

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 March 2008

Public Authority: The Commission for Local Administration in
England
Address: 10th Floor
Millbank Tower
Millbank
London SW1P 4QP

Summary

On 11 September 2007 the complainant requested from The Commission for Local Administration in England ("CLAE") copies of legal guidance provided to it by the Department for Communities and Local Government (the "DCLG"), the CLAE's external auditors and/or the Information Commissioner (the "Commissioner") relating to its handling of requests under the Freedom of Information Act 2000 (the "Act"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA"). He also asked "what special research have these three bodies conducted in relation to the three information laws specifically for the Commission for Local Administration?". The CLAE refused the request on 13 September 2007, upholding its decision on internal review on 31 October 2007, stating that it had neither received any information of the type requested, nor had any special research of the type stated been conducted. The CLAE acknowledged that it did hold copies of some of the guidance published by the Commissioner, but applied the exemption in section 21 to this information since it was publicly accessible on the Commissioner's website. The complainant asked the Commissioner to investigate the handling of his request by CLAE, and in particular its application of the exemption in section 21 of the Act. The Commissioner has investigated the complaint and agrees that, in its handling of this information request, the CLAE has complied with the requirements of the Act in all respects. He agrees that section 21 was applied correctly and therefore does not order any steps to be taken by CLAE.

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 I of the Act. This Notice sets out his decision.

The Request

2. On 11 September 2007 the complainant requested the following information from the CLAE:

“Please provide me with the copies of the legal guidance provided by the Department of Communities and Local Government and/or your external Auditors Baker Tilly and /or the Information Commissioner in relation to the handling of requests, by the Commission for Local Administration, under the provisions of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Data Protection Act 1998 as amended.

What special research have these three bodies conducted in relation to the three information laws specifically for the Commission for Local Administration?

Should you require me to refine or further clarify my request please contact me by email.”

The Commissioner notes that there has been some confusion as to whether the request was made on 11 or 12 September 2007; however since the CLAE has referred (in its internal review letter dated 31 October 2007) to the request as having been made on 11 September, the Commissioner is content to accept that as the correct date.

3. On 13 September 2007 the CLAE responded to the request by email, having allocated to the request reference number CS/07/0031. The refusal notice read as follows:

“The Commission has not received any specific legal guidance on the handling of requests under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or the Data Protection Act 1998 as amended from either the Department of Communities and Local Government or from our external auditors, Baker Tilly, or from the Information Commissioner.

The published advice to public bodies from the Information Commissioner (IC) is available on the IC website. We do hold some of this in our files and electronically, but as this is accessible to you by other means, the exemption in s21 of the Act applies.

No special research has been conducted into our FOI practice by any of the above bodies.”

4. On 17 September 2007 the complainant requested the CLAE to undertake an internal review, expressing doubt about the refusal he had received. His request for review referred specifically to information he considered the CLAE might hold relating to the Commissioner, and made no reference to the DCLG or to the CLAE's auditors. He alluded to the existence of Decision Notices involving the CLAE on the Commissioner's website and queried the apparent contradiction in the CLAE's response that it had received no legal guidance from the Commissioner.
5. On 31 October 2007 the CLAE sent a letter to the complainant stating the outcome of its internal review. This upheld the original refusal and provided further clarification in response to queries the complainant had raised in relation to the refusal notice. In particular, the CLAE explained that there was no contradiction inherent in its statements in the original refusal notice. The CLAE stated that it had obtained no specific guidance from the Commissioner, but that it held copies of and referred to some published guidance from the Commissioner available on his website, which is available to the public. The CLAE further clarified that by “legal guidance” it had not intended to refer to Decision Notices, which relate to specific cases.

The Investigation

Scope of the case

6. On 11 September 2007, the complainant had contacted the Commissioner to complain about the handling of two different requests for information, distinct from the one which is the subject of this Decision Notice. In the course of investigating those matters, the Commissioner learned of the complainant's dissatisfaction with the handling of the information request featured here.
7. In his correspondence with the Commissioner, in relation to this request the complainant specifically asked the Commissioner to consider the following points:
 - his view that there was a lack of clarity of procedures within the CLAE for handling requests for information, particularly as regards contact points within CLAE.
 - the CLAE's application of the exemption in section 21 of the Act.
8. The above point about the clarity of the CLAE's procedures is not a requirement of Part I of the Act, although the Commissioner is able to monitor patterns in the behaviour of public authorities and take action where appropriate. The complainant also raised other issues that are

not addressed in this Notice because they are not requirements of Part I of the Act.

9. The relevant legislation cited in this Decision Notice is stated in full in the Legal Annex at the end of this Notice.

Chronology

10. The Commissioner wrote to the complainant on 13 October 2007 to remind him to request an internal review by the CLAE of its decision. On 17 October the complainant informed the Commissioner that he had requested a review on 17 September, and provided a copy of that request.
11. On 17 October 2007 the complainant also expressed concern to the Commissioner at a perceived delay in reply by the CLAE to a number of emails he had sent on this and separate matters.
12. On 14 November 2007 the Commissioner wrote to the CLAE to inform it that he had received the complaint. The CLAE replied on 16 November.
13. On 15 November 2007 the Commissioner wrote to the complainant that his investigation in this case would focus on the specific request described above.
14. On 27 November 2007 the Commissioner wrote to the CLAE to seek further clarification and a review of its handling of the complainant's request.
The CLAE responded on 3 December. It confirmed that its original refusal and its review of the complainant's request were correct. It also expressed regret that it had not conducted its internal review more speedily in response to the complainant's request for review.

Analysis

Procedural matters

Section 1

15. The Commissioner confirms that guidance on freedom of information matters contained on his website is publicly available, as are copies of Decision Notices.
16. The Commissioner also confirms that, apart from Decision Notices which relate to particular cases, the CLAE has received from him no "legal guidance" on the handling of freedom of information requests, nor has he conducted any special research specifically for the CLAE on

this subject.

17. The Commissioner is satisfied that the CLAE holds no information of the type requested by the complainant on 11 September 2007, except that which is also publicly available.
18. Therefore the Commissioner finds that, in its refusal notice dated 13 September 2007, the CLAE complied with the requirements of sections 1(1), 10(1) and 17(1) and (7) of the Act.

Exemption

19. In its refusal notice as upheld on internal review, the CLAE applied the exemption in section 21 of the Act, which exempts from disclosure any information which is reasonably accessible to an applicant.
20. In the light of his findings stated in paragraphs 15 to 17 above, the Commissioner is satisfied that this exemption has been correctly applied by CLAE.
21. The Commissioner finds that in any event, even if Decision Notices were, as the complainant contended in correspondence with the CLAE, to be regarded as "legal guidance", the section 21 exemption would also have applied to such Notices.

The Decision

22. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

23. The Commissioner does not require any steps to be taken.

Other Matters

24. The complainant requested an internal review on 17 September but was not informed of the outcome until 31 October. Although this is outside the twenty working days recommended as best practice by the Commissioner in his Good Practice Guidance No.5 dated 22 February 2007, there is no statutory timescale for the conduct of an internal review by a public authority. The Commissioner also notes that the CLAE has apologised for the delay, both to him and to the complainant.

Right of Appeal

25. 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.
Website: www.informationtribunal.gov.uk

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.

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 25th day of March 2008

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Section 1(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.”

Section 10(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 receipt”.

Section 17(1)

“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(7)

“A notice under subsection (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.”

Section 21(1)

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”