

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 February 2009

Public Authority: University of Southampton
Address: Highfield
Southampton
SO17 1BJ

Summary

The complainant requested information from the public authority that related to the number of students beginning three specific nursing qualifications and the number of students completing those qualifications over a three or four year term in 2002-2006. After over eight and a half months the complainant lodged a formal complaint with the public authority. After a further four months the complainant had still not received a reply. The public authority eventually told the complainant it would respond to the request. The Commissioner began an investigation and was told by the public authority that a substantive response would be sent, but none was forthcoming. The Commissioner has therefore found that, in not responding, the public authority has breached section 10 of the Act. The Commissioner requires the public authority to either provide the information or issue a valid refusal notice that complies with section 17 of the Act within 35 days of the date of this notice.

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. On 14 November 2007 the complainant made the following request by email for information in accordance with the Act:

'Please could you supply the following information:

- (1) How many students commenced a three year pre-registration degree programme in nursing at your institution in 2003 and how

- many completed a three year pre-registration degree programme in nursing in 2006?
- (2) How many students commenced a four year pre-registration degree programme in nursing at your institution in 2002 and how many completed a four year pre-registration degree programme in nursing [in] 2006?
 - (3) How many students commenced a pre-registration nursing diploma at your institution in 2003 and how many completed a pre-registration nursing diploma in 2006?
3. On 4 March 2008 the complainant chased the request by e-mail.
 4. On 5 March 2008 the public authority acknowledged receipt of the request.
 5. On 23 April 2008 the public authority responded by email to the complainant agreeing to look into the request.
 6. On 28 May 2008 the complainant chased the public authority for a response and received an 'out of office' email response.
 7. On 29 May 2008 the complainant chased the public authority by emailing a different contact.
 8. On 5 August 2008 the complainant wrote to complain to the Registrar and Chief Operating Officer at the public authority.
 9. On 14 August 2008 the complainant telephoned the public authority to chase a response.
 10. On 27 August 2008 the complainant chased a response by email. On the same date the public authority acknowledged, by email, the receipt of her letter of 5 August 2008 and promised to respond shortly.

The Investigation

Scope of the case

11. On 25 September 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 the delay in providing any response to her request. The complainant noted that she had made the same request to 68 other universities all of which had provided the information.

Chronology

12. On 17 October 2008 the Commissioner rang the public authority and was told that the public authority was having internal problems with the request.

13. On 13 November 2008 the Commissioner wrote to the public authority asking for a response to the request to be sent to the complainant within ten days.
14. On 5 December 2008 the Commissioner rang the public authority to inquire why there had been no response to the request. The public authority replied that it would probably cost too much to comply with the request. The Commissioner explained that a full breakdown of how the public authority arrived at this conclusion would be required in its response. The public authority promised to write to the complainant and the ICO on 5 December 2008.
15. As no response was forthcoming, the Commissioner rang the public authority on 22 December 2008 to chase a response. A message was left requesting an urgent call back.
16. On 6 January 2009 the Commissioner rang and again left a message.
17. On 8 January 2009 the Commissioner rang the complainant to inquire if she had received a response from the public authority. She had not received a response.
18. On 8 January 2009 the Commissioner emailed the public authority stating that a Decision Notice would be drafted if a response had not been received by 12 January 2009.
19. On 14 January 2009 the complainant rang the Commissioner to check the progress of the case. She was told that a Decision Notice would be drafted.

Analysis

Section 10

20. Section 10(1) (full wording in the Legal Annex) states:

‘....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.’

The information request in this case was made on 14 November 2007. The public authority has failed to provide a response to the complainant within twenty working days. It has still not responded to the request by the date of this notice.

21. During a telephone conversation with the Commissioner the public authority suggested that the request would be refused as the cost of complying with the request would be too great. However, this has not been communicated to the complainant.

The Decision

22. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. The public authority breached section 10 (1) by failing to provide a response compliant with section 1(1) of the Act within twenty working days of receipt of the request.

Steps Required

23. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Provide a response to the request that is compliant with section 1(1). This should either disclose the requested information to the complainant, or should constitute a refusal notice valid for the purposes of section 17.

24. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

25. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other Matters

Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

26. During the course of the investigation, the University of Southampton has repeatedly failed to meet the timescales for response set by the Commissioner. The University's recurring failure to properly respond first to the complainant and then to the ICO's informal attempts to resolve this matter has forced the Commissioner to issue a formal Decision Notice, which should not have been necessary in this case.

27. The Commissioner is concerned that the University's approach to this case has not been co-operative or within the spirit of the Act, and may indicate a lack of commitment to or awareness of the University's freedom of information obligations. He recommends that the University identifies and addresses any shortcomings in its FOI procedures and training and would also expect to see improvements in the University's future engagement with the ICO.

Right of Appeal

28. 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.
Website: www.informationtribunal.gov.uk

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.

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 12th day of February 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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.”