being drafted, which would need to be cleared before being sent. DCSF sent a further holding letter on 17 March 2006, again apologising for the delay and advising that a response would be sent as soon as possible.
4. The complainant did not receive any further correspondence from DCSF until 13 October 2006, when he received responses to each of his information requests. In relation to the first request (see Annex 2 for full details), DCSF provided links to various websites. In relation to the second request, DCSF did provide most of the requested information. In relation to the third request, DCSF advised that the requested information was exempt under section 40(2) of the Act because it related to a third party. In relation to the fourth request, DCSF provided some information and advised that further relevant information was exempt under section 43 of the Act (prejudice to the commercial interests of any person).
5. The complainant was dissatisfied with the delay in responding, and requested an internal review in relation to two of the requests (the second and third requests as set out in Annex 2). The complainant advised DCSF of his view that its response to his requests had been delayed until it was politically convenient to answer them.
6. DCSF responded to the complainant on 10 November 2006 and advised that it had now conducted an internal review as requested. DCSF explained that, in relation to the second request, it did not in fact hold all of the requested information, although it had provided the information it did hold. In relation to the third request, DCSF upheld its decision to refuse the request in reliance on section 40(2) of the Act. Although not requested by the complainant, DCSF also reviewed its response to the first request, and provided additional information.

The Investigation

Scope of the case

7. On 13 November 2006 the complainant contacted the Commissioner to complain about the way his requests had been handled. The complainant alleged that DCSF had deliberately delayed responding to his request until it had developed a new policy to address concerns about List 99. In support of this view, the complainant advised the Commissioner that DCSF had announced a new policy in relation to List 99 on 13 October 2006, which coincided with the date of DCSF's response to his requests.

8. The Commissioner is mindful of the fact that under section 77 of the Act a criminal offence may be committed where an authority deliberately alters, defaces, blocks, erases, destroys or conceals information which it knows an applicant is entitled to receive. The Commissioner therefore considered whether a criminal investigation was required in this particular case, and this is explained in more detail in Other Matters at paragraph 22 below. However, the Commissioner's decision under section 50 of the Act relates only to whether or not DCSF complied with Part I of the Act in responding to the complainant's requests.

Chronology

9. The Commissioner wrote to DCSF on 10 October 2007 and 22 January 2008 to advise it of the complaint and to request details of the way DCSF handled the complainant's requests.
10. DCSF provided written detailed submissions to the Commissioner on 19 November 2007 and 11 February 2008. This included chronologies of DCSF's actions in relation to the requests and information relating to the context in which the requests were received. The Commissioner has also had sight of DCSF's procedures for handling requests made under the Act, as applicable in January 2006.

Analysis

11. Given that DCSF acknowledged each of the complainant's requests, there is no dispute about receipt of the requests. In order to comply with section 10(1) of the Act, DCSF ought to have responded to the complainant promptly, and in any event not later than twenty working days following the date of receipt. In this particular case DCSF ought to have responded by 20 February 2006. In fact DCSF responded to the complainant on 13 October 2006, some nine months after the requests were received.
12. DCSF has accepted that it failed to respond to the complainant's requests in accordance with section 10 of the Act. However, DCSF has argued to the Commissioner that a number of factors contributed to this breach. Firstly, DCSF advised the Commissioner that at the time of the complainant's requests, it received a higher than expected number of requests about List 99, which came under the remit of DCSF's Safeguarding Operations Team. DCSF explained that in the period between 1 January and 28 February 2006, this team received 41 requests under the Act, 200 Parliamentary questions and 640 other items of correspondence. In addition, during this period the department received 64 other requests under the Act, which meant a total of 105 requests under the Act alone. In comparison, the Safeguarding Operations Team handled five requests during 2005.
13. In light of the information provided by DCSF, the Commissioner is minded to accept that the volume of requests was unexpectedly high in comparison to

the previous year. However, the Commissioner is of the view that public authorities, especially those in central government departments, ought to be able to anticipate increased public interest in issues of the day.

14. The Commissioner also asked DCSF to provide details of the steps taken to prepare responses to the complainant's requests. Although DCSF did provide chronologies of actions taken (see paragraph 10 above), it was unable to produce any correspondence or documentation to support these actions. The Commissioner is disappointed that DCSF did not retain records of its request handling, as the chronologies suggest that extensive consultation took place. DCSF has accepted that it ought to have kept fuller records, and has advised the Commissioner that it now has an electronic documents and records management system, which will retain such information in the future.
15. Having considered the chronologies provided by DCSF, it is apparent to the Commissioner that the complainant's requests were considered by a number of DCSF staff before a response was provided. These included legal advisors and the Permanent Secretary, as well as the Secretary of State's private office. The Commissioner has expressed his view to DCSF that the complainant's requests appeared largely straightforward, and ought not to have required such extensive consultation. The Commissioner is of the view that a delay of nine months in providing a response is unacceptable even in the most exceptional of circumstances.
16. The Commissioner is mindful of the fact that between January and October 2006 DCSF put information relating to List 99 into the public domain on a number of occasions, although none of this information would have answered the complainant's requests. However the Commissioner notes that authorities are obliged to comply with their obligations under the Act irrespective of workload.
17. The Commissioner is also of the view that DCSF ought to have considered whether it could have provided the complainant with responses to any of the requests sooner. The Commissioner notes that in relation to the first request, DCSF's response was to provide the complainant with links to various websites, a response which ought not to have taken nine months to formulate. The Commissioner notes that in relation to the second request, the first draft response was circulated in March 2006, some seven months before the final response was approved. However, in relation to the fourth request, DCSF was still ascertaining what information was held in May 2006.
18. The Commissioner notes that DCSF could have considered whether compliance with the complainant's requests might have exceeded the cost limit as set out in section 12 of the Act. However, DCSF did not seek to rely on this provision, and therefore were obliged to respond to the requests promptly and in any event within the time limit set out in section 10(1) of the Act.
19. The Commissioner also notes DCSF's acknowledgement that it failed to comply with its own procedures in handling the complainant's requests. DCSF

has advised the Commissioner that it conducted a review of its FOI handling procedures in June 2007, and is implementing measures which should ensure such delays do not reoccur.

The Decision

20. The Commissioner is satisfied that DCSF did not comply with section 10 of the Act in relation to the complainant's requests of 20 January 2006, in that it failed to respond to the complainant within the time limit set out in section 10 of the Act.

Steps Required

21. As the complaint in this case related solely to the delay in providing a response, the Commissioner does not require DCSF to take any remedial steps in relation to the requests.

Other Matters

22. As indicated in paragraph 7 above, the complainant suggested to the Commissioner that DCSF may have deliberately withheld the information from him. The Commissioner has considered all the circumstances of this case, but is not satisfied that there is any evidence to suggest that this was DCSF's intention. Section 77 of the Act states that a criminal offence is committed if an authority alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive. In this case the Commissioner has not seen any evidence to suggest that DCSF delayed responding to the complainant with the intention of blocking access to information that he was entitled to receive. Therefore the Commissioner has not undertaken a criminal investigation in this case.

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.
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 8th day of October 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **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.

2. **Section 10** provides that:

- (1) ... 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.

3. **Section 12** provides that:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

4. **Section 77** provides that:

- (1) Where –
- (a) a request for information has been made to a public authority, and
 - (b) under section 1 of this Act or section 7 of the Data Protection Act 1998, the applicant would have been entitled (subject to payment of any fee) to communication of any information

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority, and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

Annex 2: Information requests made to DCSF

1. Please would you let me know in writing if you hold information of the following description:

Information concerning the reasons why an appeal process was created for List 99 to the Care Standards Tribunal and concerns which were raised for and against this decision.

If you do hold such information I wish to have:

A copy of the information;
An opportunity to inspect the record;
A summary of the information

2. Please would you let me know in writing if you hold information of the following description:

1. How many of those 210 people on List 99, who have restrictions placed on their employment rather than being fully banned from schools, were placed on List 99 following concerns of a sexual nature about the teacher.
2. How many of those concerns of a sexual nature involved children and/or pupils rather than sexual behaviour towards adults
3. How many of those concerns of a sexual nature involved child pornography.

If you do hold such information I wish to have:

A copy of the information;
An opportunity to inspect the record;
A summary of the information

3. Please would you let me know in writing if you hold information of the following description:

Information concerning the case of [named individual], who was cleared to work in schools in spite of a conviction involving a 15-year-old girl.

If you do hold such information I wish to have:

A copy of the information;
An opportunity to inspect the record;
A summary of the information

4. Please would you let me know in writing if you hold information of the following description:

Information concerning the contracting out of List 99 medical duties, formerly performed by [named individual] and later given to the healthcare organisation AXA PPP.

If you do hold such information I wish to have:

- A copy of the information;
- An opportunity to inspect the record;
- A summary of the information