

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 May 2011

Public Authority: Cabinet Office
Address: Admiralty Arch
London
SW1A 2WH

Summary

The complainant requested information in two separate but linked requests about a pensions payroll contractor used by the Cabinet Office. The Commissioner has investigated and finds that no formal response was provided to either request under the Act. The public authority was in breach of its procedural obligations under the Act as a consequence.

The two requests should be dealt with under the provisions of the Act, and the Commissioner requires the Cabinet Office to respond to the complainant confirming or denying whether information is held in respect of each request. If information is held the Cabinet Office should either disclose the information to the complainant or issue a valid refusal under section 17 of the Act.

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.

Background

2. The complainant submitted requests (dated 24 July 2010 and 6 January 2011 respectively) to the Cabinet Office. Having received no response to his initial request despite having contacted the public authority on a number of occasions, the complainant submitted a further request to the Cabinet Office. The second request reiterated part of the first but from the date of 24 July 2010, but also asked for information about how the

Cabinet Office was managing requests under the Act. The Commissioner has therefore decided to investigate the two ensuing complaints jointly.

The Requests

Request 1

3. On 24 July 2010 the complainant requested the following information:

"In accordance with the Freedom of Information Act, please provide the following: -

- (i) details of monitoring and supervision arrangements with set frequencies, of the pensions payroll contractor;*
- (ii) minutes of meetings, letters or other forms of communication with [contractor's name redacted] or its parent companies over the last 12 months where these relate to backlogs, failure to reply to written correspondence in good time or at all, failure to ensure correct payments of pensions in good time;*
- (iii) any records/communication relating to the imposition of a premium rate [sic] 0870 number for telephone or fax communication with [contractor's name redacted] in relation to Civil Service Pension enquiries;*
- (iv) any records/communication relating to Cabinet Office insisting on a change from the premium rate of 0870 to 0800 or 0845 for pensioner contact with [contractor's name redacted].*

Please reply within 28 days."

Request 2

4. On 6 January 2011, the complainant submitted a further request for the following information:

"In accordance with the Freedom of Information Act, please provide the following: -

- (i) minutes of meetings, letters or other forms of communication with [contractor's name redacted] or its parent companies since 24 July 2010 where these relate to backlogs, failure to reply to written correspondence in good*

time or at all, failure to ensure correct payments of Civil Service pensions in good time;

- (ii) the total number of Freedom of Information Act requests for information received by Cabinet Office in 2010;*
- (iii) the total number of Freedom of Information Act requests for information received and accepted by Cabinet Office in 2010 but with the information not supplied within the 28 day limit."*

5. The Cabinet Office acknowledged receipt of the complainant's Request 1 on 5 August 2010; however, it did not provide a response despite a number of contacts made by the complainant asking it to do so.
6. On 13 October 2010 the complainant wrote to the Cabinet Office stating that he was making a formal complaint about the lack of response.
7. The Cabinet Office acknowledged receipt of the complainant's correspondence on 14 October 2010, advising him that it would conduct an internal review.
8. The complainant contacted the Cabinet Office on 4 November 2010 and received a callback advising that he should expect the outcome of the internal review within twenty working days and that he should not chase it until 40 working days had elapsed. Given the delay already incurred since the complainant had submitted his request, the complainant decided to complain to the Commissioner.

The Investigation

Scope of the case

9. On 7 January 2011 the complainant contacted the Commissioner to complain about the way his requests for information had been handled, specifically about the lack of response to both his requests under the Act.

Chronology

10. The Commissioner acknowledged receipt of the complaint on 12 January 2011 and wrote to both the Cabinet Office and the complainant on 10 February 2010. He reminded the Cabinet Office of its statutory duty to provide a response and asked it to do so within 10 working days. He also wrote to the complainant to advise him of the action taken and requesting that he exhaust the Cabinet Office's internal complaints

procedure should the Cabinet Office respond and refuse to provide him with the requested information.

11. The complainant wrote to the Commissioner on 2 March 2011 expressing his dissatisfaction given that he had already exhausted the Cabinet Office's complaint/review process, and enclosing a copy of his Request 2 dated 6 January 2011. The complainant stated that Request 2 had been confirmed as being received by the Cabinet Office but that a response was still outstanding.
12. On 21 March 2011 the Commissioner spoke to the Cabinet Office and was informed that the reason for the delay in providing the responses to Requests 1 and 2 was workload.
13. The Commissioner wrote to both the Cabinet Office and the complainant on 22 March 2011 accepting the complaint in respect of both Requests 1 and 2.

Analysis

14. The full wording of the sections detailed in this Notice can be found in the Legal Annex.

Procedural Requirements

Section 8 - Requests for information

15. Section 8(1) of the Act states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Commissioner considers that both requests in this case can be defined as such and therefore constituted valid requests under the Act for recorded information.
16. The Commissioner holds the view that all communications made 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. In this case the Commissioner's view is that the Cabinet Office was under an obligation to provide a freedom of information response to both requests within the statutory timescale.

Section 10 – Time for response

17. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
18. From the information provided to the Commissioner in this case it is evident that the Cabinet Office did not respond to the complainant under the Act within the statutory timeframe, and therefore breached section 10(1).

The Decision

19. The Commissioner's decision is that the Cabinet Office did not deal with either of the requests for information in accordance with the Act. The Cabinet Office breached sections 10(1) of the Act by failing to provide a response to Requests 1 and 2 within the statutory timeframe of 20 working days.

Steps Required

20. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the Act:
 - confirm or deny whether the requested information is held to comply with section 1(1)(a);
 - if information is held, in accordance with its obligations under section 1(1)(b) either provide it, or withhold it by issuing a valid refusal notice under section 17(1) of the Act.
21. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

22. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

23. 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

24. 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.
25. 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 23rd day of May 2011

Signed

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

Legal Annex

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."

Request for Information

Section 8(1) provides that –

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested."

Section 8(2) provides that –

"For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

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."

Refusal of Request

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 -

(d) states that fact,

(e) specifies the exemption in question, and

(f) states (if that would not otherwise be apparent) why the exemption applies."