

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 December 2010

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Summary

The complainant requested a copy of any blacklists which London Borough of Hillingdon (the Council) may operate with regards to restricted contact with complainants. The Council refused to disclose the information by virtue of section 40(2) of the Freedom of Information 2000 Act ("the Act"). During the course of the Commissioner's investigation the Council provided the complainant with a redacted copy of its restricted persons register. The complainant accepts that the Council correctly applied section 40(2) to the information which has been redacted. Therefore this notice only addresses the failure of the Council to respond within the statutory time for compliance. The Commissioner requires no steps to be taken.

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 3 July 2009 the complainant submitted the following request for information:

"I am writing to request publication of any blacklists which the council may operate.

This would include (but not exclusive to)

- serial complainers*
- violent/aggressive/abusive persons*
- troublemakers*
- campaigners/activists*

I would also request information on the distribution/circulation of these lists.

I am happy to receive publication of these lists with personal details redacted."

3. The Council provided a response to the complaint on 11 September 2009 in which it refused to provide the information by virtue of section 40(2) – Third party personal data. In this letter the Council also stated that it was considering section 38 of the Act and as such was delaying in providing a full response while the public interest test was being carried out.
4. In a letter dated 6 April 2010 the Council provided the complainant with a full response to his request of 3 July 2009. The Council stated that it was withholding the requested information by virtue of sections 40(2) – Third party personal data and section 38(1) – Health and safety.
5. The complainant requested an internal review on 6 April 2010 stating that as per his original request he was happy to receive the information in a redacted format.
6. The Council provided the outcome of the internal review it had carried out in a letter dated 30 April 2010. The Council upheld its initial refusal.

The Investigation

Scope of the case

7. Following the intervention of the Commissioner, the Council provided the complainant with a redacted copy of its restricted person register. The complainant is satisfied with the information which has been provided to him, he has therefore specifically asked the Commissioner to consider the following points:
 - The Council's failure to respond to his initial request within 20 working days.

Chronology

8. On 1 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. On 26 March 2010 the Commissioner wrote to the Council reminding it of its obligations under the Freedom of Information Act and asking it to respond to the complainant's initial request dated 3 July 2009.
10. In a letter to the Commissioner dated 4 May 2010, the complaint stated that he was not satisfied with the response he had received from the Council after exhausting its complaints procedure.
11. On 13 May 2010 the Commissioner wrote to the public authority to inform it that a further complaint had been made.
12. There was then a chain of correspondence between the Commissioner and the Council during which the Council agreed to provide the complainant with a redacted copy of its restricted person register.
13. On 4 November 2010 the complainant was provided with a redacted copy of the register.

Analysis

Procedural Requirements

Section 10

14. 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 Council has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

The Decision

15. The Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act:
- Section 10(1) of the Act in failing to failing to respond within twenty working days following receipt of the request

Steps Required

16. The Commissioner requires no steps to be taken.

Other matters

17. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner notes that, during the handling of this section 50 complaint, the Council appeared either reluctant to or unable to reach decisions in relation to the requested information which it initially withheld. This raises concerns that the Council's staff might not have been provided with sufficient training in relation to the handling of requests.

The introduction to section 45 code of practice (the “Code”) states:

“All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is

essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard. Larger authorities should ensure that they have a central core of staff with particular expertise in Freedom of Information who can provide expert advice to other members of staff as needed..."

Whilst the introduction does not form part of the Code itself, the Commissioner would echo its recommendations and would wish to remind the Council of the importance of providing staff handling requests for information with adequate training.

Right of Appeal

18. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 21 day of December 2010

Signed

**Andrew White
Group 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."

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."