

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 January 2011

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Summary

The complainant made a request for any information which would support the Prime Minister's response to an e-petition regarding childcare vouchers. The complainant addressed his request to the Prime Minister's Office which forms part of the Cabinet Office. The Cabinet Office responded on the twentieth working day stating that the information was the responsibility of the Treasury. In his request for an internal review the complainant criticised the time taken for the first response, specifically he asserted that the response had breached the provisions of section 10 of the Act insofar as the response had not been made promptly. The Commissioner has concluded that the Cabinet Office responded within the time for compliance. However, he finds that the response was in breach of section 1(1)(a) in not stating specifically whether the information was held and section 10(1) by not stating whether the information was held within the statutory time limit.

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 13 November 2009 the complainant made a request to the Prime Minister's office (which is part of the Cabinet Office) for the following information:

"Please could you supply any research or other documents you hold that might back up the PM's claim, for example statistics or lists about employers providing childcare vouchers without requiring a salary sacrifice in exchange, or any explanation of why salary sacrifice schemes would still be worthwhile."
3. On 11 December 2009 the Prime Minister's Office wrote to the complainant and in accordance with the section 45 Code of Practice advised him to contact a different public authority, that being HM Treasury. The response did not specifically state that the information was not held.
4. On 11 December 2009 the complainant responded to the Prime Minister's Office and requested an internal review.
5. On 22 December 2009 seven working days later the complainant sent a chasing email followed by a further reminder on 15 January 2010.
6. The Prime Minister's Office acknowledged this correspondence on 19 January 2010, 23 working days after the request for an internal review.
7. On 7 March 2010 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 following points:
 - He stated that he did not believe the response which 'implied (without specifically stating)' that the information was not held.
 - He considered that the response was not prompt.
 - An internal review had not been provided in compliance with the code of practice.
8. On 30 March 2010 the Commissioner wrote to the Prime Minister's Office reminding it of its responsibilities under the Act.
9. On 20 April 2010 some 86 working days after the request for an internal review the Cabinet Office provided the complainant with the outcome of the review.

10. On the same day the complainant contacted the Commissioner to complain that the internal review did not address the promptness of its initial response. He also reiterated his dissatisfaction with the time taken to provide an internal review. The complainant no longer stated that he did not believe that the information was not held.

The Investigation

Scope of the case

11. In his email to the Commissioner on the 20 April 2010 the complainant focused his attention on the 'question of promptness'. He specifically stated his dissatisfaction that the Cabinet Office had not addressed the issue of promptness which he considered to be an explicit part of the Act which should be enforced. He also expressed his dissatisfaction at the length of time taken in providing an internal review. The Commissioner has therefore determined the following points to be the scope of this case:
 - The nature of the initial response
 - Whether that response was given "promptly" for the purposes of section 10(1) of the Act
 - The time taken to provide an internal review.

Chronology

12. On 14 July 2010 the Commissioner began his investigation by writing to the Cabinet Office to request further information on the operation of the e-petition process.
13. On 17 July 2010 the Cabinet Office responded with an explanation of the procedure followed in replying to an e-petition.
14. On 30 July 2010 the Commissioner wrote to the complainant with his conclusions.
15. On the same day the complainant replied to the Commissioner detailing his concerns regarding public authorities responding 'promptly' to requests and requesting a formal decision on this point.
16. On 4 August 2010 a representative of the Commissioner spoke with the complainant regarding his concerns about 'unreasonable' delays and the interpretation of 'promptly'.

17. On the same day the complainant provided a written explanation of his opinion which noted that the Commissioner had not yet issued a Decision Notice making a determination of 'promptly'. The complainant stated; "many authorities tend to delay their responses to the end of the 20 day period for no good reason."
18. On 10 August 2010 the Commissioner requested from the Cabinet Office details of the time frame of the handling of the complainant's request and whether a response could have been provided earlier.

Analysis

Procedural Requirements

Section 1(1)(a)

19. The Cabinet Office responded on the twentieth working day after receiving the request. The response did not explicitly state whether the requested information was held or not and therefore did not comply with the provisions of section 1(1)(a). The complainant was referred to HM Treasury to seek the information.
20. The Commissioner investigated the approach taken by the Cabinet Office to an e-petition on the website. He understands that a finished response is provided by the appropriate Government Department. The response is accompanied by whatever background information the Department considers necessary to provide an overview of the policy in question. This background information is destroyed by the Cabinet Office when the e-petition response has been posted and signatories of the e-petition have been informed.
21. The Government Department providing the response in this case was HM Treasury and therefore the Commissioner considers that this department would have been the most likely department to hold the requested information.
22. The Cabinet Office followed its established processes in determining whether it held any information appertaining to this request. The Commissioner considers that, on the balance of probabilities, the Cabinet Office did not hold the requested information at the time the request was made.

Section 10(1)

23. The complainant asked the Commissioner to consider whether the Cabinet Office had responded promptly to his request, albeit within twenty working days. In order to determine if the time taken by the Cabinet Office was appropriate in this case, the Commissioner requested information on the steps taken to determine whether the information requested by the complainant was held by the Cabinet Office.
24. The Commissioner noted that there is a process designed to be effective and accurate in providing a response to a Freedom of Information (FOI) request. He concluded that it is right and proper for public authorities to develop processes which facilitate a considered response to FOI requests. It is therefore not unreasonable for the Cabinet Office to follow its own procedures.
25. The Commissioner acknowledges that on receipt of the request it was not immediately known whether the Cabinet Office held the information sought. Therefore it was necessary and appropriate for the Cabinet Office to determine this by following its own processes.
26. These processes provide the mechanism for dealing with requests within the time for compliance detailed in the Act. Consequently, in the Commissioner's opinion, given that the Cabinet Office had to determine whether it held the information, it was appropriate to make its response within the twenty working days.
27. The Commissioner is satisfied that the Cabinet Office procedures are reasonable in respect of the volume of FOI requests it receives and the varying degrees of complexity of the cases.
28. The question to be addressed is whether the Cabinet Office could have determined whether the Cabinet Office could have responded earlier than it did as soon as it determined that the information was not held.
29. The Commissioner has examined the chronology of this request as it progressed through the process followed by the Cabinet Office. On receipt of a request the Cabinet Office allocates the case to the correct unit. This unit then becomes the lead unit from where the case is progressed by commissioning searches to ensure capturing any relevant information. The contacts made for searches in this case involved the Permanent Secretary, a policy advisor, a senior Special Advisor and the Duty Clerk's Office. The Commissioner acknowledges that his decision as to what would represent an appropriate search strategy must depend on the circumstances of each case but he

expects to see evidence of a reasonable and logical search strategy. The Commissioner is satisfied that the process allowed for thorough and appropriate searches to be made.

30. The Commissioner requested further evidence of the workload in progress at the time of the request, but the Cabinet Office was reluctant to engage further on this point. However, the Commissioner is aware from his own experience that the cabinet Office's FOI workload is routinely heavy.
31. In all the circumstances, the Commissioner is satisfied that the response in this case was both prompt and within the time for compliance.

The Decision

32. 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:

- The public authority responded promptly and within the time for compliance.

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

- The public authority breached section 1(1)(a) by not specifically stating whether it held the relevant information.
- It also breached section 10(1) in not stating the aforementioned within the statutory time limit.

Steps Required

33. The Commissioner requires no steps to be taken.

Other matters

34. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

- The Cabinet Office provided an internal review 86 working days after the request. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this instance, the Cabinet Office's internal review took 86 working days to complete and there is no evidence that the additional time taken was warranted in this instance.
- The Commissioner notes that the Cabinet Office is included on his recently published list of public authorities failing to meet the section 10 time for compliance.

Right of Appeal

35. 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 served.

Dated the 5th day of January 2011

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."

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."