

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 October 2011

Public Authority: The Traffic Commissioner for the West Midlands
Traffic Area

Address: 38 George Road
Edgbaston
Birmingham
B15 1PL

Summary

The complainant made a number of requests under the Freedom of Information Act 2000 (the 'Act') for information about Road Licenses and Notices and Proceedings.

The public authority did not answer some of the requests and for others denied that it held relevant recorded information.

The complainant referred a number of matters to the Commissioner for him to consider. Some of those matters were informally resolved and this Notice focuses on the remaining issues.

The Commissioner finds that the public authority has breached a number of procedural requirements. In particular, it has breached sections 10(1), 16(1), 19(1)(a), 19(1)(b) and 19(1)(c).

However, the Commissioner does not require any formal remedial steps to be taken in this case, because he is working with the public authority to ensure that it improves its compliance and develops an appropriate publication scheme.

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 Traffic Commissioners have each been designated as a public authority for the purposes of the Act through being listed in Schedule One. However, they are not a public authority for the information that they hold as a tribunal.
3. The Commissioner understands that the complainant is researching information about various bus companies.
4. It has been established that the complainant was trying to access Road Service Licences in this case. These were abolished by the Transport Act in 1985 and were not kept by the public authority.
5. However, the public authority does have 'Notices and Proceedings' which explain what permissions have been granted and the results of any proceedings taken by the public authority.

The Request

6. There was a series of correspondence that led to this complaint being referred to the Commissioner. The Commissioner will outline the key parts of that correspondence.

Request one

7. On 4 February 2010 the public authority thanked the complainant for his correspondence, but confirmed that it was unable to identify the licenses that were sought. It asked the complainant to contact it to discuss what could be provided.
8. On 5 February 2010 the complainant requested the public authority to tell him where he could access the following Road Service Licenses that he believed were issued by the West Midlands Traffic Commissioners:
 - (1) [Name A redacted]; D6036.
 - (2) [Name B redacted]; D2761, D2763, D2768, D8369.
 - (3) [Name C redacted]; D2730, D5959, D5970, D9006.
 - (4) [Name D redacted]; D2741, D2742, D3725.
 - (5) [Name E redacted]; D9545, D11333, D11559.
 - (6) [Name F redacted]; D5961.
 - (7) [Name G redacted]; D2293, D5197, D5950, D11642.
 - (8) [Name H redacted]; D5958, D5971.
 - (9) [Name I redacted]; D2778, D3105, D5951, D5976.
 - (10) [Name J redacted]; D10582.
 - (11) [Name K redacted]; D1511, D1513, D5963, D5972.

9. On 10 February 2010 the public authority explained that it did not recognise the numbers and said it was unable to help the complainant with his enquiry.
10. On 13 February 2010 the complainant wrote to the public authority to explain that he sought the Road Service Licences. It is unclear whether this letter was received by the public authority at this time.
11. On 24 April 2010 the complainant wrote to the public authority again and explained that he expected a better response to his enquiry about these licences. He included his letter dated 13 February 2010.
12. On 17 May 2010 the public authority responded. It explained that it was still unclear about what the complainant was requesting. It asked the complainant to explain what he was researching to enable it to offer further advice and assistance.
13. On 24 May 2010 the complainant responded and explained again that he wanted the Road Service Licences with the numbers quoted on 5 February 2010.
14. On 14 June 2010 the public authority responded. It explained that the clarification received on 24 May 2010 did not assist it in identifying the information requested and therefore that it considered the matter closed.
15. On 20 June 2010 the complainant explained that he still sought this information and explained that in his view it should be contained on its publication scheme.
16. On 19 July 2010 the public authority issued its response. It explained that it now understood that he was asking for Road Service Licenses that were abolished by the 1985 Transport Act. It explained that it did not hold any records or information in respect to those licences and could not access them through the reference numbers that were cited as they were obsolete. It explained that it believed that they could have been destroyed when it moved location in 2004.
17. On 28 July 2010 the complainant replied. He was dissatisfied and asked whether the Traffic Commissioner had checked whether the Road Service Licenses were transferred to an archive. He said he now believed it was possible for the public authority to acquire this information from the Notices and Proceedings starting in 1980 and asked it to do it. He also used the opportunity to make a second request for information.

Request two

18. On 28 July 2010 the complainant requested the following [the necessary data being the information about the Road Service Licences]:

'It would be possible to extract the necessary data from Notices and Proceedings starting circa 1980 and working backwards. This route will be extremely wearisome and long winded, but possible. Please confirm that you are able to provide this material.'

19. The complainant received no response to this request for information before the Commissioner was referred this case, although the public authority has confirmed that it received it. On 4 March 2011 a new response was provided. It explained that it did hold Notices and Proceedings and invited the complainant to inspect them.

The Investigation

Scope of the case

20. On 5 October 2010 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:

- he was concerned that he had not received the information that he had requested;
- he was concerned that the information was being blocked and its officers were in breach of a criminal offence;
- he was concerned that his request dated 28 July 2010 had been entirely ignored and not answered;
- the delays that he had experienced failed to accord with the Act; and
- he was concerned that he hadn't received the publication scheme of the public authority.

21. On 15 January 2011 the complainant agreed with the Commissioner that the scope of his investigation would have the following eleven elements:

[1] to determine on the balance of probabilities whether the Office of the Traffic Commissioner has the Road Service Licences that were requested on 20 June 2010 (with the reference numbers specified on 5 February 2010);

[2] if the information is held, then to determine whether it can be disclosed to the public under the Act;

[3] to ensure that a response that accords with the Act is issued to the request dated 28 July 2010 (if it has not been issued already);

[4] if information for **[1]** is not held, to determine on the balance of probabilities whether the Office of the Traffic Commissioners have the Notices and Proceedings that commence in 1980 (and go back to 1931);

[5] if so, to determine whether this can be done within the costs limit (18 hours) and whether this information can be disclosed to the public under the Act (including by inspection);

[6] if it does not hold relevant recorded information for **[1]** or **[4]** itself to determine whether it has recorded information that explains their location elsewhere;

[7] to determine whether the public authority has provided reasonable advice and assistance in its handling of the requests for information;

[8] to determine whether the public authority has a publication scheme and, if not, to ensure that it develops one;

[9] if it has a publication scheme, to ensure that the Commissioner receives a copy of it (and see whether the requested Licenses and/or Notices and Proceedings are on it);

[10] to consider all the potential issues about timeliness where they do not accord with the legislation; and

[11] to consider whether there is sufficient evidence to make out the criminal offence in this case (found in section 77 of the Act).

22. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:

- The complainant explained on 2 April 2011 that he accepted that elements **[1]** to **[6]** of the agreed scope were now informally resolved.

23. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, for element **[11]** the Commissioner has considered this matter and has concluded that there was insufficient evidence to make out that any offence had been committed. Element **[11]** will not be

considered further, because it does not relate to an issue that is a requirement of Part 1 of the Act.

Chronology

24. On 1 November 2010 the Commissioner wrote to the complainant and the public authority to explain that he had received an eligible complaint. He asked the public authority to provide him with information about its position in this matter.
25. On 24 November 2010 the Commissioner received a response from the public authority. It explained its understanding of the complaint.
26. Between 23 December 2010 and 15 January 2011 the Commissioner and the complainant exchanged a number of items of correspondence. The result was that the scope of his investigation was agreed.
27. On 26 January 2011 the Commissioner wrote to the public authority and made detailed enquiries. On 23 February 2011 the Commissioner received a response to them.
28. Between 23 February 2011 and 4 March 2011 the Commissioner corresponded with the public authority to ensure that it issued an appropriate response to request 2. It did so on 4 March 2011.
29. On 9 March 2011 and 30 March 2011 the Commissioner wrote to the complainant to explain the progress of the case and to ask whether he agreed that some of the elements of the case were informally resolved.
30. On 2 April 2011 the complainant confirmed that elements **[1]** to **[6]** were now resolved and the Commissioner replied on 13 April 2011 to confirm that he would now focus on elements **[7]** to **[11]**.

Analysis

Procedural Requirements

31. The complainant has asked the Commissioner to come to a formal verdict about the public authority's procedural handling of his two requests for information (elements **[7]** to **[10]**). The Commissioner will consider these matters the order that they are mentioned in the scope:

Section 16: Advice and assistance

32. The complainant has argued that the advice and assistance that he was provided in relation to request one was inadequate.

33. The public authority has accepted that the advice and assistance it has provided has proved to be insufficient in this case. It explained that its staff genuinely did not understand what was being requested in this case, because the records predated its staff. In addition, its normal checks did not make its previous existence apparent. In mitigation, it did offer to speak to the complainant on the telephone, but the complainant never decided to call it.
34. Section 16(1)¹ provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
35. The Commissioner's view is that section 16(2) relates only to the paragraphs in Part ii of the Code of Practice entitled '*The provision of advice and assistance to persons making requests for information*'. This follows paragraph 3 that clarifies that it is only this part of the Code of Practice that must be satisfied for a public authority to discharge their duty under section 16(1) of the Act. Therefore, if paragraphs 4 to 15 are satisfied, reasonable advice and assistance must be deemed to have been provided and the obligations under section 16(1) are met.
36. In order to consider section 16(1) fully, the Commissioner will work his way through the appropriate and relevant parts of the section 45 Code of Practice and consider whether its provisions were complied with in this case.
37. Paragraphs 4 and 5 concern procedures for dealing with requests. It explains that the public authority should consider whether it needs to create written procedures about those occasions when it does not hold information. The public authority has explained to the Commissioner that it understands that it needs to improve its procedures for handling requests of this sort and the way that it provides assistance to applicants. The Commissioner is of the view that the procedures were inadequate in this case and the public authority failed to comply with its obligations under paragraphs 4 and 5.
38. Paragraphs 6 and 7 explain the assistance that should be given when advising an applicant how to frame their request. In this case the confusion led to no assistance in framing the request. The Commissioner believes that the appropriate action was to explain what sort of licences continued to be held and where it had searched to find out that it could

¹ Full copies of all the provisions mentioned in this Decision Notice can be found in its legal annex.

not understand the reference numbers provided. It follows the public authority also failed to comply with its obligations under paragraphs 6 or 7.

39. Paragraphs 8 to 12 explain the assistance that should be provided to a complainant when further clarification needs to be sought by the public authority to enable it to identify and locate the information sought. It provides a non-exhaustive list of the sorts of assistance that can be provided. It explains that a flexible approach should be expected. In this case, the Commissioner believes that the advice and assistance offered was not sufficiently flexible to understand what was sought in good time, leading to further correspondence.
40. As the public authority failed to act in accordance with paragraphs 4 to 12, the Commissioner finds that it breached section 16(1). This is because it failed to offer reasonable advice and assistance.
41. However, the Commissioner does not believe that it is appropriate to order any remedial steps in respect to this breach because:
 - (1) The complainant is now aware of the information that is held by the public authority that is relevant to his interest;
 - (2) The public authority has taken responsibility for its compliance and informed the Commissioner how it desires to improve – including additional appropriate training; and
 - (3) The Commissioner is working with the public authority on an ongoing basis to assist it in improving its compliance with the Act.

Section 19: Publication schemes

42. The complainant specifically indicated that he was concerned about the public authority's publication scheme. He explained that he was worried it didn't have one or if it did, that it wasn't providing information in accordance with it.
43. The public authority does not have its own publication scheme. Instead the Department of Transport website contains a publication scheme for all of the Traffic Commissioners together. It can be found at the following link:

<http://www.dft.gov.uk/pgr/roads/tpm/trafficcommissioners/publicationscheme/classesofpublications>
44. The obligations that are imposed by the Act can be summarised as follows:

1. A public authority must adopt and maintain a publication scheme [section 19(1)(a)];
 2. This publication scheme should either be approved by the Commissioner or be based upon the Commissioner's model publication scheme;
 3. It must publish information in accordance with that scheme [section 19(1)(b)]; and
 4. From time to time review the scheme [section 19(1)(c)].
45. Whilst the Commissioner has the power to approve a model publication scheme it is the duty of the public authority to adopt a scheme and make it function appropriately.
46. The public authority has not got its own publication scheme and the one that the Traffic Commissioners have adopted has neither been approved by the Commissioner nor based upon the Commissioner's model scheme. The public authority has breached section 19(1)(a) of the Act.
47. The publication scheme does have Notices and Proceedings on it, although it does not contain Road Service Licenses. The public authority's failure to provide the Notices and Proceedings in line with its publication scheme, before the Commissioner's intervention, also constitutes a breach of section 19(1)(b).
48. In addition, the public authority does not have control over the scheme and cannot review it in accordance with the Act. It is also therefore in breach of section 19(1)(c).
49. However, the Commissioner does not believe that it is appropriate to order any remedial steps in respect to this breach because:
- (1) The complainant has now been invited to view the relevant recorded information for free that is held by the public authority that is relevant to his interest;
 - (2) The public authority has taken responsibility for its compliance and informed the Commissioner how it desires to improve; and
 - (3) The Commissioner is working with the public authority on an ongoing basis to assist it in improving its compliance with the Act and particular in assisting it with its publication scheme.

Section 10: Timeliness

50. Section 10(1) provides that public authorities should comply with the requirements of section 1 within 20 working days.

51. Section 1 requires the following:

1. that the public authority confirms or denies whether it holds relevant recorded information in response to a request for information [section 1(1)(a)]; and
2. if the information is held, it should be communicated (unless the public authority can rely on a valid exemption) [section 1(1)(b)].

▪ Request one

52. Request one has been complicated by the lack of understanding about what had been requested. However, the Commissioner's view is that the situation became clear after the third iteration of the request dated 24 May 2010 and after then it was not reasonable of the public authority to ask for further clarification. He therefore believes that the public authority should have complied with section 1 in 20 working days from then. The public authority failed to do so and therefore breached section 10(1).

▪ Request two

53. Request two was not answered before the Commissioner's involvement in this case. The failure to address the request in 20 working days was a breach of section 10(1).

54. The Commissioner does not require any remedial steps to be taken in respect to the section 10(1) breaches because there are no steps that can remedy the delays that have been experienced.

The Decision

55. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In particular, it breached:

1. Section 10(1) because it failed to respond in a way that accorded with section 1 to either request for information in 20 working days;
2. Section 16(1) because it failed to offer reasonable advice and assistance; and
3. Section 19 because its publication scheme did not comply with the requirements of the Act.

Steps Required

56. The Commissioner requires no steps to be taken for the reasons outlined above.

Right of Appeal

57. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: www.informationtribunal.gov.uk

58. 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.

59. 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 5th day of October 2011

Signed

**Mr Gerrard Tracey
Principal Policy Advisor
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1 - General right of access to information held by public authorities

(1) 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.

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

(3) 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 2 - Effect of the exemptions in Part II

(1) Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that where either—

(a) the provision confers absolute exemption, or

(b) 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 public authority holds the information,

section 1(1)(a) does not apply.

(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(3) For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption—

- (a) section 21,
- (b) section 23,
- (c) section 32,
- (d) section 34,
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords,
- (f) in section 40—
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
- (g) section 41, and
- (h) section 44.

Section 10 - Time for Compliance

(1) 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."

(2) 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."

(3) 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 16 - Duty to provide Advice and Assistance

(1) 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.

(2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 19 - Publication Schemes

(1) It shall be the duty of every public authority –

(a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”),

(b) to publish information in accordance with its publication scheme, and

(c) from time to time to review its publication scheme.”

(2) A publication scheme must –

(a) specify classes of information which the public authority publishes or intends to publish,

(b) specify the manner in which information of each class is, or is intended to be, published, and

(c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.”

(3) In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

(a) in allowing public access to information held by the authority, and

(b) in the publication of reasons for decisions made by the authority.”

(4) A public authority shall publish its publication scheme in such manner as it thinks fit.

(5) The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.”

(6) Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.

(7) Where the Commissioner –

(a) refuses to approve a proposed publication scheme, or

(b) revokes his approval of publication scheme,

(c) he must give the public authority a statement of his reasons for doing so."