

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 28 October 2009

**Public Authority:** Ministry of Justice  
**Address:** Selborne House  
Victoria Street  
London  
SW1E 6QW

### Summary

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The complainant requested information from the public authority and did not receive a response within 20 working days. Following the complaint made to the Information Commissioner the public authority was instructed to respond to the complainant within ten working days of receipt of the Commissioner's letter. The complainant later confirmed to the Commissioner that no response had been received from the public authority within the ten working days. The public authority eventually responded to the complainant stating that no information was held in relation to the request. The Commissioner has found that, in not providing a response until five months after the request was made, the public authority has breached section 10 of the Act.

### The Commissioner's Role

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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

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2. On 11 May 2009 the complainant made the following request for information in accordance with the Act:

*"I request the last two copies of the 'Periodic review of designated reservations' as set out in section 17(3) of the Human Rights Act in respect of the European Convention on the legal status of children born out of wedlock and their rights to the succession to the Crown, or a title of honour, or any right of inheritance to an entailed interest under article 9."*

3. On 23 June 2009 the complainant emailed the public authority stating that no response in light of the request had been received.

## **The Investigation**

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### **Scope of the case**

4. On 06 July 2009 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 the fact that the public authority had failed to reply to the information request within 20 working days. During the Commissioner's investigations a response was provided from the public authority on 07 October 2009. This Notice is only therefore concerned with the lateness of the response and not the response itself.

### **Chronology**

5. On 06 July 2009 the complainant contacted the Information Commissioner wishing to make a formal complaint against the public authority.
6. On 23 July 2009 the public authority informed the complainant that the request dated 11 May 2009 was being dealt with and a response would be sent.
7. On 28 July 2009 the Commissioner wrote to the public authority informing them of the complaint made against them and reminding them of their duty to respond within 20 working days. He instructed the public authority to respond to the complainant (providing a copy of the response to the Commissioner's Office) within ten working days.
8. On 11 August 2009 the complainant confirmed to the Commissioner that no response had been provided by the public authority following the Commissioner's instruction to respond within ten working days.
9. On 07 October 2009 the public authority provided a response to the complainant stating that no information was held by the public authority in relation to the request of 11 May 2009.

## Analysis

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### Procedural Matters Section 10

10. Section 10(1) (full wording in the legal annex) states:

*“... a public authority must comply with this 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 11 May 2009. The public authority has failed to comply with section 1(1)(a) (full wording in the legal annex) in respect of this request by the date of this notice. In failing to provide a response compliant with section 1(1)(a) within 20 working days of receipt of the request, the public authority breached section 10(1).

### The Decision

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11. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The public authority has breached section 10(1) by failing to provide a response compliant with section 1(1)(a) of the Act within 20 working days of receipt of the request.

## Right of Appeal

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12. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 28<sup>th</sup> day of October 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

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

## Legal Annex

### 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.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is 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.”

**Section 10(3)** provides that –

“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.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

## Legal Annex continued

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## General Right of Access

**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 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under

subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”