

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 December 2009

Public Authority: Child Maintenance and Enforcement Commission
Address: Office of the Commissioner
PO Box 61791
London
SW1P 9NT

Summary

The complainant made requests to the Child Support Agency, now part of the Child Maintenance and Enforcement Commission ('CMEC'), for a variety of statistical information about its dealings with its clients. The Child Support Agency disclosed some information to the complainant, but stated that it did not record the rest of the requested information. The Commissioner has investigated the remaining elements of the request and concluded that some of the requested information is not held by CMEC, but that it does hold information relating to two of the requests. The Commissioner has also concluded that to comply with each of those two requests would require CMEC to exceed the appropriate limit under section 12(1) of the Act and that therefore it is not obliged to comply with the requests as a whole. However, CMEC should offer the complainant advice and assistance under section 16 of the Act in relation to one of the requests. The Commissioner also finds that CMEC breached section 1(1)(a), section 10(1) and section 17(5) of the Act in its handling of the requests.

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.

Background

2. The Child Maintenance and Enforcement Commission ('CMEC') is a non-departmental public body established in July 2008 to provide a new system of child maintenance in Great Britain. CMEC states that its primary objective is to

maximise the number of effective child maintenance arrangements in place – whether private or statutory – for children who live apart from one or both parents. CMEC took over responsibility for the Child Support Agency, which was formerly an executive agency of the Department for Work and Pensions, and which continues to operate the statutory child maintenance scheme. CMEC is now responsible for handling requests for information addressed to, or relating to the functions of, the Child Support Agency.

3. In view of paragraph 2 above, although the complainant's initial request was submitted to the Child Support Agency prior to the establishment of CMEC, the public authority is referred to as 'CMEC' throughout this Decision Notice.

The Request

4. The complainant wrote to CMEC on 31 December 2007 and requested various statistical information relating to its services and its dealings with parents, or clients. The requests are listed in full in Annex A of this Decision Notice.
5. On 19 February 2008 CMEC responded and provided the complainant with a series of information relevant to the request. However, it stated that it did not routinely record some of the requested information and therefore could not supply it.
6. Following that response, the complainant submitted further requests for information on 25 February 2008. The requests are again listed in full in Annex A.
7. CMEC responded on 23 May 2008 and supplied some of the information requested by the complainant on 25 February 2008. It also provided additional background information and explanations relating to the subject of the requests. However, CMEC stated that the remainder of the requested information was not recorded, and reiterated that it also did not hold some of the information which was also requested on 31 December 2007.
8. On 9 July 2008 the complainant wrote to CMEC and requested an internal review of its response of 23 May 2008. In this letter he also made a further request for copies of various Child Support Agency and DWP policies. The complainant wrote to CMEC again on 30 September 2009 because he had not received a response to this letter.
9. Having been contacted by the complainant about CMEC's failure to respond to his request for an internal review, the Commissioner contacted CMEC and asked it to clarify whether an internal review response had been sent. CMEC stated that it could find no trace of having received the complainant's letters of 9 July 2008 and 30 September 2008, but that it would subsequently seek to provide a response by 18 December 2008.

10. On 30 January 2009 CMEC wrote to the complainant with its internal review response and reiterated the conclusions of its responses of 19 February 2008 and 23 May 2008.

The Investigation

Scope of the case

11. On 12 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider CMEC's failure to disclose some of the information he had requested in his letters of 31 December 2007 and 25 February 2008, in addition to its failure to respond to his further request of 9 July 2008.
12. During the course of the Commissioner's investigation the following matter was resolved informally and therefore this is not addressed in this Notice:
 - On 9 July 2009 CMEC provided a separate response to the complainant's new request of 9 July 2008.
13. The Commissioner corresponded with the complainant regarding the findings of his investigation. On 2 November 2009 the complainant wrote to the Commissioner and identified the following requests as being the outstanding aspects of his complaint:
 1. Total number of applications made for shared care allowance in the last ten years (by gender), and how many qualified for it (requested in letter of 25 February 2008);
 2. Number of complaints made (by gender) in the last ten years, and how many were upheld (by gender) (requested in letter of 31 December 2007); and
 3. Number of orphans created as a result of CSA harassment leading their parents to commit suicide, and the number of parents committing suicide (by gender) in the last ten years (requested 31 December 2007 and 25 February 2008).

CMEC's initial responses to these requests had been that it did not record the information.

14. This Decision Notice addresses the Commissioner's findings in relation to the above requests only.

Chronology

15. The Commissioner wrote to CMEC on 27 May 2009 with a series of questions about its response to the request and statement that information relevant to the requests was not routinely recorded.
16. CMEC responded to the Commissioner on 9 June 2009 and explained that information relevant to requests 1 and 2, as listed in paragraph 13 above, is not routinely recorded on its databases and is only held in clerical files. CMEC stated that a highly resource intensive process would be required in order to collate the requested information. For request 3, it stated that it does not record the cause of a client's death and therefore the information was not held.
17. The Commissioner wrote to CMEC again on 18 June 2009 and enquired further about the format in which information relevant to requests 1 and 2 is held and the processes it would be required to follow in order to comply with the request. The Commissioner referred to section 12 of the Act and asked to be provided with CMEC's estimate of the time it would require to comply with the requests.
18. CMEC responded to the Commissioner on 30 June 2009 and provided further details of how the information relevant to requests 1 and 2 is held. It also provided estimates of the time it would take to comply with the requests.

Analysis

Substantive Procedural Matters

Section 12 – cost of compliance exceeds appropriate limit

19. Section 12(1) of the Act provides that a public authority is not required to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') provide that the cost limit for public authorities not listed in Part I of Schedule 1 of the Act is £450. This must be calculated at the rate of £25 per hour, which equates to a time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that it may be refused.
21. Regulation 4(3) of the Fees Regulations provides that the following factors can be taken into account when formulating a cost estimate:
 - “(a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information,

(d) extracting the information from a document containing it.”

1. Request for information about applications for shared care allowance

22. In its response to the complainant of 23 May 2008, CMEC stated that it does not record the total number of applications, or requests, for shared care allowance made by parents. It added that applications are only recorded where the allowance has actually been awarded to non-resident parents.
23. Further to enquiries from the Commissioner during the investigation, CMEC confirmed that the number of applications made is not routinely recorded on its electronic database in an easily accessible format. CMEC advised the Commissioner that it is under a legal duty to accurately and fully record decisions relating to the calculation and enforcement of particular cases, and this includes recording details of decisions made to award the shared care allowance to non-resident parents. However, CMEC is under no statutory obligation to record the total number of requests for the allowance.
24. The Commissioner has established that, although applications received by CMEC for the allowance are not routinely recorded on its computer systems, it retains hard copy records of applications in the form of clerical papers and therefore does hold information on the number of applications received. The Commissioner's general position is that information recorded in both electronic and manual files is held by public authorities notwithstanding that it requires any level of skill to retrieve and extract the relevant information. However, the Commissioner recognises that section 12 arguments may be engaged by the circumstances of a particular case.
25. CMEC has explained that the majority of requests for shared care allowance are only recorded within clerical case files. These are held in a central storage facility as well as in individual offices. Case papers are normally destroyed 14 months after a case has been closed, meaning CMEC would not be able to retrieve information for cases which had been open at any point in the specified ten year period but which had been closed more than 14 months ago. In order to comply with the request with reference to the information it does hold, CMEC staff would be required to manually check the documents within the clerical case papers for at least all of its 'live' cases.
26. As an example of the volume of child maintenance cases open at any one time, CMEC stated that it had 1.3million live cases in June 2009. A highly resource intensive process of manually accessing all of its case files would be required in order for CMEC to comply with the request. Because it only routinely records decisions made to award shared care allowance to non-resident parents, CMEC does not have any alternative means of distinguishing between those case files which would contain an application and those which would not. Therefore it would be necessary for all of the live case files to be searched in order to comply with the request.
27. CMEC estimates that it would take a caseworker an average of 30 minutes to check through all of the papers relevant to a particular case in order to locate and

retrieve an application for shared care allowance. Individual case files, referred to by CMEC as '320s', contain all correspondence and papers received or generated by CMEC in connection with its cases. These are stored in a central storage facility in addition to within individual offices. The Commissioner notes that individual '320' case files are likely to vary in size, but potentially cover a number of years over which a case has been open and therefore will include complex cases with voluminous records which CMEC staff would need to sift through in order to identify applications for shared care allowance. It may also be the case that there has been more than one application in the course of CMEC's administration of a case, and this would also need to be established. Based upon an estimate of an average of 30 minutes to manually search through each of its live '320' files, and the example provided of 1.3million live cases in June 2009, CMEC estimates this process would equate to 650,000 hours of work. While the Commissioner notes that the length of time taken to search individual case files is likely to vary, he accepts that the sheer volume of live case files required to be manually searched which would make complying with this request a highly resource-intensive task.

28. During the course of the Commissioner's investigation, CMEC suggested that some requests for shared care allowance may be noted on its computer systems as 'clerical notes'. This could be either instead or additionally to the hard copy clerical papers. CMEC operates two computer systems for the administration of child maintenance cases – the Child Support Computer System (CSCS) and the Child Support 2 (CS2) system introduced in 2003 for the administration of cases on a new child maintenance scheme. Therefore, while it is not a requirement or routine for CMEC to record requests for shared care allowance on its computer systems, the fact that a request had been made might nevertheless have been recorded. This would be within either a 'Notepad' document on the CSCS system or as 'free text' on the newer CS2 system, but these are not designated fields which can be searched electronically in order to return the number of requests for the allowance which may have been recorded.
29. CMEC states that in order to collate any of the requested information which may be held on its computer systems it would be required to read all of the clerical notes and establish where there is a reference to a request for shared care allowance. In order to answer the request fully, this would be in addition to the estimated time to conduct searches of manual files outlined at paragraph 27.
30. The Commissioner considers that, aside from the accuracy of the estimate of 30 minutes in relation to the actual time it would take to access individual paper case files, the sheer volume of files CMEC's staff would be required to access in order to comply with the request means that it is clear the appropriate limit of 18 hours would be vastly exceeded for this request. The Commissioner therefore concludes that the exemption under section 12(1) of the Act is engaged by this request as a whole.
31. The Commissioner also considers that, owing to the size of the task of conducting manual searches and the non-searchable format in which any relevant information might be held electronically on CMEC's computer systems, as outlined at paragraph 28, there is no reasonable way in which the complainant

would be able to narrow this request so that it would come within the 'appropriate limit' of 18 hours. Therefore, the Commissioner considers that CMEC is not required to offer the complainant advice and assistance as to how this request may be narrowed under section of the Act.

2. Request for information about complaints received by CMEC

32. The complainant requested the number of complaints received by CMEC and how many complaints had been upheld, with both statistics broken down by gender of the parent over a ten year period. CMEC provided the complainant with figures for the total number of complaints received each year for the last ten years, broken down into various types of complaint. It did not disclose a breakdown by gender or whether the complaint was upheld and stated that this information is not recorded.
33. Further to enquiries from the Commissioner, CMEC has explained that it manages complaints from clients using a standalone computer database 'RESPOND'. The current system does not include fields to record the gender of the person making a complaint, or whether the complaint was upheld. Therefore, CMEC stated it would not be able to perform simple database enquiries in order to answer the request. Also, while the introduction of a new RESPOND database in 2007 means CMEC is now able to enter and retrieve information via a search for gender-specific titles such as 'Mr', 'Mrs' and 'Miss', the version of RESPOND used prior to 2007 did not allow for this. Therefore, it would not be possible for CMEC to answer the request in full by carrying out a search of its database.
34. In order to fully answer the request, CMEC would be required to manually access all of its hard copy complaint files for the period in question and collate the figures based upon the documents contained within each file. This would involve referring to the complaint papers and noting the gender of a complainant based upon their title (e.g. Mr, Mrs, Ms), where it was provided, and then establishing how the complaint was resolved and noting those which were upheld. Where complaints had been upheld, it would also be necessary to cross-reference this information with the gender of the complainant (based upon their title, where stated) in order to provide the requested breakdown. As it is not mandatory for the title of a complainant to be provided when submitting a complaint, the information would not always be recorded.
35. CMEC stated that it received 396,000 complaints in the requested ten year period relating to its current 'live' cases. It would not be able to retrieve information on cases that were live at any point in the ten year period but which were closed more than 14 months ago, because case papers are destroyed 14 months after a case closure. Based upon an estimate of an average of five minutes to check through each of the 396,000 cases file and note the relevant information, where it is recorded, CMEC states that this would equate to 33,000 hours of work.
36. The Commissioner considers that the volume of hard copy case files CMEC would be required to manually search in order to comply with the request means that the appropriate limit would be vastly exceeded and section 12 is clearly engaged by the request as a whole.

37. The Commissioner also notes, however, that CMEC has been able to record the gender title of those submitting complaints since the introduction of its new RESPOND database in 2007. The 'title' field is not mandatory, and therefore the information will not always be recorded. However, the right under the Act is to information which is held, not information which is necessarily accurate.
38. The Commissioner therefore considers that it would be possible for CMEC to provide some information relevant to the request within the cost limit by performing a search of the RESPOND database by gender titles. The information that could be retrieved is the number of complaints submitted by individuals whose gender title has been entered onto the database since the introduction of the new RESPOND system in 2007. CMEC would not, however, be able to conduct a database search in order to retrieve information detailing how many of the requests were upheld.
39. The Commissioner therefore considers that CMEC should offer advice and assistance under section 16 of the Act by contacting the complainant and discussing whether he wishes to refine his request on the basis described in paragraph 38. CMEC should also advise the complainant of the context surrounding the information it would be able to provide within the appropriate limit, and that this information is likely to be incomplete.

Procedural Requirements

Section 1 – general right of access to information

40. Section 1(1) states:

'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.'

41. The Commissioner considers that in failing to inform the complainant that it held information relevant to requests 1 and 2, as listed in this Notice, CMEC breached section 1(1)(a) of the Act.

3. Request for number of orphans created as a result of parent suicide

42. The complainant requested information on the number of orphans created as a result of harassment by CMEC leading their parents to commit suicide, and the number of parents who had committed suicide (broken down by gender) in the last ten years. CMEC stated that it records the date of a client's death, when notified, but does not record any further information such as the cause of death.
43. CMEC has confirmed to the Commissioner that when it is notified of a client's death, it does not record or enquire about the cause of death, whether through

suicide or any other cause. It also confirmed that there is no statutory obligation for the cause of a client's death to be recorded by CMEC.

44. The Commissioner notes that CMEC would have a business need to record the fact that a client dies and, where notified, the date, as this information directly impacts upon its administration of a case. The fact that a child's parent has passed away is a change of circumstance which will lead to alterations in CMEC's administration of a case, including the calculation and allocation of child maintenance arrangements. However, the Commissioner considers it reasonable that there would not be a business need to record the cause of a client's death, including where it may be the result of a suicide. The cause of a parent's death would not affect CMEC's future administration of maintenance arrangements for the child involved in that particular case.
45. On the balance of the available evidence, the Commissioner is satisfied that the requested information is not held by CMEC and that this request was handled in accordance with the Act.

Section 10(1) – time for response

46. Section 10(1) of the Act 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.'

47. The Commissioner notes that the initial request was made to CMEC on 25 February 2008 but that the response was not sent until 23 May 2008. Therefore in failing to confirm whether it held information relevant to the request within 20 working days, CMEC breached section 10(1) of the Act.

Section 16 – duty to provide advice and assistance

48. Section 16(1) provides that public authorities are required to provide advice and assistance to complainants.
49. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the Code of Practice issued under section 45 of the Act recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit. It also states that the public authority should consider advising the applicant that a narrowed or re-focussed version of the request could be handled within the limit.
50. The Commissioner considers that in relation to request 2, regarding complaints received from its clients, CMEC should have offered the complainant advice and assistance as to what information of relevance to the request it might be able to provide within the costs limit. CMEC therefore breached section 16(1) of the Act.

Section 17 – refusal of a request

51. Section 17(5) of the Act requires that, where a public authority relies upon a claim that section 12 applies, it must give the applicant a notice stating that fact within twenty working days. The Commissioner considers that, as CMEC did not rely upon section 12 of the Act until during the Commissioner's investigation, CMEC breached section 17(5) of the Act.

The Decision

52. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- In response to request 3, it complied with section 1(1)(a) of the Act by confirming that it did not hold information relating to the number of its clients who had committed suicide and the number of orphans created as a result.

53. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- In relation to requests 1 and 2 it breached section 1(1)(a) of the Act by failing to confirm that it held the requested information;
- In failing to respond to the requests within twenty working days of receipt, it breached section 10(1) of the Act;
- In failing to inform the complainant that it was relying upon section 12(1) of the Act within twenty working days, it breached section 17(5) of the Act; and
- In failing to offer the complainant advice and assistance as to how he may refine request 2 in order to bring it within the costs limit, it breached section 16(1) of the Act.

Steps Required

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

In line with the considerations outlined at paragraphs 38 and 39 of this Notice about advice and assistance under section 16 of the Act, CMEC should contact the complainant to discuss the possibility of refining request 2 (for the number of complaints received, broken down by gender) to bring it within the costs limit.

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

Failure to comply

56. 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

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

Paragraph 38 of the section 45 Code of Practice (the "Code") states:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint..."

Paragraph 41 of the Code states:

"In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay..."

Paragraph 39 of the Code recommends that complaints procedures (or 'internal reviews') should encourage "...a prompt determination of the complaint." As he has made clear in his *Good Practice Guidance No 5*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.

In this instance, the complainant wrote to CMEC on 9 July 2008 and 30 September 2008 to express his dissatisfaction with the response to his request, but an internal review response was not provided until following the intervention of the Commissioner. This equated to a period of 119 working days between the initial request for a review and the internal review response being provided.

The Commissioner notes that CMEC apologised to the complainant for the delay and stated that it could find no trace of having received the letters of 9 July 2008 or 30 September 2008. However, following CMEC's acknowledgement of the letters having been provided with copies of them by the Commissioner it informed the complainant that it aimed to respond by 18 December 2008. CMEC did not meet this target time and nor did it inform the complainant of the reason for the further delay until the internal review response was provided on 30 January 2009.

The Commissioner expects that CMEC will ensure its future practice conforms to the recommendations of the Code.

Right of Appeal

58. 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 14th day of December 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Annex A

The complainant made the following request to CMEC on 31 December 2007:

“Under the Freedom of Information Act 2000, I am making a request for the CSA to disclose by percentage the following figures:

1. Number of parents (explicitly by gender) on its books for the last 10 years.
2. How many parents (explicitly by gender) the CSA has imprisoned because of alleged non-payment/other breaches. [An example was provided]. I require the figures for the last 10 years for both shared and single parent custody.
3. The number of complaints it receives and by which parent. How many of these complaints have ever been upheld. I require figures for the last 10 years.
4. Please provide the facted derivation behind the 104 nights threshold used by the CSA to deny any allowance to the other parent (mainly fathers) for childcare.
5. The number [of] the orphans created as a result of the CSA proactively harassing parents so much that they have [been] forced to commit suicide. I also require the number of parents (explicitly by gender) that the CSA have driven to suicide. I require the figures for the last 10 years.”

Following CMEC’s response of 19 February 2009, the complainant made a further request to CMEC on 25 February 2008:

1. “Please provide me with a breakdown by gender to which parent the assessment has been applied to. Again please provide figures for the last 10 years.
2. I am surprised that you state that the CSA does not keep a record of successful Appeal decisions against its wrongdoings especially when the CSA will have to devote resources to make representations to defend its own decision/position. Are your actions in breach of legislation that requires that such files to be maintained? Also please then state how the CSA learns from its mistakes to ensure that repeated wrongdoings/abuses do not occur causing continues hardship to children and parents.
3. Although you have provided me a copy of the legislation setting the 104 nights threshold, I am asking again, please provide me with its derivation, ie. How is this figure factually derived, what are the factors and criteria used in deriving this figure of specifically 104 nights as opposed to 90 nights, or 20 nights etc.
4. Also, out of the figures in (1) for the last 10 years, please state how many parents (by gender) have actually requested this allowance and how many actually qualify for it?
5. You state that the information regarding the number of suicides and orphans created by the CSA is “not routinely recorded”. Please provide me with ALL the figure and/or information that you already hold in your possession regarding this matter.”

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.”

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.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Refusal of Request

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”