

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 September 2011

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Summary

The complainant asked The National Archives ('TNA') to provide him with an electronic copy of two documents. TNA informed him that the documents he had requested are open records and are available in full for the public to view or to have a copy made, for which there is a charge. The complainant explained that he wished his request to be considered under the Freedom of Information Act 2000 (the 'Act') but TNA refused to perform an internal review of its response as it did not consider the request fell under the Act. The Commissioner is satisfied that TNA has legitimately handled this request in accordance with its own publication scheme and that TNA may charge the complainant for the requested information. However the Commissioner considers that once the complainant had indicated that his request was a freedom of information request, TNA should have issued a refusal notice. The Commissioner therefore finds TNA to be in breach of section 17(1)(a), (b) and (c).

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 Act. This Notice sets out his decision.

The Request

2. On 1 March 2011 the complainant made the following information request to TNA:

'Please release the following documents, in electronic format to this email address. I'd like all pages please; monochrome is fine.

- MH 164/8
- MH 153/616'

3. On 14 March 2011, TNA informed the complainant that it was its policy to issue formal estimates prior to undertaking any copying work. It informed him that he could request an estimate for copies through its website or post. It provided him with the website address:

<http://www.nationalarchives.gov.uk/recordcopying>

4. TNA explained its process for estimating payments. It explained that once it had received an estimate request it would send the applicant full details of the cost of the requested copies with instructions on how to process an order. It would commence the copying once payment was received and copies would be dispatched within published target delivery times.
5. On 14 March 2011 the complainant requested an internal review of this response. He explained that this was a request under the Act and he required either the information or a valid refusal notice.
6. On 15 March 2011 TNA explained that the files he had requested are open records. As such they are available in full for the public to view or to order a copy to be made for them, for which there is a charge.
7. TNA confirmed that it had informed the complainant of the process to be followed to have an electronic copy of the requested files sent to him. It explained that it had sent his request to its record copying department which handles requests for copies of files and would contact him to provide him with the cost of this information.
8. TNA explained that there was no decision under the Act to be reviewed.

The Investigation

Scope of the case

9. On 15 March 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that TNA does not think that the Act applies to it.

Chronology

10. On 5 April 2011 the Commissioner wrote to the complainant and explained his preliminary view.
11. On 11 April 2011 the complainant informed the Commissioner that he did not agree that TNA's proposed charge of £2.80 per page is justified.

Analysis

12. The full text of section 1(1), section 10(1), section 17(1)(a),(b) and (c), section 19 and section 21 of the Act can be found in the Legal Annex at the end of this Decision Notice.

Substantive Procedural Matters

Section 1

13. 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.”*

14. TNA has confirmed that it holds the requested information. It has therefore complied with section 1(1)(a).

Section 19

15. Section 19 of the Act sets out the duty of every public authority to adopt and maintain a publication scheme, which provides details of information made available proactively by that authority. Section 19(1)(b) sets out a

requirement for authorities to publish information in accordance with their adopted scheme.

16. A public authority must therefore publish information in accordance with that scheme and should specify whether the material is available to the public free of charge or on payment. This is specified in section 19(2)(c).
17. TNA's publication scheme is available on its website and clearly indicates that it will charge for copies of certain classes of information. It can be found at:

<http://www.nationalarchives.gov.uk/foi/publication-scheme.htm>

18. TNA's website is also clear as to the fees which will be charged. Its reprographic charges can be found at:

<https://www.nationalarchives.gov.uk/recordcopying/recordcopyingcharges.aspx>

19. The Commissioner is therefore satisfied that TNA's publication scheme is clear that charges may be made for copying services and that TNA's website provides the details of those charges.
20. The TNA website indicates that monochrome prints from digital scans of documents on A3 paper copy cost £2.80.
21. The Commissioner's published guidance to charging for information under a publication scheme states that:

'We strongly recommend that the level of charges should be compatible with the principle of promoting public access to the information held by public authorities. While we cannot be prescriptive about the level of charges, we would expect a public authority to be able to justify them based on a transparent and publicly available charging policy or policies.'

This guidance can be found on the Commissioner's website at:

http://www.ico.gov.uk/for_organisations/freedom_of_information/publication_scheme/can_i_charge.aspx

22. TNA is providing a public service in the Archives Service and it allows the inspection of the information held there for free. It is entitled to charge for the costs of providing a copying service. It is transparent about these charges and refers to them in its publication scheme. Full details are provided on its website. The Commissioner does not consider

the charges to be so high that they inhibit public access to the information, particularly as inspection is free.

23. The Commissioner is therefore satisfied that TNA's publication scheme is clear that charges may be made for copying services. TNA's website is also clear as to the fees which will be charged.
24. The complainant has indicated that he considers the charge required by TNA is not justified; however the Commissioner would consider that the basis of the charge is clear and transparent and that it is not unreasonable.
25. TNA has not refused the complainant access to the requested information as it is publically available. It has explained how much the information will cost him and it is entitled to do so.
26. The Commissioner is therefore satisfied that TNA may charge the complainant for the requested information and that it has legitimately handled his request in accordance with its own publication scheme.

Procedural Requirements

Section 17

27. The request was dated 1 March 2011. TNA provided a response to the complainant on 14 March 2011. However, the complainant explained that this was a request under the Act and requested an internal review. This was not provided as TNA did not consider that the request should be handled under the Act.
28. However, the Commissioner considers that although the request could have been handled outside of section 1 of the Act, once the complainant had informed TNA that his request was made under the Act, it should have either provided the information or issued a valid refusal notice under section 17 of the Act. In cases where information is available under a publication scheme, a public authority may refuse to provide that information under section 21 of the Act (information reasonably accessible via other means).
29. The Commissioner therefore finds that TNA failed to issue a refusal notice to the complainant within the statutory time period for compliance with section 1(1). TNA is therefore found to be in breach of section 17(1).
30. Section 17(1)(a) and (b) states that should a public authority claim that the information requested is exempt, it should state that fact and specify the exemption in question. In its initial response, TNA explained

that it was not providing the information but it could be inspected for free or a copy could be made for a charge. Once the complainant made it clear he considered this to be a request under the Act, TNA still did not provide a refusal notice and apply an exemption to the information. TNA is therefore found to be in breach of section 17(1)(a) and (b).

31. In failing to explain why an exemption under the Act applies to the request, the Commissioner finds TNA to be in breach of section 17(1)(c).

The Decision

32. 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:

- TNA publishes information in accordance with its publication scheme, as required under section 19(1)(b) and section 19(2)(c).
- TNA handled the request in line with its publication scheme.

However, the Commissioner has also decided that although the request could legitimately have been handled under the publication scheme, once the complainant indicated that this was a request under the Act, the public authority should have provided a response under the Act. As it failed to do so, the following elements of the request were not dealt with in accordance with the Act:

- TNA failed to provide a refusal notice to the complainant within the statutory time period contained within the provisions set out in section 17(1).
- TNA is found to be in breach of section 17(1)(a). It failed to state that the requested information was exempt from disclosure.
- TNA is found to be in breach of section 17(1)(b). It failed to cite the relevant exemption in its response.
- TNA is found to be in breach of section 17(1)(c). It failed to state why an exemption applies.

Steps Required

33. The Commissioner requires no steps to be taken

Other matters

34. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following:

Paragraph 38 of the code of practice issued under section 45 of the Act (the "Code") recommends:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure."

Paragraph 36 of the Code recommends:

"Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information. The same procedure could also usefully handle complaints in relation to the authority's publication scheme."

In this instance, despite receiving an expression of dissatisfaction from the complainant, the public authority refused to engage its complaints procedure. In future, the Commissioner expects that the public authority will handle requests and complaints about its request handling in accordance with the code.

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,
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 22nd day of September 2011

Signed

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

Legal Annex

Section 1: 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.”

Section 10: 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 -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Publication Schemes

Section 19(1) provides that –

‘It shall be the duty of every public authority –

- (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a ‘publication scheme’),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme.’

Section 19(2) provides that –

‘A publication scheme must –

- (a) specify classes of information which the public authority publishes or intends to publish,
- (b) specify the manner in which information of each class is, or is intended to be, published, and
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.’

Section 19(3) provides that –

‘In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decisions made by the authority.’

Section 19(4) provides that –

‘A public authority shall publish its publication scheme in such manner as it thinks fit.’

Section 19(5) provides that –

‘The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.’

Section 19(6) provides that –

‘Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.’

Section 19(7) provides that –

‘Where the Commissioner –

- (a) refuses to approve a proposed publication scheme, or
- (b) revokes his approval of publication scheme, he must give the public authority a statement of his reasons for doing so.’

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”