

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 September 2010

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Summary

The complainant made a request for information and the public authority responded to the request but took longer than twenty working days. The complainant referred this matter to the Commissioner.

The Commissioner finds that the public authority did take more than twenty working days to respond to the request for information. He has considered the public authority's arguments that it reasonably requested further information under section 1(3) and has determined that its request in all the circumstances was not reasonable. The public authority failed to comply with either section 1(1)(a) or section 1(1)(b) within the necessary timescales and therefore breached section 10(1). However, he does not require any remedial steps to be taken because a valid response has now been issued.

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 9 March 2010 the complainant requested for the following information to be provided in accordance with section 1(1) of the Act:

'Please would you provide me with answers for the following [sic] questions:

- 1. Between 04/08/2009 and 01/03/2010 how much revenue has been raised by charging motorcycles to park in Westminster?*
 - 2. Between 04/08/2009 and 01/03/2010 how much revenue has been raised from PCNs [Penalty Charge Notices] issues [sic] in connection with parking contravention relating to non-payment of parking charges in [sic] motorcycle bays in Westminster?*
 - 3. What amount has been spent up to 01/03/2010 on the signage relating to motorcycle bays in Westminster?*
 - 4. What amount has been spent up to 01/03/2010 on motorcycle training by Westminster, please also provide a detailed breakdown of the type of motorcycle training and the agencies used to provide this training?'*
3. The public authority acknowledged the receipt of the request on the same day and set a target of 8 April 2010 to respond to it.
4. On 5 April 2010 the public authority tried to telephone the complainant without success. It then sent an email explaining that it believed that it required clarification to enable it to deal with the request. It stated:

'As we are not clear on the following question, can you please explain what is meant by motorcycle training in the context of vehicle parking revenue?

We would need further clarification on this; although, ultimately it may not be possible to give you an answer, in relation to parking revenue.

"What amount has been spent up to 01/03/2010 on motorcycle training by Westminster, please also provide a detailed breakdown of the type of motorcycle training and the agencies used to provide this training?"

5. No clarification was provided and on 21 April 2010 a response was issued by the public authority. It provided the following answers:

1. £724,326 in motorcycle permits income from 4 August 2009 to 31 March 2010.
2. During this period, 7,753 PCNs have been paid by motorcycles in a motorcycle bay equating to £355,567. In addition, a further 1,937 PCNs were issued during the period, which remain 'open', equating to approximately £85,000 of uncollected income and a further 3,560 PCNs were issued that were subsequently cancelled.
3. Since 1 April 2010, £154,000 was spent on signage due to vandalism.
4. Motorcycle safety courses have been mentioned as 'future opportunities' in Cabinet Reports. Funding for motorcycle safety courses was suggested as a potential further opportunity in the May 2009 Cabinet Report, and the December 2009 Supplementary Report then referred to it as a long-term potential development. Resources permitting, the City Council would investigate the feasibility of [sic *it] within the next year. No concrete commitment to do this has ever been given, however.

It then explained that the complainant could seek an internal review should he be dissatisfied with these answers and provided its details. It also explained that after that there was a further right of appeal to the Information Commissioner and provided his details.

6. Later that day, the complainant explained that he was unhappy that 31 working days were taken to process the request instead of the 20 working day limit. He asked for the public authority to justify the delay before he went to the Commissioner.
7. The public authority responded on the same day. First it had a telephone conversation with the complainant about it and then it sent an email that explained that it apologised for the delay. It explained that it had left a message for the complainant without success previously, sent the email dated 5 April 2010 to clarify matters and was waiting for a response. It explained that this was why a delay was experienced.

8. On 22 April 2010 the complainant replied. He said that he was unhappy that the query was made one day before the response was due and believed that it was cynically employing the request for further information to extend the deadline. He explained that he did receive the request for clarification but he did not read it because it went directly to his junk mail folder. He explained that he was of the view that the delay in this case was not an isolated incident and that he was referring it to the Commissioner.

The Investigation

Scope of the case

9. On 27 April 2010 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 following point:
 - That he received the information but not in twenty working days.

Chronology

10. 17 June 2010: The Commissioner acknowledged receiving the complaint form from the complainant. He explained that he had noted the breach of section 10(1) but did not propose to take any further action because a response had been provided.
11. He then wrote to the public authority to explain that he had received the complaint and that he believed that a breach of section 10(1) had occurred and he would note this on his system.
12. 22 June 2010: The complainant wrote to the Commissioner to explain that he was not happy with the Commissioner's approach. He explained that he was not happy with the veracity of the information and that he required it to go to court. He explained because of his view that it was not an isolated issue he wanted a Decision Notice to be issued about the delay.
13. 1 July 2010: The Commissioner wrote to the complainant to confirm that he would move to issue a Decision Notice about the delay issue.

Analysis

Substantive Procedural Matters

Section 1(3) - Clarification of the original request

14. Section 1(3) allows a public authority to inform the applicant that it requires reasonable further information in order to identify the information requested and this would 'stop the clock' until that further information was provided.
15. A request for clarification under section 1(3) should in all cases be made within twenty working days of the receipt of the request. In this case it was.
16. The Commissioner must therefore make an assessment about whether in his view the request for a clarification was reasonable in this case to identify the information requested.
17. To make this decision he has considered paragraphs 8 to 11 of his Section 45 Code of Practice¹ that provides guidance about the circumstances when to request clarification from the complainant before processing the request.
18. Paragraph 9 explains that public authorities should be prepared to explain why they require more information and that the applicant is contacted, as soon as possible, preferably by telephone, fax or email, when more information is needed.
19. When considering paragraph 9, the Commissioner notes that the public authority waited until the 19th working day to ask for this clarification and processed the request without it and does not believe that this was a request for further information that could be said to have been made 'as soon as possible'. This is the main reason that he believes that it was not reasonable to request a clarification in this case. However, he does note that the public authority tried to contact the complainant through two methods of communication.
20. Paragraph 8 of the Code explains that public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought.

¹ The Code of Practice issued under section 45 of the Freedom of Information Act can be found at the following link: <http://www.foi.gov.uk/reference/imp/imp/codepafunc.htm>

21. When considering paragraph 8, the Commissioner notes that in this case the public authority did ask for more information, but received no response, so processed the request on its understanding of it. The Commissioner believes that 'motorcycle training' is a term that is clearly defined and that the information was likely to be readily identifiable had it been held.
22. Overall, he has come to the verdict that it was not reasonable for the public authority to seek clarification in this case and that the public authority is not therefore entitled to rely on section 1(3) to 'stop the clock'.
23. He notes that this decision was finely a balanced one. On one hand the Council did make their attempts at a clarification clear, tried more than one method of communication and ended up sending a full response. Set against this though is the fact that nearly four weeks elapsed before this was set in train and it is this delay that has led to this conclusion.

Procedural Requirements

Section 10(1)

24. 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."

25. The request for information was made on 9 March 2010. The public authority failed to issue a valid response to this request within twenty working days. It therefore failed to comply with section 1(1)(a) or section 1(1)(b) (full wording of each section is contained in the legal annex) in respect of this request in twenty working days. The Commissioner does not require any remedial steps in respect to these breaches, because the public authority has now issued a valid notice.

The Decision

26. 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 failed to comply with either section 1(1)(a) or section 1(1)(b) within the necessary timescales and therefore breached section 10(1).

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. 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 sent.

Dated the 20th day of September 2010

Signed

**Andrew White
Complaints Resolution Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

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

(3) 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 10 - Time for compliance with request

(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.