

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 January 2007

Public Authority: Stockton-on-Tees Borough Council
Address: Municipal Buildings
Church Road
Stockton-on-Tees
TS18 1LD

Summary

The complainant requested a copy of a notice published on the Council's electronic notice board, which allegedly made critical comments about one of the companies of which he is Director. In addition, the complainant requested the name of the author of the notice, and details of any action taken against the author by the Council. The Council responded that the information was not held. The complainant believed the notice would have been saved to the Council's back up tapes. As the Council and the complainant could not agree upon which date they believed the notice had been posted, the Commissioner asked the Council to search a number of its back up tapes for the requested information. The Council then confirmed to the Commissioner that the contents of the back up tapes had been deleted. The Commissioner is satisfied that the information is no longer held by the Council; and that it is more likely than not that the information was not held at the time of the request. The Commissioner does not therefore require any further steps to be taken by the Council.

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 3 April 2006 the complainant wrote to Stockton-on-Tees Borough Council ("the Council") and stated:

"it has been brought to our attention that an employee of Stockton Borough Council has posted some remarks about either this company or its sister Billingham Auto Repairs Ltd on your internal computer bulletin board.

Having satisfactorily undertaken work in the past for both the Council and its employees I am somewhat alarmed by this information. I would be obliged if you could please arrange to let me have copies of any comments that have been published on your system”.

3. The Council responded on 13 April 2006 and stated that:

“...for a short period of time, an item did appear on the notice board that referred to Parkfield Motors. The item was considered to be inappropriate and as a result of our monitoring procedures was quickly removed”.

4. The complainant wrote back to the Council on 18 April 2006 and reiterated his request for “details of the notice published”. Further, he requested:

“the details of the author”; and asked

“what action has been taken against the originator [of the notice]”.

5. The Council wrote back to the complainant on 8 May 2006 and stated that:

“unfortunately we do not hold the information you are seeking”.

The Council explained that the notice board item and the identity of the author had been deleted soon after it was posted and therefore it did not appear on the Council’s disaster recovery back up tapes.

6. The complainant wrote to the Council on 11 May 2006 and expressed dissatisfaction at the response provided on 8 May 2006. The Council acknowledged this letter on 19 May 2006 and stated that the complainant’s letter of 11 May 2006 constituted a request for internal review of the handling of the request. The Council informed the complainant that he would be contacted shortly with the outcome of the review.

7. The Council wrote to the complainant on 7 June 2006 with the outcome of the internal review. The internal review upheld the Council’s handling of the request and reiterated that the electronic record of the information requested was deleted soon after it was posted. Further, the Council explained that a paper copy of the information was accidentally destroyed by a member of the Council’s staff when tidying his desk, however the Council claims that this was before the end of February 2006.

The Investigation

Scope of the case

8. On 8 June 2006 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 Council's alleged failure to provide information in response to his request.

Chronology

9. On 11 August 2006 the Commissioner wrote to the Council. He summarised the complainant's requests as follows:

Request 1: a copy of the notice board item in question;

Request 2: the name of the person who placed the item on the notice board; and

Request 3: the details of the action taken against the author of the notice board item.

In relation to request 1, the Commissioner asked the Council:

to confirm the measures it had taken to search for the information in question;

to provide a copy of the Council's monitoring procedures and to explain what it considered to be inappropriate content;

to provide copies of relevant information security management procedures;

to provide details of the security back up procedure, especially in relation to the length of time deleted items should remain 'backed up'; and

to provide a copy of any relevant retention/disposal schedule held by the Council.

In relation to request 2, the Commissioner asked the Council to confirm whether there was any recorded information held by the Council which identified the author of the notice board item in question.

In relation to request 3, the Commissioner noted that the Council appeared to have failed to respond to this request. He therefore required the Council to confirm whether it held any relevant information.

10. The Council responded on 23 August 2006.

In relation to request 1, the Council explained that items would only be 'backed up' if they were stored overnight in the relevant electronic file. The Council confirmed that the notice board folder was searched upon receipt of the request however that no relevant record was located. The Council stated that the notice board item in question had been deleted on the same

day it was posted and that this explained why it would not have been 'backed up' to the security system. This was because back up tapes were saved on a daily basis and the tapes recycled each month. The Council confirmed that at the time of the incident its monitoring procedure was not formally documented, however following the incident the policy had been set out in writing. A copy of this policy was sent to the Commissioner; this confirmed that the notice board should be monitored at least every two hours and any inappropriate item removed. The Council also confirmed that the paper copy of the notice board item was destroyed at the end of February 2006 and that there was no formal records management policy which governed how long notice board items should be retained.

In relation to request 2, the Council confirmed that it did not hold any recorded information which identified the author of the notice in question.

In relation to request 3, the Council confirmed that it did not hold any recorded information which detailed the action taken against the author of the notice board item. It stated that the manager of the member of staff in question dealt with the matter verbally.

11. The Commissioner wrote back to the Council on 1 September 2006.

In relation to request 1, the Commissioner asked the Council to confirm whether a search of email accounts and individuals' personal computer drives had been undertaken following receipt of the complainant's request for information.

In relation to requests 2 and 3, the Commissioner asked the Council to confirm whether there was any written record held which contained the information requested, as the Council's previous response had seemed to be concerned with information held by the Information Security department.

12. The Council wrote to the Commissioner on 4 September 2006 and stated that:

In relation to request 1, a search of relevant email accounts and computer drives had been undertaken, however the requested information had not been located.

In relation to requests 2 and 3, the Council confirmed it did not hold any recorded information which answered the requests.

13. The Council also wrote to the complainant on 4 September 2006 and confirmed that there was no recorded information held in relation to request 3, as it had not previously done so.

14. Following this, the Commissioner wrote to the complainant on 11 September 2006, presented the findings of his investigation and invited the complainant to withdraw his complaint. This was because, based on the evidence that had been submitted to him, the Commissioner believed that Council did not hold the

- requested information, and therefore there was no further action he could require it to take. In response, the complainant told the Commissioner that he was not prepared to withdraw his complaint. He explained that he did not believe that the Council did not hold the information requested, especially as he had understood that the notice board item had appeared on the system for more than two hours.
15. In light of the complainant's comments, the Commissioner wrote back to the Council on 20 September 2006 and asked it to provide the following:
- the date upon which the notice board item in question was posted;
 - the date upon which that day's back up tape would have been destroyed;
 - a copy of any policy which dictates when written records are placed on a member of staff's personnel record, or if there was no such policy, a description of the standard practice adopted by the Council in this regard.
16. The Council responded on 26 September and provided the following information:
- the Council did not know the exact date upon which the notice board item in question appeared on the board; however it believed it was published "some time in February";
 - back up tapes are retained for 12 months, after which they are recycled;
 - no such written policy exists; it is the responsibility of the line manager to decide what action is to be taken.
17. The Commissioner wrote to the Council on 26 September 2006 and asked how long it would take to restore a single back up tape and retrieve a piece of information from it.
18. The answer, received on 11 October 2006, was that it would take between four and five hours to carry out such work.
19. The Commissioner telephoned the complainant on 13 October 2006 and explained that, upon receipt of a request, a public authority must estimate how long it would take to:
- determine whether it holds the information requested;
 - locate the information or a document containing the information;
 - retrieve the information; and
 - extract the information from a document containing it.
20. The Commissioner explained that, if the public authority estimated that to carry out the above action would take more than 18 hours, it was not obliged to comply with the request. The Commissioner therefore proposed to ask the Council to carry out a search of its back up tapes, up to the 18 hour limit being reached. This would allow for a maximum of 4 days' tapes to be searched. The complainant agreed to this, however he stated that he would confirm in writing to

the Commissioner which days' tapes were most likely, in his opinion, to hold the requested information. Following this, the complainant wrote to the Commissioner on 17 October 2006 and confirmed that he believed the notice had been posted on 14 March 2006 or one of the following three days.

21. Owing to the discrepancy in the dates given by the Council and the complainant, the Commissioner asked the Council to conduct a search of the back up tapes of 14 – 17 March 2006 up to the appropriate limit of 18 hours by letter of 20 October 2006. The Council confirmed on 1 November 2006 that this search would be carried out.
22. The Council wrote to the Commissioner on 17 November 2006 and stated that, when it had set out to carry out the searches, it had discovered that the information had not been retained for 12 months as had previously been stated. Instead, the back up tapes had been recycled after 4 months, and therefore the tapes for 14 – 17 March 2006 were no longer held by the Council. The Council enclosed a copy of the outcome of an investigation it had carried out into this incident.
23. The Commissioner examined the Council's explanation of the issue, as contained in its report and established that there was insufficient evidence to warrant carrying out an investigation into the destruction of the back up tapes under section 77 of the Act (Offence of altering etc records with intent to prevent disclosure).
24. The Commissioner telephoned the complainant on 21 November 2006 and explained why the Council would not be able to undertake a search of the relevant back up tapes. The complainant expressed his continued dissatisfaction with the Council's handling of his complaint and requested that the Commissioner issue a Decision Notice outlining his findings.

Analysis

Procedural matters

25. The Commissioner has considered whether the Council has complied with section 1(1) of the Act.

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.”

Request One

26. The Council had stated to the complainant that it did not hold the information requested. The Council claimed that the electronic copy of the notice board item was destroyed on the day it was posted, although when asked by the Commissioner it was unable to conclusively state the date upon which this took place. The Council had informed the complainant that a paper copy of the notice board item had initially been retained, however claims this was accidentally destroyed by a member of its staff before the end of February 2006. The complainant informed the Commissioner that he believed that the notice had been posted between 14 and 17 March 2006. The Commissioner asked the Council to carry out a search of its back up tapes for this period, up to the appropriate limit, as the Council had informed him that these tapes were kept for 12 months. The Council then confirmed to the Commissioner that the back up tapes had actually been destroyed 4 months after their creation; and were therefore destroyed in August 2006.
27. The Commissioner considers, in the absence of evidence to the contrary, that it is more likely than not that the information requested was not held by the Council at the time the request was made.

Request Two

28. The Council has stated that, as the notice board item is no longer held by the Council, and the Incident Log entry refers only to the "originator" of the message, there is no recorded information held by the Council which links the member of staff who produced the notice board item with the item itself.
29. For the reasons outlined in paragraph 26 above, the Commissioner is satisfied that the notice board item itself is not held by the Council. Further, the Commissioner has seen copies of the Council's Incident Log, and agrees that the individual is not referred to by name however only as "the originator" of the message.

Request Three

30. The Council has stated that it does not hold any recorded information which details the action taken against the author of the notice board item. The Council has explained that there is no set policy which dictates when a written record must be placed on a member of staff's personnel file, and that in this instance the author's line manager addressed the matter verbally.
31. In view of this, the Commissioner is satisfied that there is no recorded information held by the Council which answers this request.

32. The Commissioner has considered whether the Council has complied with section 10(1) of the Act:

Section 10(1) states:

“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.”

Request One

33. Request 1 was made on 3 April 2006. The Council responded on 8 May 2006 that the information was not held.

Request Two

34. Request 2 was made on 18 April 2006. The Council responded on 8 May 2006 that the information was not held.

Request Three

35. Request 3 was made on 18 April 2006. The Council responded on 4 September 2006 that the information was not held.

The Decision

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

Section 1(1)

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

Section 10(1) in respect of requests 1 and 3.

Steps Required

37. The Commissioner requires no steps to be taken.

Other matters

38. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

The Council initially informed the Commissioner that back up tapes for all its systems were retained for 12 months, however it later admitted that the tapes for March 2006 had been destroyed in August 2006. During the investigation, the Council assured the Commissioner that its 12 month retention period for backup tapes will now be reinstigated. The Commissioner considers that the Council should ensure records are retained and destroyed in line with the policy in order to conform to the section 46 Records Management Code of Practice, to improve its ability to respond accurately to requests for information and to ensure the transparency of its activities.

Right of Appeal

39. 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

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 3 day of January 2007

Signed

**Richard Thomas
Commissioner**

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

Legal Annex

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.”

Section 1(2) provides that –

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

Section 1(3) provides that –

“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 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

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 10(2) provides that –

“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.”

Section 10(3) provides that –

“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 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”