

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 June 2011

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested details of the complete contract held between the Ministry of Justice and Registry Trust Ltd for maintaining the Register of Judgments, Orders and Fines, together with information on associated charges, costs and the surplus paid into the Consolidated Fund. The public authority originally provided a copy of the contract but with some information redacted by reference to section 43(2) (commercial interests) of the Freedom of Information Act 2000 (the "Act").

During the course of the Commissioner's investigation the public authority disclosed an unredacted version of the contract, thereby disclosing all of the requested information which it held. As the information has now been provided the Commissioner has not considered whether or not the exemptions cited were properly engaged. He has decided that the public authority's handling of the request resulted in one or more procedural breaches of the Act, as explained in 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. On 24 March 2010 the complainant made the following four-part information request to the Ministry of Justice (the 'MOJ') via the *WhatDoTheyKnow.com* website:

"...Under the Freedom of Information Act 2000, please may I be sent:

- (1) A copy of the agreement in force between the Lord Chancellor and the Registry Trust Limited.*
 - (2) The maximum charges set by the Lord Chancellor for searching and making information available from the Registry in each year since 2006.*
 - (3) A copy of the most recent report to the Lord Chancellor from Registry Trust Limited wherein the cost for keeping the register is justified (this report would include the statistics about the number of searches made, the cost of administering the duties, software costs, etc).*
 - (4) The amount of surplus paid into the Consolidated Fund by the running of this Registry in each year since 2003."*
3. On 14 June 2010 the MOJ provided the complainant with a copy of the contract, but it withheld some of the information within the contract on the basis of the exemption contained in section 43(2) (commercial interests). Its response also addressed parts 2, 3 and 4 of the complainant's request.
4. The complainant requested an internal review of the public authority's decision on 17 June 2010 in relation to part 1 only of his request, regarding the redactions within the contract provided to him.
5. On 25 August 2010 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It confirmed a further public interest test had been carried out in relation to section 43(2) and upheld the original decision to redact parts of the contract, specifically Clauses 6.8, 13.3 and the whole of Schedule 2.

The investigation

Scope of the case

6. The Commissioner determined the scope of this investigation to be whether the public authority properly applied section 43(2) to some of the information within the contract and thereby determine whether parts of the contract should have been redacted. The scope had been agreed with the complainant.

Chronology

7. The Commissioner obtained further comments and information from the public authority about its application of section 43(2). Having received its response, the Commissioner sought further clarification and provided the MOJ with the Office of Government Commerce (OGC) guidance on procurement. In accordance with the guidance, the Commissioner advised the MOJ of his view that details of service level agreements should generally be disclosed, together with details of 'exit strategies and break options' which had been redacted. He asked the public authority to reconsider its decision in this case or provide further information in support of its application of section 43(2).
8. During the course of his investigation, the public authority subsequently provided the complainant with all information falling within the request which it held.
9. The Commissioner enquired whether the complainant was prepared to withdraw his complaint, but the complainant declined to do so.

Analysis

Exemptions

10. As the information in this case has been disclosed the Commissioner has not considered whether or not the public authority was correct in citing the exemption it had previously relied upon.

The Decision

11. The Commissioner has decided that the public authority breached its procedural obligations under the Act as follows:
- in failing to issue a refusal notice within 20 working days, it breached section 17(1);
 - in failing to confirm or deny whether it held the requested information within 20 working days, it breached section 10(1).

Steps required

12. The Commissioner requires no steps to be taken.

Other matters

13. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the Act's section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt decision. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review or, in exceptional circumstances, 40 working days. As a matter of good practice the public authority should explain to the requester why more time is needed. In this case it took the public authority 48 working days to complete the review. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the public authority fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the public authority of the expected standards in this regard.

Right of Appeal

14. 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 21st day of June 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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 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(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 17(1) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

- (b) *specifies the exemption in question, and*
- (c) *states (if that would not otherwise be apparent) why the exemption applies.'*

Section 17(2) states –

'Where–

- (a) *in relation to any request for information, a public authority is, as respects any information, relying on a claim–*
 - (i) *that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or*
 - (ii) *that the information is exempt information only by virtue of a provision not specified in section 2(3), and*
- (b) *at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.'

Section 17(3) provides that -

'A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) *that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or*
- (b) *that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.'*

Section 17(5) provides that –

'A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.'

Section 17(7) provides that –

'A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.'