

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 January 2010

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant submitted a request for information to the Ministry of Justice ("the MOJ") for documents from the MOJ and did not receive a response within twenty working days. The complainant contacted the Commissioner who requested a response within ten working days. The MOJ eventually responded to the complainant with details of the information held but this was after twenty working days. The Commissioner's decision is that the MOJ breached section 10(1) of the Freedom of Information Act 2000 (the "Act") by failing to comply with section 1(1) of the Act within twenty 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 Act. This Notice sets out his decision.

The Request

2. On 23 July 2009 the complainant requested the following information:

Detail the searches that were made for the file containing copies of correspondence between the UK Government and Council of Europe relating to the European Convention on the legal status of children born out of wedlock; and details of the internal MOJ procedures for the storage, access, transfer, safeguarding, loans, etc. of files.

The Investigation

Scope of the case

3. On 19 August 2009 the complainant contacted the Commissioner to complain about the MOJ's failure to respond to his request within twenty working days. During the course of the Commissioner's investigation a response was provided to the complainant by the MOJ on 8 October 2009. This notice is therefore only concerned with the lateness of the response and not the response itself.

Chronology

4. On 15 September 2009 the Commissioner wrote to the MOJ asking it if it had dealt with the above request dated 23 July 2009 as a 'new' one raised by the complainant.
5. On 24 September 2009 the Commissioner wrote to the MOJ asking it to respond to the request within ten working days.
6. On 8 October 2009 the MOJ wrote to the complainant outlining its searches for the documents in question and appending a copy of its records management policy. It also outlined the approach the complainant would need if he wished to apply for an internal review by the MOJ.
7. On 24 November 2009 the complainant wrote to the Commissioner stating that he did not wish to pursue the matter via an internal review within the MOJ.

Analysis

Procedural Requirements

8. Section 1

Section 1(1) of the Act states 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."

9. **Section 10**

Section 10(1) of the Act states 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.”

10. The Commissioner considers that the MOJ has breached section 10(1) of the Act as it failed to respond to the request in accordance with section 1(1) of the Act within twenty working days following the date of receipt.

The Decision

11. In not providing a response to the complainant within twenty working days in accordance with section 1(1) of the Act the Commissioner finds a breach by the MOJ of section 10(1) of the Act.

Steps Required

12. The Commissioner requires no steps to be taken.

Right of Appeal

13. 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 11th day of January 2010

Signed

**Lisa Adshead
Senior FOI Policy Manager**

**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.”

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(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.”