

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2013

Public Authority: Department for Social Development
Address: Lighthouse Building
1 Cromac Place
Gasworks Business Park
Ormeau Road
Belfast
BT7 2JB

Decision (including any steps)

1. The complainant has requested information relating to a terminated maintenance contract. As part of its response the public authority provided some information, stating that this was all it held, but the complainant did not agree. The Information Commissioner's decision is that the public authority's response was late and also that it only took into consideration one objective reading of the request.
2. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - it should reconsider a broader reading of the request and issue a fresh response in compliance with the FOIA.
3. 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

4. The information relates to the termination of a maintenance contract by the Northern Ireland Housing Executive (the "NIHE"). In its refusal

notice the public authority provided the following background information:

"On 19 April 2011 Red Sky announced that it was going into voluntary administration following the termination of its contract with the Northern Ireland Housing Executive following an investigation into the company's working practices.

Minister McCausland became increasingly concerned about the issues which led to the termination of the contract and asked for an investigation to provide assurance in relation to contracts, the quality of services to tenants and the proper use of public funds.

A submission was prepared for Minister McCausland on 30 August 2011 detailing the business case for the investigation including the Terms of Reference and proposed costs".

5. The BBC issued a news article on 5 July 2011¹ which included the following comment:

"The environment minister has asked for the issue of Belfast property repairs company Red Sky to be discussed by the Stormont executive on Thursday.

The Housing Executive ended its £8m repairs contract with the Belfast firm in April over overcharging allegations.

However, Social Development Minister Nelson McCausland has since asked it to reinstate Red Sky until a new system for awarding contracts is introduced".

6. Further information can be found online. The following items are examples, but it should be noted that they all post-date this request:

http://www.dsdni.gov.uk/depro_foi_disclosure_log_dsd-2011-0116-anonymised_response.pdf

<http://www.dsdni.gov.uk/oral-statement-by-dsd-minister-to-ni-assembly.htm>

¹ <http://www.bbc.co.uk/news/uk-northern-ireland-14033842>

<http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-dsd-july-2012/news-dsd-030712-housing-executive-response.htm>

<http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Committee-Minutes-of-Evidence/Session-2012-2013/September-2012/Northern-Ireland-Housing-Executive-Management-of-Response-Maintenance-Contracts/>

Request and response

7. On 15 July 2011, the complainant wrote to the public authority and requested information in the following terms:

"...please provide me with all correspondence (emails, memos and minutes of meetings) relating to the department's request to the Housing Executive to have Red Sky's maintenance contract re-instated.

Please provide details, including names, dates and the location of any meetings or correspondence held between Minister McCausland or any DSD official and any outside individual, individuals, party or company which lobbied/ made representations on behalf Red Sky or requested that the suspended contract with the Housing Executive be reinstated.

Please provide details, including correspondence, of the inquiry ordered by the minister into maintenance contracts at the Housing Executive, including who has been asked to carry out the review, what are the terms of reference of the inquiry, how long this inquiry will last and how much it will cost".

8. After a considerable delay of almost nine months, the public authority responded on 6 April 2012. It stated that it did not request that the Northern Ireland Housing Executive reinstate its maintenance contract with Red Sky and consequently it held no information in respect of the first part of the request. It provided three documents in respect of the second part of the request, saying that this was all it held. It advised the complainant who was appointed to conduct the inquiry in respect of the third part of the request but stated that the remainder of this information was exempt under sections 30(2) and 43 of the FOIA.
9. In view of the lengthy delay in this case the Information Commissioner has accepted the complaint in the absence of an internal review.

Scope of the case

10. On 18 April 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He specifically referred to the length of time that it had taken the public authority to respond to his request as well as the lack of documentation provided in respect of the second part of his request; the Information Commissioner will therefore consider these elements.
11. The complainant did not complain about either the first part of his request or the public authority's application of exemptions to the third part of his request; these will therefore not be considered.

Reasons for decision

Timeliness

Section 1 – general right of access

Section 10 – time for compliance

Section 17 - refusal of request

12. Section 10(1) of the FOIA 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."

13. Section 1(1) of the FOIA 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. The request was submitted on 15 July 2011 and the complainant did not receive a formal response until 6 April 2012, almost nine months later. The Information Commissioner finds that the public authority breached section 10(1) by failing to inform the complainant whether or

not it held the requested information within 20 working days of the request.

15. Section 17(1) of the of the FOIA 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."*

16. In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).

Interpretation of the request and response

Section 1 – general right of access

17. As stated above, section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.

18. Additionally, under the FOIA a public authority has a duty to read a request for information objectively. If more than one objective reading of a request is possible, a public authority is under a duty to clarify with the requester the scope of their request.

19. The Information Commissioner has produced guidance which explains what a public authority should consider when interpreting a request, and when it should ask the requester for clarification².

20. In this guidance the Information Commissioner explains:

²[http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Practical_application/INTERPRETING_A_REQUEST.ashx](http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~/media/documents/library/Freedom_of_Information/Practical_application/INTERPRETING_A_REQUEST.ashx)

"Where the request is ambiguous, the authority will need to seek clarification from the requester in order to ensure that it can comply with the request properly".

21. He also advises that a public authority should not: *"refuse an otherwise clear request because the requester does not use the same terminology to describe the information as used by the public authority"*.
22. Furthermore, the Information Commissioner is of the opinion that if a public authority believes that a request could be read in more than one way, or that it does not have an obvious interpretation, it will need to ask the requester for clarification. It is the Information Commissioner's view that a public authority should always ask for clarification in such circumstances to ensure that it can comply with the request properly. This did not happen on this occasion.
23. The Information Commissioner now notes the wording of the part of the request which has been disputed. This seeks various pieces of information held in relation to any parties: *"...which lobbied / made representations on behalf [of] Red Sky or requested that the suspended contract with the Housing Executive be reinstated"*.
24. The Information Commissioner here notes the wording of the statement put out by the BBC, as cited under *"Background"* above. The BBC also use the term *"reinstate"* when referring to the Social Development Minister's request to *"reinstate"* Red Sky until a new system for awarding contracts is introduced.
25. The Shorter Oxford English Dictionary defines *"reinstate"* as meaning:
"Bring or put back (a person etc.) into a former position or condition; reinstall, re-establish, (in office etc.)."
26. The Shorter Oxford English Dictionary also gives an associated example, taken from the Independent on Sunday, of: *"Rolls-Royce decided to cancel then reinstate its staff's contracts"*. The Information Commissioner considers that in this information request *"reinstate"* is being used as meaning to put the contract back into a former position.
27. Although the public authority did provide some information, which it states is all that fell within the scope of the request, it may still be found in breach of the FOIA even if it has responded correctly to one possible objective reading of the request. This will occur where there is also an alternative meaning of the request, which is equally correct, for example as in *Berend v IC and LBC Richmond upon Thames*

[EA/2006/0049 & 0050]. Therefore, although the public authority did provide a response, the Information Commissioner may not accept that the interpretation that it relied on was the only one available to it.

28. When asked to explain its interpretation of 'reinstating' the public authority advised the Information Commissioner:

"Reinstatement or reinstating would have meant that the termination of the Red Sky contract was stopped (which was not the case) and the contract given back/retained by Red Sky".

29. In contrast to this interpretation the Information Commissioner notes there is an alternative reading which can, in his view, be objectively evidenced in the terminology he has included in the quote by the BBC in the "Background" section above. In this quote the BBC uses the term "reinstate" in such a way that it means "extending" the contract until a new system for awarding contracts is introduced, which is a broader interpretation than that used by the public authority.
30. On this occasion, the Information Commissioner considers that an objective reading of the request would refer generally to any information held which relates to any possible continued service of Red Sky following the termination of the contract, ie information which relates to potentially 'putting back' the contract into its former position, inclusive of 'extending' it; whether this is to be a temporary measure is irrelevant. He thinks such a reading would be expected of any reasonable public authority.
31. The Information Commissioner therefore concludes that the public authority has read the request too narrowly. It should reconsider its earlier response and issue a fresh response which takes into consideration the broader interpretation of the request, as outlined by the Information Commissioner above.

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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed

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