

Freedom of Information Act 2000 (Section 50)

Decision Notice

28 January 2009

Public Authority: Department for Innovation, Universities and Skills
Address: Kingsgate House
66-74 Victoria Street
London
SW1E 6SW

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") on 13 May 2008 to the Department for Innovation, Universities and Skills ("DIUS"). The complainant requested information relating to extremist activity at Bradford University over the previous two years. DIUS failed to respond to this request despite repeated reminders to do so. The Commissioner has therefore decided that DIUS failed to comply with section 1(1)(a) and (b) of the Act and must now do so within 35 days of the date of this notice. Furthermore the Commissioner also found that the DIUS failed to comply with the time for compliance set out at section 10(1) of the Act.

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 13 May 2008 the complainant made a request to DIUS for the following information:-

"Please provide the information the department holds, from the last two years, on extremist activity at Bradford University.

To be specific, I am not concerned with information held that relates directly to the high profile court case involving students from the university, ie. anything served into the court, but the information the department holds on discussions with the university which may have flowed from that case and any other information the department holds

on extremist activity at the university.

This should include, but not exclusively, any recorded information from discussions, meetings, briefings between Bill Rammell and the university.”

3. On 14 May 2008 DIUS wrote to the complainant to acknowledge his request and to explain that a full response would be sent as soon as possible.
4. The complainant did not receive a response from the DIUS.

The Investigation

Scope of the case

5. On 17 June 2008 the complainant contacted the Information Commissioner's Office (ICO) to make a formal complaint as DIUS had failed to respond to his request for information.

Chronology

6. The Commissioner made a number of attempts to contact DIUS to ask it to respond to the complainant's request for information. The Commissioner sent a letter to DIUS on 16 July 2008 in which it was asked to respond to the complainant in accordance with its obligations to do so under the Act. During a telephone call on 21 August 2008 DIUS explained that the Commissioner's letter of 16 July 2008 had been received however a response had not as yet been provided. It stated that a response would be provided within a week.
7. As a response was unforthcoming another telephone call was made on 8 September 2008 from the ICO to DIUS to follow the matter up. On 9 September 2008 DIUS telephoned to confirm that a response would be sent by the end of the week or early the following week. DIUS explained that it had put in place new measures to try to prevent delays such as this happening in the future.
8. As a response was still not forthcoming, the ICO telephoned DIUS again on 23 September 2008. DIUS confirmed that a response had still not as yet been provided to the complainant. It explained that this was because it was consulting with the Ministry of Justice (MoJ) before providing a response. DIUS clarified that a response would be sent out within the next couple of days and a copy of that response would be sent to the ICO. However DIUS again failed to provide a response to the complainant's request within that timeframe.

9. On 4 October 2008 the Commissioner wrote again to DIUS, setting out the request for information and asking that DIUS respond to the complainant in accordance with its obligations under the Act.
10. On 18 November 2008 the Commissioner made a final attempt to contact DIUS to ask it to respond to the complainant's request for information. DIUS still failed to respond.

Analysis

Procedural matters

Section 1

11. Section 1(1) of the Act 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.”*

12. The Commissioner has considered whether the Trust has complied with section 1(1)(a) and (b) of the Act.
13. In reaching a decision in this case the Commissioner has considered the fact that the Trust has failed to provide a full response to the complainant.
14. Furthermore DIUS had assured the Commissioner that it would respond to the complainant's request during various telephone calls made during the course of the Commissioner's investigation. However DIUS's response was not forthcoming.
15. Having considered the above the Commissioner is satisfied that the Trust has not responded to the complainant's request in accordance with section 1(1)(a) and (b) of the Act as it failed to confirm or deny whether the information is held and if it is to either provide it or issue a valid refusal notice.

Section 10

16. Section 10(1) of the Act states 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.”

17. The Commissioner has considered whether the DIUS has complied with section 10(1) of the Act.
18. In reaching his decision, the Commissioner has considered that DIUS has not provided a full response to the complainant and therefore has not complied with section 1(1)(a) and (b) within 20 working days.

The Decision

19. The Commissioner's decision is that DIUS did not comply with section 1(1)(a) and (b) of the Act.
20. Furthermore in failing to confirm or deny whether the information is held and if it is to either provide the information or a valid refusal notice the Commissioner has decided that DIUS failed to comply with section 10(1).

Steps Required

21. The Commissioner requires DIUS to respond to the complainant's request in accordance with section 1(1)(a) and (b) of the Act. DIUS must confirm or deny whether or not it holds the requested information and if so, it must either communicate that information to the complainant or issue a valid and adequate refusal notice.
22. DIUS must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to Comply

23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 55 of the Act and may be dealt with as a contempt of court.

Right of Appeal

24. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 28 day of January 2009

Signed

**Nicole Duncan
Head of FOI Complaints**

**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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”