



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 19 May 2006**

**Public Authority: The Department for Work and Pensions**

**Address: The Adelphi  
2<sup>nd</sup> Floor  
1-11 John Adam Street  
London  
WC2N 6HT**

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with Part I of the Act in that it has complied with its obligations under section 1(1).**

**In view of the above the Commissioner confirms that no remedial action is required.**

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
  - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
  - 1.2 Where a complainant has made an application for a decision, unless:
    - a complainant has failed to exhaust a local complaints procedure, or
    - the application is frivolous or vexatious, or
    - the application has been subject to undue delay, or
    - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
  - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The complainant has advised that on 21 April 2005 the following information was requested from the public authority in accordance with section 1 of the Act.
- 2.2 Regarding paragraph 3.8 of Guidance Note 27 in the Supplement of the Manual of Actuarial Practice –
- “1. All documentation held by DWP evidencing consideration of the amendments and justifying the reasons for the changes, whether produced by DWP or the Institute of Actuaries;
2. All correspondence, including notes and emails, regarding the amendment process; and
3. All DWP documentation recording formal approval by the Secretary of State for the purposes of the Regulations.”
- 2.3 The public authority responded to the request on 19 May 2005 by sending copies of information that it held.
- 2.4 The complainant wrote back to the public authority on 25 May 2005, querying why it had not been provided with relevant copies of internal documents from within the Institute of Actuaries.
- 2.5 The public authority responded on 15 June 2005 by stating that this information had not been sent as it was not held. It also enclosed some further information that it did hold.
- 2.6 The complainant wrote back to the public authority on 27 June 2005. It stated its view that the relevant internal documents were held by the Institute of Actuaries on behalf of the public authority, and that the public authority should therefore obtain them from the Institute of Actuaries in order to meet the request.
- 2.7 The public authority responded on 7 July 2005. It advised the complainant that it had reviewed and upheld its previous decision that it did not hold this information, and advised the complainant of their right to appeal to the Information Commissioner.

## **3. Relevant Statutory Obligations under the Act**

- 3.1 **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.”

3.2 **Section 3 (2)(b)** provides that –

“For the purposes of this Act, information is held by a public authority if-

(b) it is held by another person on behalf of the authority.”

#### 4. **Review of the case**

4.1 In reaching his decision as to whether **Section 3(2) (b)** applies in this case, the Commissioner considered the view put forward by the complainant. He also contacted the public authority to obtain its view and to get further information about the nature of the relationship between the public authority and the Institute of Actuaries.

4.2 The public authority explained that it exercised no control over what happened to the internal documents of the Institute of Actuaries, nor any right of access to such documents. It also explained that changes to Guidance Notes are made following recommendations from the profession’s Pension Board (representing both the Faculty and the Institute of Actuaries) to the DWP, and discussion of any proposed changes between these parties, but that the DWP do not have access to any of the Institute of Actuaries working papers that might lead up to such advice or discussions.

4.2 Both parties agree that Guidance Note 27 in the Supplement of the Manual of Actuarial Practice is produced by the Institute of Actuaries and approved by the Secretary of State, in accordance with Section 119 of the Pensions Act 1995. Both parties agree that the Institute of Actuaries is a private body with no formal connection to the DWP.

4.3 From this, the complainant concludes that the Institute of Actuaries is acting as an agent of the DWP and so is holding information on its behalf. The public authority concludes that the Institute of Actuaries is acting as an independent body.

#### 5. **The Commissioner’s Decision**

5.1 The Commissioner’s decision in this matter is that the public authority has dealt with the Complainant’s request in accordance with the following requirements of Part I of the Act:

**Section 1(1)** – in that it informed the Complainant in writing whether it held information of the description specified in the complainant’s request.

5.2 Further, the Commissioner’s decision is that **Section 3(2) (b)** does not apply in this case.

- 5.3 The Commissioner considers that as the public authority do not instruct the Institute of Actuaries in what internal documents should be created, retained or destroyed, and do not exercise a right of access to such documents, it is reasonable to suppose that they are held for the Institute of Actuaries own purposes and not on behalf of the public authority.
- 5.4 The Commissioner further considers that the Institute of Actuaries is an independent organisation, and that therefore only records that have been passed from it to the public authority are held by the public authority.
- 5.5 The Commissioner further considers that the fact that the Secretary of State approves changes to guidance is not sufficient reason to conclude that the Institute of Actuaries holds information on his behalf. He finds that considering the independent status of the Institute of Actuaries, and that both the complainant and the public authority accept that there is no formal connection between the Institute of Actuaries and the DWP, it is more reasonable to suppose that the Institute of Actuaries holds the information in its own right.

**6. Action Required**

- 6.1 In view of the above the Commissioner does not require any remedial action to be taken by the public authority.

**7. Right of Appeal**

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 19th of May 2006**

**Signed .....**

Reference: FS50084417

**Phil Boyd**  
**Assistant Commissioner**

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