

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 September 2010

Public Authority: Sheffield City Council
Address: Town Hall
Sheffield
S1 2HH

Summary

On 31 July 2009 the complainant made a request for information to Sheffield City Council ("the Council") for details regarding his mother's stay in Council-run residential accommodation. The Council had released information relating to price rises in such accommodation already, and refused details pertaining to his mother's personal financial details until such time as he could prove he had power of attorney. The Commissioner further determined on a balance of probabilities that the Council had released all possible documentation it held relating to the guidelines for financial assessment in residential homes. In delaying its reply to the complainant beyond the 20 working days and not informing him of its review procedure, the Commissioner finds the Council in breach of sections 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. On 23 March 2009 the complainant contacted the Council to query the rise in financial assessment user fees for his mother's care in a Council-run care home.
3. On 24 March 2009 the Council replied, stating that the increase in user fees is based on the annual rise of five per cent applied generally to state pensions in that year.
4. On 12 May 2009 the complainant asked the Council for a copy of its calculations for the financial assessment of the fees dating back to February 2007. The Council replied the next day, advising a change in the relevant officer who was dealing with the matter.
5. On 19 May 2009 the complainant wrote to the new contact at the Council, asking for "a copy of you (sic) procedures/guidelines for assessing users fees". On the same day the Council replied, stating that it uses the 'Charging for residential accommodation guide', known as CRAG and authored by the Department of Health. It further said that CRAG could be viewed on both the Council's website and that of the Department of Health.
6. On 31 July 2009 the complainant wrote back to the Council, saying that he had consulted both the websites mentioned in paragraph 5 above and had searched the guidelines in CRAG and the National Assistance Regulations 1992, in support of which CRAG is drafted by the Department of Health. Having failed to find satisfaction in this search, he asks, under the Act, "if you could supply me with the document that contains the information which was used to increase the user fees in 2008 and 2009".
7. On 12 October 2009 the complainant contacted his Member of Parliament, David Blunkett. He raised both the issue of the Council denying him power of attorney over his mother's estate and that the Council had not responded to his request of 31 July 2009 detailed in section 6 above. Mr. Blunkett passed on his concerns to the Council.
8. On 8 January 2010 the Chief Executive of the Council wrote to the complainant concerning the request. In this letter the Council admits that CRAG does not specify when to increase contributions, but that income should be counted in the period that it is received. To avoid the inconvenience of many individual requests the letter states that it is the Council's policy to use an approximation to gauge the increase in user fees. As most service users in the residential homes

in question tend to be in receipt of benefits, the relevant rise in benefit is then used to assess the change in fees to be paid year-on-year. The Council claims that this is standard practice within local authorities in line with paragraph 8.002 of CRAG: "a payment of income is generally taken into account for a period equivalent to that which it represents, e.g. a payment due to be made weekly is taken into account for a week, a payment due to be made calendar monthly is taken into account for a month, but a weekly rate is calculated before assessment. Guidance on the attribution of income to a specific period is in Section 9". The Council concludes this part of the letter by stating that this is the full extent of the information held in relation to re-assessment of users' fees in its residential homes.

The Investigation

Scope of the case

9. On 3 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant had two points to raise with the Commissioner. The first was to complain about the Council's refusal to allow him the power of attorney over his mother's estate, his mother having passed away since the beginning of his FoIA request to the Council. This, however, is not within the Commissioner's remit to investigate. The second was to state his belief that not all the information relating to the Council's methodology in how it assessed the rise in users' fees for its residential properties had been released to him.
10. The Commissioner was minded to investigate the complainant's request dated 31 July 2009 in which he asks for "the document that contains the information which was used to increase the user fees in 2008 and 2009". Although the complainant had made similar requests concerning the criteria used in raising the fees on 12 May and 19 May 2009, the request of 31 July 2009 is in response to the public authority's statement that it used CRAG to assess the rise in fees. The request of 31 July therefore represents the culmination of the previous requests.

Chronology

11. On 19 February 2010 the Commissioner wrote to the complainant. In this letter it was pointed out to him the 'applicant-blind' nature of the Act and that information available to one individual is available to all. To seek information on the deceased the complainant was given the Commissioner's published guidance on seeking information on the deceased. It was also pointed out that he had brought his case to the Commissioner's notice without requesting an internal review with the Council, the Council not having informed him of this procedure. He was told to ask the Council for such a review and that the Commissioner would write to the Council stating that it had failed to carry out its duty to inform the complainant of this procedure. This letter to the Council was sent on the same date.
12. On 26 February 2010 the complainant contacted the Council, asking "that the council reviews its decision not to supply the information I have requested under the Freedom of Information Act".
13. On 3 March 2010 the Council wrote to the complainant, stating that he been served with all the information in its possession relating to users' fees guidelines.
14. On 15 March 2010 the complainant replied, saying to the Council that "the document used to increase users fees in your letter 8th January 2010 does not fully address the issues I have raised". The complainant claims that the Council "does not increase the user fee as per 8.002 of CRAG". After disputing the Council's figures levied on his late mother's bill, he states "as you have failed to supply a copy of your departmental procedures which covers this request, I will be contacting the ICO again".
15. On 16 March 2010 the Council wrote to the complainant with its full internal review. This states: "with regard to the guidance requested, this is all the written information which is available, the duty under Section 1 of the FoIA 2000 has long since been discharged in its entirety. If there is no further recorded information there is nothing further the Council can provide".
16. On 21 March 2010 the complainant wrote to the Commissioner. He accepted the Commissioner's guidance that his application for his late mother's personal details using the Act may not be the most fruitful route to gain access to the information he required, but did wish to pursue the matter relating to assessment guidelines for users' fees.

17. On 6 April 2010 the Commissioner wrote to the Council to make further enquiries concerning the information that the complainant believes is still withheld.
18. On 9 April 2010 the Council replied. It stated that the complainant had received all the documentation pertaining to the matter "but refused to believe this is all the guidance which exists in relation to this matter. (The complainant) continues to refuse to accept that he has been provided with all the relevant guidance covered by that request".
19. On 12 May 2010 the Commissioner wrote to the complainant detailing the six occasions on which the Council had either supplied the information requested or repeated that it had supplied all the information it possessed on the subject. Three officers of the Council, including the Chief Executive, provided this correspondence, dated 24 March 2009, 19 May 2009, 8 January 2010, 3 March 2010, 16 March 2010 and 9 April 2010. The Commissioner invited the complainant to either withdraw the matter or opt for a Decision Notice.
20. On 3 June 2010 the complainant wrote to the Commissioner, asking for his decision to be formalised in a Decision Notice.

Analysis

Substantive Procedural Matters

Is further relevant recorded information held?

21. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities, the information is held.
22. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

23. Paragraph 19 above details the six replies that the complainant or the Commissioner has received from the Council concerning specifically the methodology employed in increasing assessments for users' fees. On 24 March 2009 a Business Support Officer from the Council wrote to the complainant, stating that an "uplift of 5% on state pensions" accounted for the rise; this letter also referred to a previous verbal exchange during which this information had already been supplied. On 19 May 2009 the same officer referred the complainant to the CRAG guidelines on both the Council's website and the website of the Department of Health, who are responsible for the creation of these guidelines.
24. Following the intervention of the complainant's Member of Parliament, David Blunkett, the Chief Executive of the Council then wrote to the complainant on 8 January 2010. This expounded further on the application of CRAG by detailing how it is employed by the Council in assessing users' fees by raising fees in line with increases in benefits; this reply also quotes the relevant section in CRAG and states that this is the full extent of information that can be released on this subject. On 3 March 2010 a solicitor for the Council assured the complainant that he had been supplied with the relevant information over users' fees. In response to further requests, the same solicitor for the Council replied on 16 March 2010: "with regard to the guidance requested, this is all the written information which is available, the duty under Section 1 of the FoIA 2000 has long since been discharged in its entirety. If there is no further recorded information there is nothing further the Council can provide".
25. On 9 April 2010 the same solicitor from the Council wrote to the Commissioner, following the latter's intervention in the case. This repeated the assertion that all possible information had been supplied to the complainant and stating that the complainant "continues to refuse to accept that he has been provided with all the relevant guidance covered by that request and the Council's letter of 8 January 2010 sets out in full the Council's position. As can be seen, the Council have more than exceeded its duty under Section 1 of the FoIA 2000. (The complainant) still refuses to believe that the Council have more than fully discharged this request".
26. A local authority may charge for residential care services provided by social services as established by the 1948 National Assistance Act as amended by the NHS and Community Care Act 1990 under section 22(5). The Department of Health issues guidelines to such authorities on how to assess the contributions of those who cannot afford to pay the full cost themselves. These guidelines are known as CRAG, and local authorities are required to use them. The authority has confirmed

to the Commissioner that no other method is used or is required to be used in order to assess fees, and that it therefore has no need to hold other information relevant to the request.

27. Given the range of searches for documents fitting the description of what the complainant sought, and perhaps more importantly the legal requirement to use CRAG, the Commissioner is content to determine that on the balance of probabilities the Council has no further information relevant to the complainant's request and has therefore complied with section 1(1)(a) and section 1(1)(b) of the Act.

Procedural Requirements

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."

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

Section 17

Section 17(7) of the Act states that:

"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."

The Commissioner considers that Sheffield City Council has breached section 17(7) of the Act as it failed to inform the complainant of his requirement to ask the Council to undertake an internal review of its original decision before he could involve the Commissioner in his case.

The Decision

28. On a balance of probabilities, the Commissioner's decision is that the public authority dealt with the request by releasing all the information it held. The Commissioner has also decided that the Council breached sections 10(1) and section 17(7) of the Act in its late reply to the complainant's original request of 23 March 2009, and its failure to notify him of the internal review procedure.

Steps Required

29. The Commissioner requires no steps to be taken.

Other Matters

30. Although this does not form part of this Decision Notice the Commissioner wishes to place on record the Council's failure to comply with the Code of Practice established under section 45 of the Act. The Code calls for public authorities to notify complainants of its complaints procedure allowing for internal reviews of its original replies. Sheffield City Council did not notify the complainant of this procedure.

Right of Appeal

31. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 1 day of September 2010

Signed

**Anne Jones
Assistant 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."

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—(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 [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

Refusal of Request

Section 17(7) provides that:

"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."