

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 August 2010

Public Authority: Carmarthenshire County Council
Address: County Hall
Carmarthen
Carmarthenshire
SA31 1JP

Summary

The complainant made a request to Carmarthenshire County Council for information about a relative, which the Council failed to consider in accordance with the provisions of the Act. The Commissioner's decision is that, in failing to consider the request under the Act, the Council breached sections 10 and 17 of the Act. However, as the complainant has now received the information requested from a variety of sources, outside the provisions of the Act, the Commissioner has not ordered the Council to take any steps.

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 complainant made a request to Carmarthenshire County Council ('the Council') for information relating to his father. The Council did not formally consider the request under the Act. By the time the Council issued a written response to the complainant, his father had died. Prior to the Commissioner's involvement the complainant had received the

information he requested from a number of sources outside the provisions of the Act.

3. This case raised some issues regarding the complainant's own personal data. These matters have been considered by the Commissioner and he has made a separate assessment of the issues, by virtue of his powers under the Data Protection Act 1998 ('the DPA'). This Notice does not relate to that assessment.
4. During the course of the Commissioner's investigation into the data protection issues, on 7 September 2009 the Council explained to the Commissioner the way that it had handled the original request. The Council confirmed that, had it dealt with the request under the Act, it would have refused to provide the information requested by virtue of section 40(2), as it considered that disclosure of sensitive personal information relating to the complainant's father into the public domain would breach the first data protection principle.

The Request

5. On 3 November 2008, the complainant made a request to Carmarthenshire County Council ('the Council') for information relating to his father. The complainant stated that he wished to know:

"where he [the complainant's father] is living, how he is, and if he is still in good health and if he and [name of father's wife] are still together"
6. The Council acknowledged the request on 10 November 2008 and advised that it would be "dealt with in accordance with the Data Protection Act 1998".
7. Between 15 December 2008 and 9 January 2009, the complainant contacted the Council on a number of occasions seeking a response to his request. The Council apologised for the delays and confirmed that a response would be issued as soon as possible.
8. On 26 January 2009, the complainant wrote a further letter to the Council complaining about the lack of response. This letter was acknowledged by the Council on 11 February 2009 and was considered under its standard complaints procedure¹ as a stage 1 complaint.

¹ <http://www.carmarthenshire.gov.uk/english/council/complaints/pages/complaintsprocedure.aspx>

9. The Council telephoned the complainant on 18 February and apologised for the delay in responding to his request. The Council advised the complainant that his father had died on 16 February 2009.
10. On 20 February 2009 the Council wrote to the complainant and apologised for the delay in responding to his request. The Council explained that on receipt of the request, it had arranged to convene a "best interests" case conference in order to determine whether the information requested could be provided, taking into account the advantages and disadvantages to the service user [the complainant's father] in relation to the sharing of such information. However, the complainant's father had died before the case conference had taken place.
11. On 26 March 2009 the complainant wrote to the Council to express his dissatisfaction with the way it had handled his request and the delays he had experienced. The complainant raised a number of questions relating to the handling of his request. The complainant telephoned and e-mailed the Council on a number of occasions to chase a response to his letter of 26 March 2009.
12. The complainant wrote to the Council on 27 April 2009 asking what its responsibilities were under the Act in terms of responding to his request for information dated 3 November 2008. The Council responded on 28 April 2009 confirming that under the provisions of the Act, a public authority has 20 working days to confirm or deny whether it holds recorded information relevant to a request.
13. On 8 May 2009, the Council responded in writing to the points raised by the complainant in his letter of 26 March 2009. The Council also stated that, as he had referred the matter to the Public Services Ombudsman, he was no longer able to take his complaint to stage 2 and 3 of the Council's standard complaint procedure.
14. On 18 May 2009 the complainant wrote a further letter to the Council raising issues relating to the handling of his request and the provision and disclosure of his own personal data by the Council.
15. On 3 June 2009 the Council responded to the complainant and advised that it had not processed his original request under either the DPA or the Act. Instead the Council advised that it had treated the request "as a matter to be dealt with by trying to establish the best interests of [name of complainant's late father]". The Council stated that, had it considered his request under the Act, it would have refused to provide the information requested as it "could not have allowed that information to come into the public domain".

The Investigation

Scope of the case

16. The Commissioner would usually expect a complainant to have exhausted a public authority's internal review process before approaching him with a complaint under section 50 of the Act. In this case, however, the Council did not acknowledge that a valid request had been made under the Act and in view of this and the fact that the complainant was not provided with details of his right of complaint to him, the Commissioner considered it appropriate to assess this complaint.
17. On 10 July 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 the following points:
 - The Council's failure to provide the information requested;
 - The Council's failure to confirm or deny whether it held the information requested;
 - The Council's failure to respond within the appropriate time limits under the Act;
 - The Council's failure to properly explain the reasons for refusing the request or apply an exemption under the Act;
 - Other data protection issues concerning disclosure and provision of information. As stated in paragraph 3 above, these matters have; been considered separately by the Commissioner in accordance with his powers under section 42 of the DPA.
18. By the time the complainant had brought this matter to the Commissioner he had received the information he originally requested from a variety of sources (outside of the Act) and this Notice therefore focuses on the procedural issues surrounding the Council's handling of the request.

Chronology

19. Following his investigation into the data protection issues involved in this case, the Commissioner wrote to the Council on 2 March 2010 to confirm that he would proceed to consider the case in relation to the Council's compliance with Part 1 of the Act.

Analysis

Procedural requirements

20. It is apparent that the Council did not recognise that the request of 3 November 2008 should have been considered under the provisions of the Act and, consequently, it did not provide a response which was compliant with the requirements of the legislation. The Commissioner's view is that it is clear from the Council's response to the complainant of 20 February 2009 that it held the information requested. As such, the request related to recorded information held by the Council and the Commissioner considers it to have constituted a valid request under the Act. Even following the complainant's further communication on 27 April 2009, in which he asked about the Council's obligations to respond to his request under the provisions of the Act, the Council continued to treat the request as a general enquiry.

Section 1

21. All sections of the legislation are reproduced in the attached legal annex.
22. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds any information of the description specified in the request.
23. Although the Council's response dated 20 February 2009 did not appear to consciously consider the provisions of the Act, it is the Commissioner's view that it did make it clear to the complainant that the information was held. The Commissioner considers that the fact that the information was held may be reasonably inferred from the statement in this response about how the Council handled requests for information about an individual "known to the Department" to ensure that the sharing of information about a service user was given with the permission of the individual concerned. In order to decide whether or not to provide the information requested in this particular case, the Council stated that it had decided that a "best interests case conference" needed to be arranged before any information was released. The Commissioner therefore considers that the Council complied with section 1(1)(a) of the Act.

Section 10

24. Section 10(1) requires a public authority to respond to a request promptly and in any event no later than 20 working days after the date of receipt.
25. The initial request was made on 3 November 2008 and the Council's first substantive response was issued on 20 February 2009. In failing to comply with section 1(1)(a) within 20 working days, the Council breached section 10(1) of the Act.

Section 17

26. Section 17(1) of the Act requires a public authority to provide an applicant with a refusal notice stating the basis upon which it has refused the information and issue this notice within the time for complying with section 1(1) of the Act.
27. The Commissioner notes that, as it failed to recognise the complainant's request as a request for information under the Act, the Council did not issue a formal refusal notice. The Commissioner has therefore treated the Council's initial substantive response to the request of 20 February 2009 as its formal refusal notice for the purposes of the Act.
28. In a letter to the Commissioner dated 7 September 2009, the Council advised that, had it handled the request under the provisions of the Act, it would have refused the request by virtue of section 40(2), because it considered that disclosure of sensitive personal information of the complainant's father to the public at large would have breached the first data protection principle.
29. The Commissioner has not carried out a detailed investigation into whether the information was exempt under section 40(2) of the Act as the information requested had been provided to the complainant, prior to his investigation, from a number of sources outside the provisions of the Act. However, as the Council has indicated that it would have relied on section 40(2) as the basis to refuse the request, the Commissioner has considered whether the Council complied with section 17 of the Act.
30. The Council's refusal notice dated 20 February 2009 was not issued within 20 working days of receipt of the request, did not specify any exemptions on which it was relying to withhold the information, nor any reasoning why the exemptions applied. As such, the Council breached sections 17(1), 17(1)(a), 17(1)(b) and 17(1)(c) of the Act.

31. Sections 17(7)(a) and (b) of the Act requires a public authority to provide the complainant with details of the public authority's internal review procedure and details of the right to complain to Commissioner. The refusal notice issued by the Council also did not contain details of the public authority's internal review procedures or details of the complainant's right of appeal to the Commissioner. In failing to do so, the Council breached 17(7)(a) and 17(7)(b) of the Act.

The Decision

32. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the Act:
- i. It breached section 10(1) for failing to confirm the information was held within 20 working days of the request.
 - ii. It breached section 17(1) for failing to issue a refusal notice within 20 working days of the request.
 - iii. It breached sections 17(1)(a), (b) and (c) in failing to state in its refusal notice which exemption(s) it sought to rely on to withhold the information requested and why they applied.
 - iv. It breached sections 17(7)(a) and 17(7)(b) in failing to notify the applicant of his right to request an internal review and his right to appeal to the Commissioner.

Steps Required

33. As the complainant has received the information requested (albeit from a variety of sources and provided outside of the Act) the Commissioner requires no steps to be taken.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
35. In order for a request for information to be valid under section 8 of the Act it is not necessary for an applicant to cite the Freedom of Information Act when making a request. Therefore any written request

for information can constitute a request under the Act, provided that it includes a name and address for correspondence

36. Although the request to the Council of 3 November 2008 did not specify it had been made under the provisions of the Act the Commissioner is concerned that the Council failed to treat it as a valid Freedom of Information request. This resulted in the Council issuing an inadequate refusal notice. The Commissioner would expect public authorities to be able to recognise requests for information and handle them in accordance with the relevant legislation. He would therefore like to remind the Council of its obligations under the Act.

Right of Appeal

37. 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

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 sent.

Dated the 2nd day of August 2010

Signed

**Anne Jones
Assistant Commissioner**

**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.”

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.”

Refusal of Request

Section 17(1) 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.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

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."

Section 17(6) provides that –

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,

- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."

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-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 40(5) provides that –

"The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.