

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 January 2012

Public Authority: Commission for Local Administration in England
(Local Government Ombudsman)

Address: Millbank Tower
Millbank
London
SW1P 4QP

Decision (including any steps)

1. The complainant has made a number of information requests in connection with two complaints he has raised with the public authority. The public authority believed it complied with the requests.
2. The Information Commissioner's decision is that the public authority failed to comply with one of the requests relating to guidance and training. He also found procedural breaches.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - It should provide copies of the talks and seminars it has referred to as well as any training material used by its specialist staff, unless it is exempt from disclosure.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The complainant has raised complaints which he asked the public authority to consider in its role as a statutory complaint handler. His requests under the FOIA stem from these complaints.

Request and response

6. Following on from previous correspondence, on 24 April 2011 the complainant wrote to the public authority and requested information in the following terms:
1. *Which of the statements of complaint you received on 9, 12 and 18 November gave rise to the letter dated 19 November and signed by [name removed] allocating the reference 10 014 529?*
 2. *Where do the 3 complaints, those dated 9, 12 and 23 November, not so far sent to the NPA, currently reside ([name removed] simply writing that you have them "on file")?*
 3. *Can you let me have copies of any documentation which your office possess which relates to the administration of these additional complaints?*
 4. *My previous experience is that you would check with the complainant early on the precise nature of the complaint so that there was no misunderstanding when you considered it. If this is not currently done, when did the practice cease?*
 5. *Could I have a copy of your scheme of delegation in respect of the work other officers carry out on your behalf.*
 6. *What checks are in place for reviewing the decisions [name removed] makes before they are made public? Did anyone else in your organisation agree to the dispatch of the Statement of Reasons sent out on 17 January, or can she be held personally responsible for its contents?*
 7. *Can I have a copy of the written guidance you give to your staff to enable them to make a judgement on whether the injustice claimed by a complainant is too slight to warrant investigating.*
 8. *Is your office accountable to anyone other than the Courts in respect of discharging your statutory functions?*
7. On 9 May 2011 he also made the following request:
- "in connection with the complaint registered as 10 011 754 -*
- a) *can you let me know what correspondence has taken place between the Ombudsman's staff and the New Forest National Park Authority, and let me have copies of that correspondence*
 - b) *precisely what steps were taken to test or validate the professional report submitted as an attachment to my letter of 15 February 2011*
- more generally*

c) could you send me a copy of the written guidance given, or any information about the training available, for your investgating [sic] officers to understand how a planning authority should properly administer the enforcement of planning control".

8. The public authority responded to both requests on 16 May 2011. It provided some information and did not cite any exemptions.
9. On 22 May 2011 the complainant queried the responses by reference to each separate request.
10. On 26 June 2011 the public authority provided an internal review which referenced both requests. Again it did not cite any exemptions.
11. During the Information Commissioner's investigation the public authority provided a set of papers entitled *Guidance for Investigations* to the complainant in respect of the training given to its staff, although it stipulated that this was in the process of being revised. It also provided information in respect of parts (a) and (b) of the latter request.

Scope of the case

12. Having initially written to the Information Commissioner on 29 June 2011, the complainant submitted his full complaint details on 31 July 2011.
13. Following initial correspondence regarding his complaint, the complainant confirmed the following to the Information Commissioner:

"The questions not properly answered and the reasons are:

2. the replies have been ambiguous; I do still do not know exactly how the three complaints are actually filed
3. I have not being given any information on the administration of my complaint dated 23 November which clearly cannot have been covered in the administration sheet dated 19 November
7. What I do not know is what guidance is given to investigators: I have been told there is some additional to Fact Sheet G2, but have not been sent documents which cover this

a) Copies of parts of the correspondence has been withheld without reason

c) I do not yet have the documents I have requested which it is

reasonable to assume does exist in some form and should not be seen as exempt information”.

14. During the investigation the public authority provided information in respect of parts 2 and 3 of the first request and part (a) of the latter request. The complainant withdrew his complaint in respect of these elements and they will therefore not be further considered. The public authority also provided some information regarding the training of its staff but this did not satisfy the complainant. In respect of each remaining element the complainant stated:

“As to the questions on training given, I have been sent a set of papers entitled Guidance for Investigations. There is a section on “injustice” within that. That may be the extent of the training, but I do not know for sure. I can only imagine that anyone charged with the responsibility of making statutory decisions on this basis would need more than what is set out in the Guidance notes. But I may be wrong. I am sure that the LGO would have a written record of training given to individual investigators.

And the second of the two requests is similar in its scope, but there is nothing in the Guidance about the way investigators are trained so that they understand the duties and responsibilities of local government officers. Clearly, no valid decisions can be made on cases of maladministration/injustice without at least a working knowledge of what is involved, such as in this case where a decision depends on a full appreciation of the system of planning enforcement”.

15. The Information Commissioner has therefore considered whether or not the public authority has complied with part (7) of the first request and part (c) of the latter request, both of which related to provision of guidance and training to its staff.

Reasons for decision

Part (7) of the request dated 24 April 2011

16. The public authority initially advised the complainant:

“I enclose a copy of Fact Sheet G2, which is available on our website. Guidance for Investigators is also normally on our website but is currently unavailable as it is being updated”.

17. At internal review it advised him:

"We have met this request in full and I have no further documents to send".

Part (c) of the request dated 9 May 2011

18. The public authority initially advised the complainant:

"All our investigators are given training in all aspects of the job, both on appointment and subsequently".

19. At internal review it advised him:

"... [name removed] complied with your request by providing you with information about the training available. Training in this case consists of activities such as talks and seminars".

20. Section 1 of the FOIA states 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."

21. The Information Commissioner notes that, during his investigation, the public authority provided its *Guidance for Investigations* to the complainant. The complainant did not accept that this was adequate and his concerns, as cited in paragraph 14 above, were put directly to the public authority and he invited it to submit any further arguments to support its position.

22. By response the public authority advised:

"On the question of injustice we consider the guidance provided to staff formally, supplemented by informal guidance delivered on individual cases by senior staff, as appropriate, to be adequate for our purposes.

On the question of training, subject training is provided by specialist staff in each office and supplemented by external courses where appropriate.

We have no further comments to make on [the complainants]'s requests".

23. As cited above, in respect of the earlier request the public advised the Information Commissioner that, as well as the formal guidance, it provides *informal guidance delivered on individual cases by senior staff*. The Information Commissioner concludes that this will consist of discussions about a case and it is very unlikely that such discussions will be based on any recorded guidance. This is because any related guidance will be given on a case-by-case basis and will not form part of any formal instruction provided to staff. Although information may be recorded on an individual case files as an 'audit trail' of how to proceed with that particular case, the Information Commissioner would not consider such notations to fall under the general heading of 'written guidance' and therefore finds that any such recordings would fall outside the scope of the request.
24. In respect of the latter request, the public authority has provided no recorded information to the complainant other than as cited above. However, in its internal review it clearly indicates that further written information will be held by way of *talks and seminars* given to its staff. Furthermore, its response to the Information Commissioner indicates that *subject training is provided by specialist staff in each office and supplemented by external courses*. By their nature, the Information Commissioner would expect *talks and seminars* to be recorded either as text, or as a presentation, for the lecturer to rely on. The Information Commissioner further considers that training *provided by specialist staff in each office* is likely to consist of recorded information that the trainers will rely on to ensure that the specialist training is presented in an adequate and consistent manner to all trainees.
25. Based on the information above, the Information Commissioner considers that, on the balance of probabilities, the public authority does not hold further recorded information in respect of the first request. However, he does not accept this position in respect of the latter request. This is because the public authority has clearly stated that some aspects of its training rely on talks and seminars and it also has specialist staff who provide training. The Information Commissioner would expect such instruction and relevant materials to be formally recorded to ensure that all relevant staff are trained adequately and in a consistent manner. Therefore, on the balance of probabilities, the Information Commissioner concludes that further information is held.
26. Consequently, in respect of the latter request, the public authority should either provide this information to the complainant or issue a valid refusal notice in compliance with section 17 of the Act explaining why it is exempt from disclosure.

Right of appeal

27. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF