

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 19 March 2008

Public Authority: The Department for Work and Pensions
Address: The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested information relating to the payments of his late Uncle's pensions. The public authority provided some information but withheld some under section 40 and stated that the remaining information was not held. During the course of the Commissioner's investigation the public authority disclosed the information withheld under section 40 as it concluded this exemption was not applicable. The Commissioner's investigation found that the remaining information was not held. However, the Commissioner has found the public authority were in breach of section 10 and 17 of the Act.

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. The Commissioner notes that under the Act the Pensions Service is not a public authority itself but is in fact an executive agency of the Department for Work and Pensions which is in turn responsible for the Pensions Service. The public authority in this case is therefore the Department for Work and Pensions although, for the sake of clarity, this decision notice refers to the Pensions Service as if it were the public authority.
3. The complainant has advised that on 16 October 2006 he made the following request for information to the Pensions Service (TPS) in relation to his deceased Uncle:

"1. Will you please supply me with the payment history and the Banks, Account Numbers and Sort Codes for the recipient Accounts of those payments covering the whole period for 20/12/00 or earlier if his Pensions have been transferred to receivers account before that.

2. Could you please tell me what rule for payments of pension during hospitalisation were from 10 April 2002 till 02 May 2002 i.e. How much pensions would my uncle have been deducted? (sic)"

4. TPS responded on 6 February 2007 informing the complainant that it was unable to release the bank details of the payee as to do so could be regarded as the unlawful disclosure of a third party's personal information. TPS did find that it was able to provide the complainant with details of the Corporate Payees on the account and of the dates they had responsibility to receive payments. TPS also provided the payment history for the period August 2004 to October 2006.
5. TPS explained that a person's pension is paid into a recipient account. This is usually the account of the person to whom the pension relates. However, it can also be paid to a 'receiver' i.e. someone acting on behalf of the customer. In this case the customer's pension was being paid into a 'corporate account', a company approved to receive his pension.
6. The complainant responded on 12 February 2007, the complainant raised a number of issues with TPS regarding his Uncle's pension and made an additional request for information:

"I note that [named firm] have seemingly paid you back the last two payments only i.e. £1298.24, please confirm that this is the case?"

7. TPS completed its internal review and responded on 1 March 2007, informing the complainant that in relation to his requests for information the Data Protection Act applied as he had requested that it disclose the bank details of the receiver who was responsible for receiving his late Uncle's pension payments. TPS stated that the bank details relate to third party who has not consented to these details being disclosed by the department. TPS also informed the complainant that it was considering recovery of the overpaid State pension from the named firm. TPS also explained that no further details were held regarding the payment history as documents were destroyed after 14 months in line with its document retention policy.
8. The complainant responded to this on 7 March 2007 asking TPS to respond to the information request of 12 February 2007. The complainant then wrote again to TPS on 26 March 2007 asking for a response to the letter of 7 March 2007 and asking TPS to respond to the original request for payment details covering the period of receivership quoted in the letter of 16 October 2006.

The Investigation

Scope of the case

9. On 26 March 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant highlighted to the Commissioner that he had only been provided with the latest payment history and that he had received no response regarding the rules for pension's payments during hospitalisation.
10. The Commissioner's investigation at this point focused on obtaining from TPS a full response to all the complainant's information requests.

Chronology

11. On 19 April 2007 the Commissioner wrote to TPS asking it to assess if all of the requests for information made by the complainant had been responded to and if not, to now provide the complainant with a response.
12. On 17 May 2007 the complainant wrote to the Commissioner requesting that the Commissioner investigate the handling of his requests in full, including the refusal to provide him with the full payment history, the bank account details and the rules governing pension payments during hospitalisation. The Commissioner's investigation therefore now focused on the refusal by TPS to disclose the bank account details, the full payment history and the rules governing pension payments during hospitalisation.
13. On 2 July 2007 TPS wrote to the complainant informing him of its understanding of the situation to date and requesting that he respond if any further assistance was required.
14. On 11 July 2007 the Commissioner wrote to the complainant informing him that he understood there to be two outstanding questions which TPS has not responded to and that he would raise this with TPS and request that it respond.
15. The Commissioner telephoned TPS on 12 July 2007 and wrote on the same date to confirm the information requests to which the complainant had not yet received a response namely: the rules governing payments of pensions during hospitalisation; and the questions regarding payments paid back from the named firm.
16. On 9 August 2007 TPS wrote to the complainant informing him of the deduction rates applicable for hospitalisation for the period requested and providing a fact sheet on the rates applicable for payments of pension during hospitalisation, this is called 'hospital down rating'. TPS also explained that it had not instigated any recovery process in respect of payments made to the complainant's late Uncle as no money had been sent by it to the named firm.

17. On 2 October 2007 the Commissioner wrote to the complainant asking him to clarify the outstanding issues. The Commissioner explained that he now understood this to be: the failure to provide the bank account details of the recipient accounts; and the failure to provide a complete payment history for his Uncle's pension as TPS claimed this was no longer held.
18. The complainant responded on 5 October 2007 confirming that the situation as outlined in the letter of 2 October 2007 was correct; the complainant also raised concern that TPS had breached section 77 of the Act by destroying payment history records over 14 months old.
19. The Commissioner responded on 10 October 2007 informing the complainant of the scope of the Commissioner's investigation. The Commissioner also explained the scope of section 77 of the Act in relation to the destruction of documentation.
20. The Commissioner wrote to TPS on 10 October 2007 requesting further details regarding the withholding of the bank account details for the recipient accounts and for more information regarding the destruction of documentation regarding the payment history of the account.
21. TPS responded to the Commissioner on 21 November 2007 providing the Commissioner with further details regarding its document retention policy and a background to the complaint. TPS also indicated that it was considering if it could now release to the complainant the account details of the corporate account which received the complainant's late Uncle's pension.
22. The Commissioner telephoned TPS on 22 November 2007 to discuss the above response and to request further details regarding their document retention policy.
23. On 8 January 2008 TPS sent to the complainant some further information regarding the corporate bank details and provided to him details as to how he could obtain the full details from the companies themselves.
24. On 11 January 2008 the Commissioner wrote to TPS asking it for an explanation as to why the full commercial bank details were being withheld under the Act. The Commissioner also requested further explanation regarding the document retention policy.
25. On 28 January 2008 TPS wrote to the complainant apologising for the handling of his information requests. TPS disclosed to the complainant the corporate bank account details, in full, into which the complainant's late Uncle's state pension was paid.
26. TPS wrote to the complainant on 20 February 2008 enclosing a copy of the all the clerical papers not previously disclosed to him, the clerical papers did not include the remaining payment history. TPS wrote to the Commissioner on the same day confirming that no further information is held regarding the payment history.

Findings of fact

27. The issue being investigated is TPS refusal to disclose the payment history for the complainant's late Uncle's pensions from 22 December 2000 to August 2004 on the basis that this information is not held. The payment history for the period August 2004 to October 2006 was provided to the complainant in the response dated 6 February 2007.

Analysis

Procedural matters

Section 17 'Refusal Notice'

28. Section 17 states that a public authority which is relying on withholding the requested information under one of the exemptions listed in the Act, must provide to the complainant, within the time for complying with section 1, a notice which (a) states the fact; (b) specifies the exemption; and (c) states why the exemption applies. Section 17(7) states that any notice 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 the rights conferred by section 50.
29. The request for information was made on 16 October 2006 and TPS responded to this on the 6 February 2007. This is outside of the twenty working days required under section 17 of the Act. The Commissioner finds that the notice of the 6 February 2007 was in breach of the requirements of section 17 as:
- TPS failed to respond in time, this is breach of section 17(1)
 - TPS failed to state which exemption applied in breach of section 17(1) (b)
 - The notice failed to state the reasons for an exemption being considered applicable in breach of section 17(1) (c).
 - The notice did not inform the complainant of TPS' internal review procedure or his rights under section 50 of the Act in breach of section 17(7).

Section 10 'Time for Compliance'

30. Section 10 of the Act states that a public authority must comply with section 1 no later than the twentieth working day following receipt of the request.
31. TPS did not disclose the bank account details requested on 16 October 2006 until 28 January 2008. This is in breach of section 10 of the Act.

Section 1 'General Right of Access'

32. In response to the complainant's request on 16 October 2006 TPS provided the complainant with the payment history of his Uncle's pensions from August 2004 until October 2006. TPS also explained that no further details were held regarding the payment history as the documents were destroyed after 14 months in line with its document retention policy.
33. TPS explained to the Commissioner that, as part of the Department for Work and Pensions, document retention periods are mainly determined by benefits legislation covering review and appeal time limits. The maximum time limit for review and appeal is 13 months and 14 days. To meet this general principle the department's retention policy is for a period of 14 months.
34. If a case is ongoing clerical papers will be held until all action is complete. In this case TPS explained that following notification in October 2006 of the death in April 2006 of the complainant's Uncle, and the questions raised by the complainant all clerical papers were retrieved from storage and are still held as the case is yet unresolved. TPS confirmed that no information about the payments made is held in the clerical papers.
35. TPS explained that all payment records are held on the Pension Service Computer System (PSCS). Ordinarily, computer recorded payments can be viewed for 18 months after the last activity on a customer's records before they are destroyed, or weeded i.e. deleted from the computer system. However, in practice computer records of payment history details are weeded after two years on a rolling basis. Therefore, at the time of the request (October 2006) TPS were unable to obtain the payment history prior to August 2004.
36. During the course of the investigation the Commissioner asked TPS to complete a thorough search of all its clerical files and to ensure that no computer recorded payments information is held within an archive. TPS confirmed that it held a clerical file but that this did not contain details of the payment history; however, TPS did disclose a copy of this file to the complainant. TPS also confirmed that it has no way of obtaining deleted computer data. TPS explained that it had received clarification on this point and that once payments have been weeded i.e. removed from the live computer system there is no way the information can be accessed as it is no longer held. The Commissioner asked TPS to request an archive print of the customer's record, which he understood was possible, TPS completed this and informed the Commissioner that no further information was held. TPS also explained that periodic weeding is required to ensure PSCS databases do not reach a capacity which would compromise service availability.
37. TPS also provided a copy of the 'DWP Benefits Document and Data Retention Guide'. This guide does not set specific limits for the retention of data in relation to each benefit, but rather states that:

"Benefits legislation covering the maximum review and appeal time limits was the main determining factor for the retention periods but it is also necessary to achieve assured, effective and efficient control of documents"

and data, and also to take into account the requirements of the Data Protection Act (DPA).

The policy also takes into account the requirements of the DPA which places a responsibility on the Department to determine retention periods for the documents it holds. Documents cannot be retained indefinitely just in case they may be needed."

38. Whilst the guide does not specify retention periods it does state that it is for each organisation to determine this. TPS have explained that the maximum time limit for review and appeal is 13 months and 14 days so as a general rule it retains information for 14 months. However, TPS have also explained that its computer records of payment history are weeded after two years on a rolling basis.
39. The Commissioner is satisfied that at the time of the request there was no clerical record of payments as all this information was recorded on PCPS. The Commissioner also accepts that if computer records of the payment history are weeded after two years on a rolling basis, then in October 2006 TPS would not have held a record of the payment history prior to August 2004. The Commissioner considers the fact that the payment history held at the time of the request dated back to August 2004 demonstrates that the weeding does not take place systematically every month but this does not alter that fact that it is reasonable to reach the conclusion that at the time the request was made the payment history prior to August 2004 would not have been held.

The Decision

40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. As it informed the complainant that the earlier payment history is not held.
41. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. The refusal notice was issued in breach of section 17 as it
 - (a) was issued outside of the 20 working days required by section 17(1)
 - (b) did not state which exemption applied in breach of section 17(1)(b)
 - (c) did not explain why the exemptions applied in breach of section 17(1) (c)
 - (d) did not inform the complainant of his rights under section 50 of the Act in breach of section 17(7).
 - ii. Disclosure of some of the information requested was in breach of section 10 as it was outside of the 20 workings days required. TPS also did

not confirm complainant that some of the requested information was not held until outside of the 20 working days required, this is also in breach of section 10.

Steps Required

42. The Commissioner requires no steps to be taken.

Other matters

43. The complainant has raised with the Commissioner the issue as to whether a section 77 breach has occurred. Section 77 states that where a request for information has been made to a public authority under section 1 of the Act, any person to whom this applied is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority with the intention of preventing disclosure of the information.
44. The Commissioner has considered whether this is applicable in the circumstances of this case. The Commissioner notes that TPS have explained and provided evidence that the computer payment history is weeded every two years on a rolling basis. In light of this expectation the Commissioner believes there is insufficient evidence to warrant an investigate of a section 77 breach as he does not consider there is any evidence that the public authority has destroyed the information to prevent disclosure, or as a result of the request to view it. The fact that a retention policy is in place adds further weight to this consideration, as the information not held would not be expected to be so if the document retention policy is followed correctly. In reaching this decision the Commissioner notes that TPS have provided the complainant with the payment history it does hold and at the instance of the Commissioner has conducted further searches and has still been unable to retrieve further information.

Right of Appeal

43. 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@tribunals.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 19 day of March 2008

Signed

**Graham Smith
Deputy 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.”

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”.”

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.”

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.”

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.”