

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 January 2011

Public Authority: The House of Commons

Address: London
SW1A 0AA

Summary

The complainant requested from the public authority details of its intranet contents, namely its root page and a site map or summary of its contents. During the investigation the Commissioner has found that the public authority provided all the requested information within the time for complying with requests provided by section 10 of the Act. The Commissioner accepts the position that the public authority does not exist as an entity during the dissolution of Parliament and is therefore not a public authority for the purposes of the Act for that time, so cannot be under a duty to comply. In accepting this, the Commissioner also considers the public authority's response to have been prompt.

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 made the following request on 09 April 2010:

'Please could I have a copy of the following pages from the Parliament intranet:

- The root page (i.e. the page at <http://intranet.parliament.uk>)
- Any site maps or similar pages providing a list or summary

*of
the information available on the intranet (I don't expect you
to
search the entire site for these; just provide any you can find
easily, for example by following a link from the root page)'*

3. The public authority responded on 09 April 2010 explaining that during the dissolution of Parliament (following the calling of a General Election) it ceases to exist until the new Parliament's first meeting, after the election. It explained that any request made before the dissolution would be treated as suspended until the new Parliament met and the countdown would be re-instated from then onwards. The election had already been called and Parliament was due to be dissolved on 12 April 2010. The situation was again confirmed by the public authority to the complainant on 12 April 2010.
4. The complainant contacted the public authority on 13 May 2010 requesting internal review on the basis that 20 working days had passed since the 09 April 2010. The complainant did not accept the public authority's assertion that there was an abeyance of the statutory timescale during the dissolution of Parliament, believing the timescale to remain unbroken.
5. The public authority replied to the request for internal review on 18 May 2010. It explained again that during the dissolution of Parliament it did not exist as a public authority and as such could not handle the complainant's request for internal review until the new Parliament was convened.
6. The complainant responded on 19 May 2010 confirming receipt of the reply to his request for internal review. He pointed out that if the public authority's reliance on the argument that it did not exist during the dissolution was found erroneous, the date at which the internal review was recorded as received would also be wrong.
7. On 27 May 2010 the public authority provided the complainant with both the requested information and a response to his request for an internal review.

The Investigation

Scope of the case

8. On 22 June 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 points:
 - i) The public authority is in error when it argues that the dissolution of Parliament, in effect, extends the timetable for response.
 - ii) The public authority's response was not prompt, as required by the Act.
9. The complainant had made three separate requests but included them all in one complaint. The Commissioner proposed that only one of these would be pursued as they were all focused on substantively the same technical issues. On 31 October 2010 the complainant responded, agreeing with this proposition.

Chronology

10. On 26 July 2010 the Commissioner wrote to the complainant to advise that he had accepted that the public authority does not exist as an entity during the dissolution of Parliament and therefore agreed that it was not obliged to respond to the request during this period. It had therefore complied with section 10 of the Act.
11. The complainant responded on 12 August 2010 stating that he was unhappy with the Commissioner's response, believing his complaint had not been adequately answered. He maintained his position that the public authority remained in existence during the dissolution and there was therefore no impediment to responding to his request. Conversely, he explained that if it was accepted that the public authority did not exist during this period, it should have responded to his request before the dissolution. In not doing so, he asserted it would not be acting promptly.
12. The Commissioner wrote to the complainant on 27 October 2010 confirming that he would be asking further questions to the public authority regarding the promptness of its response and its legal position during dissolution.

13. The Commissioner wrote to the public authority on 01 November 2010 to ask further questions. The public authority responded on 08 November 2010 confirming its original stance regarding its legal status during dissolution. It also asserted that its reply to the complainant had been prompt.

Findings of fact

14. The Commissioner finds that Parliament was dissolved at 15:00 on 12 April 2010 and came back into existence at 14:30 18 May 2010 at the new Parliament's first meeting following the election.

Analysis

Substantive Procedural Matters

15. Section 10(1) (see Legal Annex for full wording) 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 crux of the matter in this case is whether the public authority has acted 'promptly' by providing its response to the complainant when it did and whether this was within the stipulated time required by the Act. A decision on this can only be reached by first considering the legal status of the House of Commons during the period of its dissolution.

16. The public authority has confirmed that it does not exist as a public authority (as set out in Schedule 1 Part 1 of the Act) during the dissolution of Parliament. In doing this it also confirmed it is unable to respond to requests during this period and can only do so once it comes back into existence. As such, the clock is effectively stopped on any request made before or during the period of dissolution and only starts again when the new Parliament meets.
17. The complainant disputes this, asserting arguments in support of his view. These being:
- 1) *'The idea that the House of Commons completely ceases to exist during a dissolution is brought into question by the existence of legislation that does not take this possibility into account, bearing in mind the constitutional principle that later*

legislation overrides earlier legislation.'

2) 'I also note that previous court disputes over Freedom of Information have been conducted by the Corporate Officer of the House, a post which certainly does not disappear during a dissolution. If the officer has standing to act on behalf of the House in such cases, then why not when responding to requests themselves?'

The complainant asserts that the Act does not take into consideration the public authority going out of existence during its dissolution and he therefore does not accept that the public authority's duty to comply with the Act during this time no longer applies:

'...there is a very explicit mechanism by which the 20 working days deadline can be varied for specific bodies (e.g. schools) and this has not been done for the Commons.'

18. In the Commissioner's view, the current situation can be contrasted with that of schools. Section s10(4) of the Act and The Freedom of Information (Time for Compliance with Request) Regulations 2004 provide that schools are conferred with the potential to extend their response time in respect of requests made during school holidays or less than 20 working days before the beginning of a school holiday.
19. The first point to be made here is that at no stage do the Regulations or the Act assume that the school goes out of existence as a public authority for the period of the holiday. The response time is merely extended. This is comparable to periods of recess in Parliament during the summer. During these periods Parliament is still in existence as an entity and, to an extent, continues to function. FOI requests are still required to be responded to during recess. This is in contrast to the situation with schools.
20. The Commissioner believes it can therefore be seen that Parliament introduced the statutory instrument for schools as it recognised a specific problem with their ability to comply with the Act. The same was not seen as necessary for Parliament. The Commissioner believes that section 10(4) merely anticipates a scenario whereby a public authority will not have the appropriate resources to correctly handle an FOI request and as such provides it with leeway to comply.

21. However, this is not the public authority's assertion here. The assertion is that it ceases to exist entirely as an entity. There is not merely a temporary suspension of its functions.
22. The question then needs to be asked: Is there any legal basis for the public authority's assertion that it does not exist during its dissolution? This can be extrapolated from the Septennial Act 1715 (see Legal Annex). The 1715 Act defines the period Parliament can sit (now a maximum of 5 years, following amendment to the Act). It states that a Parliament can exist for no longer than the prescribed period and exists only from the date on which it meets, having been called by writ of summons. Therefore, once that Parliament comes to an end and is dissolved, the public authority ceases to exist and does not come into existence again until the new Parliament meets (on the writ of summons from HM The Queen).
23. The second point raised by the complainant is that there are positions within the public authority (i.e. the Corporate Officer of the House) which continue to function during the dissolution. The case alluded to in paragraph 17 is the decision of the Information Tribunal in *Corporate Officer of the House of Commons v ICO EA/2006/0074*¹. The premise of the complainant's argument therefore being that since the functions of the public authority continue during dissolution, the public authority, in effect, continues. The complainant's request could therefore have been handled despite the dissolution.
24. However, from the analysis of that case it can be seen that the Corporate Officer of the House is considered to be a separate corporate body. As such, it exists and functions in its own right. It was not considered to also be a public authority. The Tribunal came to the conclusion that the public authority (the House of Commons) was not itself a corporate body and could correctly be characterised as a public authority under the Act.
25. Therefore, whilst there are functions and positions affiliated and directly involved with the public authority, which remain during the dissolution, they have no bearing on whether or not the public authority itself remains in existence. It is the public authority as an entity to which the request was made

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i84/HoC2.pdf>

and which has the obligation of responding. Having gone out of existence very soon after the request was made, the public authority, as an entity, was not legally under any obligation to respond until it came back into existence.

26. The Commissioner accepts that during the period of dissolution the public authority did indeed go out of existence and was therefore under no duty to comply with the request during that period. In effect, the clock stopped.
27. Turning now to the question of promptness, the complainant asserted two things with regard to this:
 - i) If the public authority was legally unable to respond during the dissolution it should have responded before it.
 - ii) If this was not done, the public authority should have responded as soon as it was able following Parliament next meeting.
28. The Commissioner takes a common sense approach to the concept of 'promptly' and interprets it as having its usual definition of 'without undue delay'.
29. The questions following from i) and ii) (of paragraph 27) are:
 - i) Should the public authority have been expected to respond before 15:00 on 12 April 2010 (this being the first working day after the 09 April 2010, and also the day on which Parliament was dissolved)? In not doing so, was it dilatory? Or,
 - ii) In replying on 27 May 2010 (the ninth working day following the request, accepting the status of the public authority as outlined above) had the public authority acted promptly?
30. With regard to i) of paragraph 29, the public authority would have had from the start of the working day on 12 April 2010 until 15:00 that afternoon, in which to provide a full response. Given that this is likely to be less than 10 hours of a 20 working day period, it would have put a heavy burden on the public authority to comply. The Commissioner considers this to be an unfeasible timescale in which to comply with the request under the Act in this instance. This cannot be the intended effect of the requirement imposed by section 10(1) of the Act.

31. Regarding ii) of paragraph 29, the public authority provided full disclosure to the complainant on the ninth working day following the request (accepting the abeyance). The Commissioner considers this to not be an 'undue delay'. This is less than half of the time which the Act provides for a response to be given. It is reasonable to consider that giving a proper response within less than half the maximum time specified in section 10(1) is prompt. Even if the Commissioner had found that the response could in fact have been made more quickly than that, this would not negate his conclusion that the response was made "promptly".
32. On a separate note, all FOI requestors to the public authority at this time, who did so through 'What Do They Know' (as the complainant did in this instance) were advised of the situation regarding the dissolution of Parliament (and the related delay which would be caused), once the request was made. The Commissioner believes in doing so the public authority took steps towards mitigating unexpected delay and was acting in a facilitative manner to requestors.

The Decision

33. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

34. The Commissioner requires no steps to be taken.

Right of Appeal

35. 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

36. 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.
37. 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 5th day of January 2011

Signed

**Graham Smith
Deputy Commissioner
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.”

The Freedom of Information (Time for Compliance with Requests) Regulations 2004 provides (please see link)-

<http://www.legislation.gov.uk/ukxi/2004/3364/contents/made>

List of Public Authorities

Schedule 1 Part 1

Public Authorities

Part I

General

1. Any Government department.
2. The House of Commons
3. The House of Lords
4. The Northern Island Assembly
5. The National Assembly for Wales
6. The armed forces of the Crown, except-
 - a. the special forces, and
 - b. any unit or part of a unit which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in the exercise of its functions.

Period of Parliament's Existence

Septennial Act 1715 provides that -

"Parliaments shall have Continuance for seven Years, unless sooner dissolved by the King. Whereas in and by the Meeting of Parliament Act 1694 it was, among other things, enacted, that from thenceforth no Parliament whatsoever, that should at any time then after be called, assembled, or held, should have any continuance longer than for three years only at the farthest, to be accounted from the day on which by the writ of summons the said Parliament should be appointed to meet: And whereas it has been found by experience that the said clause hath proved very grievous and burthensome, by occasioning much greater and more continued expences in order to elections of members to serve in Parliament, and more violent and lasting heats and animosities among the subjects of this realm, than were ever known before the said clause was enacted; and the said provision, if it should continue, may probably at this juncture, when a restless and popish faction are designing and endeavouring to renew the rebellion within this kingdom, and an invasion from abroad, be destructive to the peace and security of the government: Be it enacted by the Kings most excellent Majesty, by and with the advice and consent of the lords spiritual and

temporal, and commons, in Parliament assembled, and by the authority of the same, that this present Parliament, and all Parliaments that shall at any time hereafter be called, assembled, or held, shall and may respectively have continuance for [five years,] and no longer, to be accounted from the day on which by the writ of summons this present Parliament hath been, or any future Parliament shall be, appointed to meet, unless this present or any such Parliament hereafter to be summoned shall be sooner dissolved by his Majesty, his heirs or successors."

Although the Septennial Act 1715 refers to Parliament being able to exist for both seven and five years, it is now five years only, following amendment to the Act.