

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Metropolitan Police Service
Address: Public Access Office
20th Floor Empress State Building
Lillie Road
London SW6 1TR

Summary

The complainant asked for a copy of the Senior Investigating Officer's report relating to the arrest and prosecution of a high profile named individual in 1985. The public authority initially refused to supply the information, citing the exemptions at section 30 and section 40. During the Commissioner's investigation it ascertained that it did not in fact hold the information. The Commissioner accepted that the information was not held and found that there had been breaches of sections 1(1)(a) and 10(1) in the public authority's failure to communicate this to the applicant.

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.

The Request

2. The complainant submitted the following request for information to the public authority on 15 February 2010.

'Please disclose under the FOI Act:

*The SIO (Senior Investigating Officer) reports for
1) the arrest of [named individual] (in November 2008)*

2) the case that led to the prosecution of [named individual] (in 1985)'.

3. The public authority issued a refusal notice on 15 April 2010, stating that the information was exempt under section 30(1)(a) and (b) (criminal investigations or proceedings) and section 40(1) (personal information).
4. On 15 June 2010 the complainant asked the public authority for an internal review of its decision. She clarified that she only wished to challenge the decision insofar as it related to the information described in point 2). She also asked to be advised as to whether that information was actually held by the authority, as this was not clear from its initial response.
5. On 7 July 2010 the public authority supplied the results of its internal review. It confirmed that it held information described in point 2) of the request. It varied its original decision, stating that the information was exempt from disclosure by virtue of sections 30(1)(a)(i) and (ii), 30(1)(b), 30(1)(c), and 40(2). It provided a further explanation of its thinking.

The Investigation

Scope of the case

6. On 8 July 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the exemptions in section 30 and section 40 had been applied correctly.
7. Referring to the complainant's letter of 15 June 2010, the Commissioner confined his investigation to the handling of point 2) of the request. He also included a consideration of the timescale of the public authority's response to the request, in his investigation.

Chronology

8. On 12 October 2010 the Information Commissioner wrote to the public authority, setting out details of the complaint against it.
9. On 2 November 2010 the public authority advised the Commissioner that it was not certain that it held the requested information, the investigation to which the information pertained having been conducted by the Ministry of Defence.

10. On 4 November 2010 the public authority wrote to both the Commissioner and the complainant confirming that it did not hold the information. It also telephoned the complainant to explain the mistake and offered an apology, suggesting that she make a request for information to the Ministry of Defence.
11. On 8 November 2010 the complainant notified the Commissioner that although she accepted the public authority's assurance that it did not hold the requested information, she was very concerned that it should formulate an initial response to her request and a review of its decision, without apparently having the requested information to refer to. She expressed concern that this might be indicative of a widespread pattern of request handling and reviews without reference to the information requested.
12. On 15 November 2010 the public authority explained in a telephone call to the Commissioner, that the person who initially dealt with the request appeared to have consulted only the information requested in point 1) when composing the initial response dated 15 April 2010. The subsequent internal review of the handling of the request was conducted by an inexperienced member of staff who has since moved to other duties.

Findings of fact

13. The Commissioner is satisfied that the public authority does not hold the information described in point 2) of the request. The complainant does not dispute this.

Analysis

Substantive Procedural Matters

14. 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.'

15. In this case the complainant's request was received on 15 February 2010. It did not inform the complainant that it did not hold the requested information until 4 November 2010. It therefore took the public authority 183 working days to notify the complainant that it did not hold information of the description specified in the request.

16. Accordingly, the Commissioner finds that in failing to notify the complainant that it did not hold the information by the completion of the internal review or the time for statutory compliance, the public authority breached the requirement in section 1(1)(a) of the Act. Furthermore, by failing to carry out this action within 20 working days, the public authority breached section 10(1) of the Act.

The Decision

17. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
- in failing to notify the complainant that it did not hold the information by the completion of the internal review or the time for statutory compliance, it breached section 1(1)(a) of the Act;
 - by failing to carry out this action within 20 working days, it breached section 10(1).

Steps Required

18. The Commissioner requires no steps to be taken.

Other matters

19. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
20. The Commissioner would like to record his concerns in relation to the public authority's reliance upon section 30 and section 40. It would appear that when applying the exemptions, the public authority had not actually located (or viewed) the information in point 2) of the request, and sought to refuse the request on a general basis. A failure to obtain or consider the actual information requested could, as in this case, result in an incorrect or inaccurate response and as such the Commissioner considers that this is extremely poor practice.
21. In relation to the internal review, paragraph 39 of the section 45 Code of Practice encourages authorities to:

'...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a

fresh decision to be taken on a reconsideration of all the factors relevant to the issue.'

22. The outcome of the review in this case, as communicated to the complainant, was very limited and did not demonstrate that a full reconsideration of the factors had taken place. The Commissioner, therefore, advises that the public authority ensures that future internal reviews are carried out in accordance with the guidelines in the section 45 Code of Practice and communicated in full.

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 16th day of December 2010

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"

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."

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - 1. whether a person should be charged with an offence, or
 - 2. whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

(d) it constitutes personal data which do not fall within subsection (1),
and

(e) either the first or the second condition below is satisfied.”