

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 February 2011

Public Authority: The Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Summary

The complainant requested information from the Home Office in relation to the early stages of the process by which cases reported to the police are investigated. The Home Office provided the complainant with links to information in the public domain. The complainant was dissatisfied with the way in which the Home Office handled her request for information.

The Commissioner has investigated and found that the exemption provided by section 21 (information accessible by other means) is engaged. Although the Commissioner identified a series of procedural shortcomings on the part of the public authority, he requires no steps to be taken.

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.

Background

2. The Home Office Counting Rules provide a national standard for the recording and counting of notifiable offences recorded by police forces in England and Wales (known as 'recorded crime'). The Rules were revised to take account of the National Crime Recording Standard (NCRS) which was adopted on 1 April 2002 with the aim of recording crime in a more victim-focused way and maintaining greater consistency between police forces in the recording of crime.

The Request

3. It appears that the complainant wrote to Jack Straw, the then Secretary of State for Justice, on 20 January 2010 with her request for information. Subsequently, having been advised this was a matter for the Home Office, she wrote to the Home Office on 23 March 2010:

"I understand that the police are to be forced to fully investigate every case reported to them under new Home Office rules.

My interest lies in cases where reports do not reach the registration stage, so there is no record, report or decision ever made within the criminal justice system.

With this in mind, I would be pleased if you would answer the following:

1. Could you please tell me what provision has been set in place to ensure that the police do record all reports/complaint of crime

and

2. if they refuse to record, what recourse is there?

This is a request under the Freedom of Information."

4. The Home Office responded on 21 April 2010. In this correspondence, the Home Office confirmed her request had been handled as a freedom of information request. It provided the complainant with links to some information in the public domain, including the National Crime Recording Standard (NCRS) and Home Office Counting Rules (HOCR). With respect to part (2) of her request, it advised her that if she was unhappy with the way in which the police have dealt with her report of an incident, she should refer the matter in the first instance to the Force Chief Officer.
5. On 21 April 2010 the complainant queried the Home Office's statement in its correspondence which said that the requested information was being released via the Home Office website. She was advised on 28 April 2010 that this was a standard paragraph which had been included in error.
6. The complainant contacted the Home Office again on 28 April 2010. In this correspondence she stated:
- "My request from the Home Office was a FOI request regarding the provisions of police forces to record all reports/complaints of crime and if they refuse, what recourse is in place.*

The reply from [name redacted], National Crime Registrar and yourself, you both indicate there is no information about the request I specifically asked [sic]. Therefore I must assume that there is no system or procedure available open to the public to rectify matters when this occurs.

Because of the confusion surrounding my request of 20 January that has been created, I would like you to confirm that you are saying categorically that there is no information about the request I specifically asked”.

7. The Home Office responded on 11 May 2010. In this correspondence, it told the complainant that it considered that her email of 23 March 2010 asked two questions, both of which it considered that it had answered. It explained that this was why its response:

“did not confirm or deny what information is or is not held, but simply answers your questions and directed you to information that is already in the public domain”.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 26 May 2010 to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

“I have clearly identified the information I requested, but for your benefit and understanding of my FOI request you will need to know that the Home Office Counting Rules and Standard for recording crime is not an option but is compulsory. The police must register and record all incidents of crime reported to them. It is at this particular point of entry to the criminal justice system that my FOI request is aimed. Only after this initial registration and an incident report made, do other factors come into play”.

9. In the Commissioner’s view, there has been considerable confusion as to the actual information being requested in this case. Although the complainant has variously used the terms “report”, “register” and “record” both in her request for information and her subsequent correspondence, the actual term used affects the understanding of the information that is being requested. It also appears that an article in the *Daily Telegraph*, which the complainant considered was of relevance to her request, served only to cause further confusion as the guidance it

referred to does not relate to the stage of the process she is interested in.

10. The Commissioner is required to make a decision as to whether a public authority has dealt with a particular request in accordance with the Act. The Commissioner's decision in this case relates solely to the Home Office's handling of the request of 23 March 2010 as detailed above.

Chronology

11. The Commissioner wrote to the Home Office on 16 July 2010 advising that a complaint had been received. The Home Office responded on 20 July 2010 acknowledging that it had responded to the complainant on 21 April 2010 citing section 21 of the Act (information accessible to applicant by other means). The Commissioner notes that, although the complainant was provided with links to information in the public domain, section 21 of the Act was not mentioned. The Home Office also told the Commissioner that it had no record of the complainant requesting an internal review of its response dated 21 April 2010.
12. The Commissioner wrote to the complainant on 19 October 2010 explaining that, in his view, the Home Office's reply of 21 April 2010 had provided her with links to information which in turn contain information relevant to points 1 and 2 of her request in that they describe the criteria for when and whether to record a report of an incident and the procedures in place. They also provide details of whom to contact, in the first instance, in relation to crime recording and detection decisions.
13. She replied on 21 October 2010 saying that her request for items (1) and (2) refers to the new Home Office rules mentioned in the first paragraph of her request. She also explained that:

"In December 2009, an announcement was made that the police will be ordered to investigate all incidents and forced to fully investigate every case reported to them under new Home Office rules to prevent victims' complaints being dismissed too quickly. It was within this context I wrote for a Freedom of Information request.

According to the above announcement, there would have been further explicit instructions from the Home Office in the precise manner in which incidents/crime is recorded and dealt with, so that each and every one is recorded".

14. On 30 October 2010 the complainant wrote to the Commissioner confirming her reference, during an earlier telephone call, to an announcement in December 2009 in the Daily Telegraph newspaper "regarding new rules and guidance that was to be issued for the police".

15. In an attempt to resolve the matter informally, the Commissioner wrote to the Home Office on 29 October 2010, advising it of the complainant's reference to the newspaper article. He asked the Home Office to provide him with the status of the guidance referred to in the article, for example if it existed and, if so, whether the Home Office holds the information.
16. Following further correspondence with the Commissioner, the Home Office wrote to the complainant on 3 December 2010. In this correspondence, the Home Office told the complainant that, with respect to new rules or guidance, the newspaper article refers to work undertaken by Her Majesty's Inspectorate of Constabulary (HMIC). It further explained that the work by HMIC relates to the way that some forces, having originally recorded a crime, then decided that no crime had taken place and cancelled the record. Following a report by HMIC, new guidance was issued providing forces with more details on what would be considered as sufficient information to support a decision to cancel the recording of a crime. The Home Office provided the complainant with a copy of the guidance.
17. The Home Office also told her:

"there are no rules that require forces to investigate all incidents, it is the case that decisions as to how, or if, any particular crime is investigated is a matter for the force's chief officer. The counting rules for recorded crime set out that forces should record all reports of incidents that appear to amount to a crime and to confirm them as a crime if on the balance of probability the crime in law occurred and there is no credible evidence to the contrary."
18. The complainant contacted the Commissioner on 5 December 2010 advising that she was not happy with the response and wished to pursue her complaint. In this correspondence she said that the Home Office is answering her request *"in the wrong context"*. She told the Commissioner:

"I understand that the Home Office counting rules apply in normal circumstances, but for instance, how can the police apply the Home Office counting rules, when no registration record exists for them to work from?"
19. The Commissioner wrote to the Home Office on 10 December 2010 asking it to confirm whether, given the clarification provided by the complainant, it holds the requested information. The Home Office responded on 22 December 2010.

Analysis

Substantive Procedural Matters

Section 1 General right of access

20. 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."

21. In this case, the Home Office did not explicitly confirm whether or not it held the requested information in its correspondence with the complainant. Consequently, on 7 May 2010, the complainant asked the Home Office:

"please confirm or deny the information I have asked for is held".

22. Although still not explicitly confirming or denying whether it held the requested information, during the course of the Commissioner's investigation the Home Office confirmed that links to information about the registering of incidents and the process following initial registration were provided to the complainant on 21 April 2010. One of these links was to the *Counting Rules for Recorded Crime* page on its website.

23. The Home Office drew the Commissioner's attention in particular to section 2 of the *Counting Rules for Recorded Crime* entitled *"General Principles"*. This states at point 2.1:

"All reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will result in the registration of an incident report by the police".

24. Having considered the matter, and following clarification from the complainant with regard to the requested information, the Commissioner is satisfied that the Home Office holds information of the description specified in the request.

Exemptions

Section 21

25. Section 21(1) of the Act provides that a public authority does not need to provide information under section 1 of the Act if that information is reasonably accessible to the applicant by other means.
26. The Home Office told the Commissioner that it cited section 21 when it replied to the complainant on 21 April 2010. However, having been provided with a copy of the correspondence, the Commissioner notes that, although telling the complainant that relevant information was publicly available and providing her with links to the information, the Home Office did not in fact refer to the exemption.
27. Having considered the matter and having had sight of the information which the complainant was provided the links to, the Commissioner is satisfied that section 21(1) of the Act is engaged.

Procedural Requirements

Section 16 Duty to provide advice and guidance

28. In breach of section 16(1), the Home Office failed to offer the complainant adequate advice and assistance, since it failed to advise her where, within the information publicly available, to find the information that satisfied her request. As a result of not doing so, the complainant was left in doubt as to how she could obtain the information which she was seeking.

Section 17 Refusal of request

29. Section 17 of the Act provides that:

"A public authority which ... is to any extent relying ... 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."*

30. In this case the Home Office failed to specify in its refusal notice dated 21 April 2010 that it was relying on an exemption and which exemption applied to the requested information. The Commissioner has therefore concluded that the Home Office was in breach of section 17(1)(a) and (b) of the Act.

The Decision

31. 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:

- it was entitled to rely on section 21(1).

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

- it breached section 16(1) by failing to provide adequate advice and assistance with respect to the information publicly available;
- it breached section 17(1)(a) by failing to specify that it was relying on an exemption; and
- it breached section 17(1)(b) by failing to specify the exemption in question.

Steps Required

33. The Commissioner requires no steps to be taken.

Right of Appeal

34. 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

35. 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.
36. 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 8th day of February 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

Section 16(2) provides that –

"Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Information Accessible by other Means

Section 21(1) provides that –

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