

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 August 2011

Public Authority: Hounslow Homes Limited
Address: St Catherine's House
2 Hanworth Road
Feltham
London
TW13 5AB

Summary

The complainant requested data from two closed circuit television cameras for a specified time period. The public authority originally stated that the information was exempt under section 40 of the Freedom of Information Act 2000 but later stated that it did not hold the requested information at the time of the request. The Commissioner has investigated and found that on the balance of probabilities the information was not held at the time of the request. The Commissioner found procedural breaches in the way the request was handled but there are no practical steps he can order.

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. Hounslow Homes Limited (Hounslow Homes) was formed in 2002 as one of the first eight Arms Length Management Organisations (ALMOs)¹. It is wholly owned by the London Borough of Hounslow (the "Council") and is

¹ http://www.hounslowhomes.org.uk/index/about_us.htm

responsible for managing the Council's 16,500 homes. Hounslow Homes is responsible for the majority of functions previously carried out by the Council's Housing Department.

3. The complaint to the Commissioner was under both the Data Protection Act 1998 and the Act. The Commissioner has already considered the complaint under the Data Protection Act 1998 under his case reference RFA0352891.

The Request

4. Section 3(1)(b) of the Act clarifies that a publicly owned company as defined by section 6(1)(b) of the Act is a public authority in its own right.
5. On 12 July 2010 the complainant wrote to Hounslow Homes regarding a complaint about dog fouling around the areas where he lives. He pointed out that he has been complaining about this issue since 1997 and expressed dissatisfaction with the action taken by Hounslow Homes. The complainant referred to specific instances of dog fouling that he has witnessed on 14 May 2010 and 11 July 2010. He went on to request CCTV footage from a specified camera from 1 January 2010 to 11 July 2010.
6. Hounslow Homes responded on 21 July 2010. It refused to disclose the information requested on the basis that it was exempt under section 40 of the Act. It also stated that the issue of dog fouling had been passed on to the Anti-Social Behaviour Team.
7. On 9 August 2010 the complainant wrote to Hounslow Homes in a letter with the following header:

*"Re: Request pursuant to the Data Protection Act 1998 ('Act')
Cameras at the corner of [named address] and opposite car park
(Flats [named flats])."*

The complainant went on to make the following request:

"Pursuant to the aforesaid Act I request you to forward the data held in these two cameras as the Act allows within the prescribed period."

8. On 2 September 2010 the Council wrote to the complainant and refused the request on the basis that the information was exempt under section 40 of the Freedom of Information Act. It appears that the complainant did not receive this response.

9. On 17 September 2010 the complainant wrote to the Commissioner to complain that his request of 9 August 2010 had *"been ignored"*. It was not clear whether the complainant was seeking only his own personal data or the information in its entirety and the Commissioner asked the complainant to clarify this point. The complainant responded on 22 November 2010 and stated that the request of 12 July 2010 had been made in relation to three specified CCTV cameras under the Data Protection Act 1998 (the "DPA") and the Act.
10. On 2 December 2010 the Commissioner wrote to Hounslow Homes and asked it to issue a response to the request of 9 August 2010. Hounslow Homes responded on 7 December 2010 with a copy of its response to the complainant of 2 September 2010.
11. The complainant wrote to the Council on 14 December 2010 expressing his dissatisfaction with the way it had handled his request. He sent a copy of that letter to the Commissioner.
12. The Commissioner wrote again to Hounslow Homes to clarify its position in this matter. Hounslow Homes wrote again to the complainant on 8 February 2011 and stated that it had been unable to comply with his request for information of 9 August 2010 because the *"data has been overwritten"*.

The Investigation

Scope of the case

13. The details of the complaint to the Commissioner are set out above. There is clearly a history of correspondence between the complainant and Hounslow Homes and the Commissioner found it difficult to determine the scope of the complaint in this case. This was partly due to the fact that the complainant sought to add to the scope of this request during the course of the Commissioner's investigation. For example, in his letter to the Commissioner of 22 November 2010, the complainant stated that his request of 12 July 2010 had been for data held in three named cameras; the camera referred to in the request of 12 July 2010, the additional camera referred to in the request of 9 August 2010 and a third camera not referred to in either request. The Commissioner appreciates that this may have been a genuine error but it did confuse matters.
14. The Commissioner has also commented below on the procedural breaches in the public authority's handling of the request and made additional comments, regarding its handling of the request in general, in the *'Other matters'* section of this Notice.

15. The Commissioner wrote to the complainant on 12 July 2011 to clarify that he was investigating a complainant about the way Hounslow Homes had handled his request for information of 9 August 2010, and stated that he had assumed the request was for data held on two specific CCTV cameras from the period 1 January 2010 to 11 July 2010. The complainant responded on 14 July 2010 and stated that the request was made on 12 July 2010 and not in August 2010.
16. The Commissioner notes that the request of 12 July 2010 was not the same as the request of 9 August 2010, in that the former requested information about one specified CCTV camera while the other requested information about two specified CCTV cameras. The Commissioner therefore based his decision on the handling of the request of 9 August 2010, which formed the basis of the original complaint to him.

Chronology

17. On 1 July 2011, the Commissioner wrote to Hounslow Homes to clarify its position in this matter. He received a telephone call from Hounslow Homes on 4 July 2011 during which it clarified its position and a written response on 15 July 2011 confirming that position.

Analysis,

Substantive Procedural Matters

18. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities.
19. In deciding where the balance lies, the Commissioner will usually consider the scope, quality, thoroughness and results of the searches carried out by the public authority, as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information is held. In this case the Commissioner considers the explanation of why further information is not held to be the most relevant factor.
20. Although Hounslow Homes' initial response to the request was that information was exempt under section 40 of the Act, thereby implying that it held the information requested, it later said that the information was overwritten and was not therefore held at the time of the request. The Commissioner therefore wrote to Hounslow Homes to obtain further information to allow him to weigh up the balance of probabilities as to

whether, at the time of the request of 9 August 2010, it held the information requested.

21. Hounslow Homes informed the Commissioner that, at the time of the request, the hard drive recording device for the CCTV cameras in question was outdated and due to be upgraded in 2011. The Council stated that at the time of the request there had been a technical problem with the recording device for the cameras. This resulted in recorded information being stored for a period of 7 days, after which the information within the hard drive was overwritten. The Council stated that at the time of the request of 9 August 2010 the earliest recording it would have held would have commenced on 2 August 2010, which is outside the scope of the time period covered by the request.
22. The Commissioner has not been provided with any evidence that the Council holds the information requested.
23. While the Council's initial response that the information was exempt under section 40 of the Act served to confuse matters, the Commissioner accepts that on the balance of probabilities the information was not held at the time of the request.

Procedural Requirements

24. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed whether it holds information of the description specified in the request. Section 10(1) of the Act states that this must be done within 20 working days, from the day after the date of receipt of a request. Following the Commissioner's intervention, Hounslow Homes did clarify that it did not hold the requested information, but by failing to do so within the prescribed timescale it breached section 10(1) of the Act.
25. Hounslow Homes initially refused to disclose the information on the basis that it was exempt. Its refusal notice of 2 September 2010 did not include details of the complainant's right of complaint to either Hounslow Homes or the Commissioner. By failing to provide these details, Hounslow Homes breached section 17(7)(a) and (b) of the Act.

The Decision

26. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly stated that it did not hold the requested information at the time of the request.
27. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- Hounslow Homes breached section 10(1) by failing to state that it did not hold the requested information within the statutory timescale;
 - it also breached section 17(7)(a) and (b) by failing to provide in its refusal notice details of its own complaint procedure or details of the complainant's right of complaint to the Commissioner.

Steps Required

28. The Commissioner requires no steps to be taken.

Other matters

29. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
30. Based on the public authority's responses to the complainant's request it is not clear whether it operates an internal review process. While there is no statutory requirement for public authorities to conduct internal reviews, Part VI of the Code of Practice² issued by the Secretary of State under section 45 of the Act states that each public authority should have a procedure in place for dealing with complaints in relation to its handling of requests for information. If Hounslow Homes does not operate a complaints procedure in respect of requests made under the Act, the Commissioner recommends that it implements one. If it does operate a complaints procedure it should make applicants for information aware of it.
31. The Commissioner would also expect public authorities answering requests for information to establish whether the requested information is held before applying an exemption. The Commissioner would expect public authorities to provide appropriate training to employees who handle requests for information to allow them to identify requests and

² <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

respond accordingly. Hounslow Homes may find the Commissioner's *'Guide to the lifecycle of a request'*³ a useful reference document.

3

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/gnp_3_lifecycle_of_a_request.pdf

Right of Appeal

32. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

33. 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.
34. 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 15th day of August 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."

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(7) provides that –

"A notice under section (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."