

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 October 2007

Public Authority: Department for Culture, Media & Sport
Address: 2/4 Cockspur St
London
SW1Y 5DH

Summary

The public authority refused the complainant's information request on the grounds of cost. The Commissioner finds that the public authority estimated the cost of complying with the request correctly but failed to comply with section 10 of the Act in that it did not respond to the request within 20 working days.

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 13 June 2005, the complainant made the following information request:

"1) Please provide a copy of all the expense statements submitted by Mrs Sue Street for the past two years. Such statements should be authorised and certified by a named senior official/ manager.

2) Please provide details and a copy of all the records of all the hospitality received by Mrs Sue Street in her role of permanent secretary at the DCMS for the past two years.

3) Please provide a copy of the record of all the matters discussed and arising from 1) and 2) above.

4) Please provide details and copies of all expense statements submitted by Tessa Jowell to the DCMS and any other government department for the past two

years.

5) Please provide details of all hospitality received from the BBC by Tessa Jowell for the past two years.

6) Please provide a copy of the record of all the matters discussed and arising from 4) and 5) above."

3. The public authority responded on 26 July 2005, outside 20 working days. This response confirmed that the information requested was held, but stated that it would not be possible to comply with the information request as the cost of doing so would exceed the appropriate limit of £600.
4. This reply gave some advice as to how the request could be refined in order to bring it within the cost limit and provided contact details should further advice be required. The response also advised the complainant how to request an internal review if he was dissatisfied with the response.
5. The complainant contacted the public authority on 26 July 2005 to request an internal review. The complainant stated that the public authority should not have formed a cost estimate on the basis of his information request being a single request divided into 6 parts, but rather should have treated it as 6 separate requests. The complainant stated that he did not receive a response giving the outcome of the internal review.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 26 July 2005. At this stage, the complainant raised only the issue of the delay in the response to his information request.
7. The Commissioner contacted the complainant on 4 August 2006. In this letter, the complainant was asked to clarify the grounds for his complaint, given that when he first contacted the Commissioner, he raised only the issue of the delay in responding to his request.
8. The complainant subsequently confirmed that he wished the Commissioner to also consider the refusal of the request on the grounds of cost. The complainant stressed that he did not believe a cost estimate should have been formed on the basis of a single request in 6 parts, but on the basis of 6 separate requests.

Chronology

9. The Commissioner contacted the public authority on 4 October 2006. In this letter, the public authority was asked to provide detail concerning how the cost estimate was formed and to indicate if it would be possible to comply with any

- aspect of the request without exceeding the cost limit. The public authority was also advised that the complainant had stated that he had not received any response to his request for an internal review.
10. The public authority responded initially on 1 November 2006. In this response, the public authority confirmed that an internal review had been carried out and that the results of this had been communicated to the complainant, but that it appeared that the complainant had not received this. The public authority included with its reply a copy of a letter dated 12 September 2005, in which the outcome of the internal review was stated. The review upheld the decision to refuse the request on the grounds of cost. It also upheld the decision to treat the complainant's request as a single request in several parts and to form the cost estimate on this basis. The public authority provided a copy of the letter giving the outcome of the internal review to the complainant.
 11. The public authority replied further on 20 November 2006. In this response, the public authority provided the following breakdown of its estimate of time that would be taken in responding to the complainant's information request:
 - 1) 3 working hours.
 - 2) 20 working hours.
 - 3) 16 - 40 working hours.
 - 4) 16 to 32 working hours.
 - 5) 1 working hour.
 - 6) 24 to 48 working hours.
 12. This estimate states that the total time taken in responding to the information request would be between 80 and 144 working hours.
 13. The public authority went on to cover the issue of what aspects of the information request could be responded to without exceeding the cost limit. The public authority indicated that it did not believe it was feasible to ascertain what aspects of the request could be responded to within the cost limit without spending considerable time and resources on this. The public authority questioned whether complying with some parts of the information request, but not others, would be of value to the complainant and also stated that it did not believe that the Act required them to take such steps.
 14. The public authority went on to outline the steps it had taken in order to fulfil its duty to provide advice and assistance. It believed that this duty had been fulfilled through providing to the complainant advice as to how his request could be refined in order that it could be complied with within the cost limit.
 15. The Commissioner contacted the public authority again on 24 November 2006. In this letter, the public authority was advised of the steps that it was recommended

to now take.

16. Firstly, the public authority was asked to provide to the complainant a breakdown of how its cost estimate was formed. It was noted that this breakdown had been provided to the Commissioner, but it did not appear that this breakdown had been provided to the complainant at any stage.
17. Secondly, the public authority was asked to respond to the aspects of the information request where it had estimated that these aspects of the request could be responded to within the cost limit. It was noted that, despite the representations of the public authority in its previous response that it would involve the expenditure of considerable resources to ascertain which aspects of the request could be responded to without exceeding the cost limit, the breakdown of the cost estimate provided with the previous response showed that parts 1 and 5 of the information request could be responded to well within the cost limit.
18. The public authority responded to this on 8 December 2006. Firstly, the public authority stated that it did not believe that section 16 required that it should provide to the complainant the breakdown of its cost estimate and that it did not intend to provide to the complainant the breakdown of its cost estimate. The public authority believed that the breakdown of the cost estimate would be provided in order to assist an applicant in refining their request. The public authority believed that it had fulfilled its obligation to provide this assistance through the advice provided to the complainant in the refusal notice. The public authority also noted that the complainant had not at any stage made a refined information request.
19. Secondly, the public authority stated that section 12 of the Act did not require a public authority to work on responding to an information request up to the point that the cost incurred through this work would exceed the appropriate limit. The public authority also stated it did not believe that it should be assumed that the complainant would agree that a response to parts 1 and 5 of his information request would satisfy his entire request. For these reasons, the public authority did not respond to parts 1 and 5 of the complainant's request.

Analysis

Section 10

20. The wording of section 10 is set out in the attached Legal Annex. The information request was made on 13 June 2005. The public authority replied on 26 July 2005. In its response, the public authority acknowledged that it had failed to respond within 20 working days as required by section 10.

Section 12

21. The wording of section 12 is set out in the attached Legal Annex. The public

authority has provided to the Commissioner a breakdown of its cost estimate for responding to this request. This is shown above.

22. The cost limit for central government public authorities is £600, as set by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. This should be calculated on the basis of £25 per each hour that 1 staff member within the public authority spends on locating, retrieving and redacting the information requested. This, in effect, gives a limit of 24 hours.
23. The estimate by the public authority shows that the time spent on responding to the request in this case would have been between 80 and 144 hours. This is well in excess of the appropriate limit.
24. The complainant has argued that his request should have been treated as 6 separate requests and any cost estimate formed on this basis. Instead, the public authority treated this as a single request with 6 parts and the cost estimate was made on this basis.
25. The Commissioner's general approach is that where a number of information requests are made within a single item of correspondence, it is appropriate for these to be considered a single request. The Commissioner takes the view that this would only not be the correct approach where it is clear that the requests are entirely unrelated. In this case, the Commissioner considers that it is clear that the requests are related and that it was appropriate for these to be handled as a single request.
26. The Commissioner accepts the representations of the public authority about its estimate of the time spent and the resulting cost incurred in complying with the complainant's information request. Section 12 therefore provides that this request could be refused on the ground of cost.

The Decision

27. The Commissioner concludes that the public authority failed to comply with section 10 in that it did not respond to the request within 20 working days of receipt.
28. The Commissioner further concludes that the public authority dealt with the request in accordance with section 12 of the Act in that it accurately estimated that the cost of complying with the request would exceed the appropriate limit.

Steps Required

29. Whilst the Commissioner has found that the public authority did not comply with section 10, this breach does not necessitate remedial action. The public authority is not required to take any steps.

Other matters

30. Whilst the Commissioner has not found that the public authority failed to comply with section 16, he would note that there are steps that he believes it appropriate for a public authority to take in order to comply with the duty to provide advice and assistance imposed by section 16. Firstly, the Commissioner believes that a public authority should provide to the applicant a breakdown as to how the cost estimate was formed in order to demonstrate to the applicant that the estimate has been made on a reasonable basis.
31. Secondly, as in this case, where a request has been made in several parts and it is clear that some parts of the request can be complied with without incurring excess cost to the public authority, it is appropriate for the public authority to offer to disclose information in response to those parts of the request that can be met without exceeding the cost limit. Whilst it is technically correct that it is not necessary for a public authority to undertake work up to the cost limit if the request as a whole would exceed the limit, in circumstances where it is very clear that some parts of a multi part request could be complied with within the cost limit, the provision of a breakdown of the costs will enable the applicant to make an informed decision on how to take forward his request. The Commissioner considers this to be clearly in the spirit of the legislation.

Right of Appeal

32. 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@dca.gsi.gov.uk

33. 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 9th day of October 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Section 10

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 12

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.”

Section 16

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”.