

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 August 2009

Public Authority: Cabinet Office
Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant made requests to the Cabinet Office on 16 June 2007. The complainant has had no response to his requests from the Cabinet Office. The Commissioner finds that the Cabinet Office has failed to comply with sections 1(1)(a) and (b) of the Act to date and in doing so has breached section 10(1). He has ordered the Cabinet Office to comply with section 1(1) within 35 calendar days 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 complainant wrote to the public authority on 28 November 2006 regarding issues related to the Civil Service Code. He did not receive a response and subsequently made the following requests to the public authority on 16 June 2007,

"I shall be grateful if you can supply me with the recorded information held by the Cabinet Office regarding:

(a) The handling of matters by the Cabinet Office subsequent to the receipt of my letter of 28.11.2006 (and subsequent e-mails) including the communications with the Parliamentary Commissioner's Office.

(b) The name(s) and designation(s) the official(s) with responsibility for the handling of the matters set out in my letter of 28.11.2006 (and subsequent e-mails) by the Cabinet Office and those with superintendent and supervisory responsibility for such person(s) ;

(c) All Cabinet office code of conduct and employee guidance regarding how officials in the Department should conduct themselves and undertake work.

(d) Any relevant Cabinet Office guidance and targets for handling matters.

(e) Any Cabinet Office redress procedures and protocols – such as for compensating those exasperated by the failure to even acknowledge let alone respond to correspondence, suffering from the inordinate delay to make progress and by the failure to provide required information [as will be appreciated for those who are professionals every communication that has to be sent has a cost]. If there is anything about offering redress before it has to be asked for then please ensure that this is included.

3. Despite corresponding with the Cabinet Office about his requests of 16 June 2007 the complainant did not receive a response.

The Investigation

Scope of the case

4. The Commissioner investigation has focused on the failure of the Cabinet Office to respond to the requests of 16 June 2007.

Chronology

5. On 23 September 2007 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The Commissioner wrote to the Cabinet Office on 10 October 2007 to remind it of its obligations and asked it to respond to the complainant within 20 days of receipt of that letter.
6. On 10 October 2007 the complainant wrote to the Commissioner to express his dissatisfaction with the handling of his complaint.
7. On 5 December 2008 the Commissioner wrote to the Cabinet Office to confirm that the complaint related to the failure of the Cabinet Office to respond to the 16 June 2007 requests and to inform it that the case would be allocated to a case officer.
8. On 3 March 2009, the Commissioner wrote to the Cabinet Office and requested that it comply with the Act. He explained that failure to comply within 20 working days would result in a decision notice being issued. The Commissioner has not received a response to this letter. Furthermore he understands that no response to the requests has been provided to the complainant.

Analysis

Procedural matters

Section 1

9. Section 1(1) states 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”.

The Commissioner considers that the Cabinet Office has failed to comply with section 1(1)(a) and (b) as it has not provided a response to the requests of 16 June 2007 to the complainant.

10. On the basis of the requests the Commissioner considers it likely that if information relevant to requests a) and b) was held it would, at least in part, constitute the complainant’s personal data. In relation to any such information the duty under section 1(1)(a) would not apply by virtue of section 40(5)(a). He has made further comments in this regard in the Other Matters section below.

Section 10

11. Section 10(1) of the Act states 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”.

The Commissioner considers that the Cabinet Office has breached section 10(1) of the Act as it has failed to respond to the requests within twenty working days following the date of receipt.

The Decision

12. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act.
- The Cabinet Office breached section 10(1) of the Act as it failed to comply with section 1(1) within 20 working days from receipt of the requests of 16 June 2007.

Steps Required

13. The Commissioner requires the Cabinet Office to respond to the complainant's requests in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is excluded from the section 1(1)(a) duty to confirm or deny if information is held. If the exclusion from the duty to confirm or deny does not apply, and the information is held, then the Cabinet Office should respond to the complainant's request in accordance with section 1(1)(b) by either communicating the information to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.
14. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

16. As mentioned above, the Commissioner notes that requests a) and b) in the correspondence dated 16 June 2007, ask for recorded information about the way in which his previous correspondence of 26 November 2006 and subsequent emails have been handled. In the Commissioner's view it is likely that if any information were held which fell within the scope of requests a) and b) some of it would constitute personal data of the complainant. To the extent that this is the case the exemption in section 40(5)(a) from the duty to confirm or deny under section 1(1)(a) of the Act would apply. However section 7(1) of the Data Protection Act 1998 provides a right of access to personal data. In view of this the Cabinet Office needs to consider whether the complainant has a right to any such information that may be held under section 7 of the DPA.

Right of Appeal

17. 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 20th day of August 2009

Signed

**Jo Pedder
Senior Policy Manager**

**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.