Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 February 2011

Public Authority: The Common Council of the City of London
Address: PO Box 270
Guildhall
London
EC2P 2EJ

Summary

The complainant contacted the Common Council of the City of London ('the CoL') on 31 May 2010 to ask whether it intended to release further information concerning Scientology in light of the recent Information Tribunal hearing of *Mr William Thackeray v Information Commissioner & The Common Council of the City of London (EA/2009/0095).* The CoL responded refusing to accept the complainant's email of 31 May 2010 as a valid information request under the Act, as it considered it only asked for its opinion. The complainant requested an internal review but again this was refused on the same grounds. He therefore approached the Commissioner. The Commissioner has given the matter careful consideration and he has concluded that the complainant's email of 31 May 2010 was a valid request for information under the Act. He has therefore ordered the CoL to comply with section 1(1) of the Act i.e. to confirm or deny whether it holds any recorded information of the description specified in the request and, if it does, to either provide that information or issue an appropriate refusal notice within 35 days of this Notice.

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. The complainant contacted the CoL by email on 31 May 2010 to request the following information:

> "Does CoL intend to release further information concerning Scientology, in light of the Information Tribunal's recent recommendation (Thackeray v ICO, para 46 – shown below) that it do so?"
>
> The Information Tribunal hearing the complainant is referring to is *Mr William Thackeray v Information Commissioner & The Common Council of the City of London (EA/2009/0095)* ('*Thackeray'*). Paragraph 46 stated:
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> "The Tribunal upheld the IC's Decision Notice and dismissed the appeal. It noted that Mr Thackeray sought an understanding of the reasons behind the decision taken by the Council that COSREC [The Church of Scientology Religious Education College] was entitled to rate relief. In the Tribunal's view, this would be better satisfied by disclosure of the underlying facts taken into account by the Council. In its view the case for disclosure was likely to be stronger in relation to material that was not legally professionally privileged given the significant public interests that arise in this case. The Tribunal was aware however that the Council had refused disclosure of such information in response to Mr Thackeray's further requests under the FOIA. The Tribunal wished to recommend to the Council that it reconsider its position in the light of this Tribunal's assessment of the public interests in favour of disclosure."

3. The CoL acknowledged receipt of the complainant's email on 1 June 2010 and advised the complainant that it would be referred to the relevant officer.

4. As the complainant received no response, he sent a further email to the CoL on 30 July 2010 to chase the matter up.

5. The CoL responded on 5 August 2010. It confirmed that the complainant's email of 31 May 2010 had also been sent as an information request under the Act via the "What do they know" website. It advised the complainant that it did not consider the email of 31 May 2010 to be a valid request under the Act, as it only asked for the CoL's opinion and would therefore not be responding any further.

6. The complainant contacted the CoL on 6 August 2010. He stated that he did not agree that his email of 31 May 2010 did not constitute a valid request for information under the Act. To avoid any misunderstanding, the complainant reworded his request as follows:

   "Please release further information concerning Scientology, in light of the Information Tribunal's recent recommendation (Thackeray v ICO, para 46) that you do so."

7. On 6 August 2010 the complainant also sent a separate email requesting the CoL conduct an internal review into its decision not to treat his email of 31 May 2010 as a valid request for information under the Act.

8. The CoL responded to the complainant's request for an internal review on 9 August 2010. It advised the complainant that it would not conduct an internal review because it did not consider his email of 31 May 2010 to be a valid information request.

9. The CoL issued a further response to the complainant on 12 August 2010. The CoL confirmed that it had treated his first email of 6 August 2010 (paragraph 6 above) as a valid request under the Act but wished to refuse this request under section 14(2) of the Act (repeated request). This was in relation to another request and not the request of 31 May.

10. The complainant contacted the CoL on 13 August 2010 to again request an internal review.

11. The CoL responded on 17 August 2010. It confirmed that it had undertaken an internal review of its response dated 12 August 2010 and remained of the view that section 14(2) of the Act applied to the information request it accepted on 6 August 2010. It referred to the complainant's email of 31 May 2010 and again informed the complainant that it did not consider this email was a valid request for information under the Act.

The Investigation

Scope of the case

12. On 6 August 2010 the complainant contacted the Commissioner to complain about the way his request for information dated 31 May 2010 had been handled. The complainant specifically asked the Commissioner to consider whether the CoL had acted appropriately by refusing to accept his email of 31 May 2010 as a valid request under the Act. He confirmed that he required a simple 'yes' or 'no' answer to this question and felt it was reasonable to assume the CoL may hold recorded information relating to this question, as it may have already begun reconsidering its position on disclosure as a result of the recent Information Tribunal hearing referred to above at the time of this email.

13. The Commissioner notes that the CoL later applied section 14(2) of the Act to the complainant's request of 6 August 2010. As the complainant did not raise the application of this exemption in his complaint to the Commissioner, it will not be considered in this Notice. As explained in paragraph 12 above, the complainant's complaint is that the CoL did not treat his email of 31 May 2010 as a valid request under the Act and because it failed to do so, he did not receive the 'yes' or 'no' answer he required.

14. The Commissioner's investigation has therefore focussed on whether the complainant's email of 31 May 2010 is a valid information request under the Act. This Notice will address this point and order any steps the Commissioner considers should be taken.

Chronology

15. The Commissioner wrote to the CoL on 6 September 2010 to inform it that he had received a complaint from the complainant and would be giving the matter formal consideration in due course.

16. The CoL wrote to the Commissioner on 12 October 2010 to provide some useful background to this request. It also provided a table of its correspondence with the complainant and explained in more detail why it remained on the view that the complainant's email of 31 May 2010 was not a valid request for information under the Act.

17. The Commissioner wrote to the complainant on 9 November 2010 to outline his view.

18. The complainant responded on 10 November 2010 to request a Decision Notice.

Analysis

Is the complainant's email of 31 May 2010 a valid information request under the Act?

19. As detailed above, the CoL argued that the complainant's email of 31 May 2010 was not a valid information request because it only asked for the CoL's opinion in relation to a recent Tribunal case and whether it would be releasing further information relating to the complainant's earlier requests as a result of this case.

20. The Commissioner has given this matter careful consideration. It is his view that any written question put to a public authority is technically an information request under the Act. This view is taken following the Information Tribunal hearing of *Richard Day v Information Commissioner & Department for Work and Pensions 9EA/2006/0069).*

21. In this hearing the Tribunal stated that the Act only extends to requests for recorded information. It does not require public authorities to answer questions or provide explanations unless the answer to the question or the explanation requested is held in recorded information. It is the Commissioner's view that the relevant consideration when any question is put to a public authority is therefore whether it holds recorded information which answers the applicant's question.

22. This approach is further supported by the Information Tribunal in the hearing of *Fowler v Brighton & Hove City Council (EA/2007/0089).* The Tribunal stated that:

> "…it is always possible that the council may hold recorded information which answers that question…"

23. In this particular case, the Commissioner accepts that it was reasonable for the complainant to assume that the CoL may hold recorded information which would answer his question. Following the Information Tribunal hearing of *Thackeray* the CoL may have commenced further internal deliberations on whether to release further information relating to COSREC's application for mandatory rate relief. The Commissioner was also investigating some of the complainant's earlier requests. He was aware of the significance of this ruling and the potential impact this may have on these earlier requests and contacted

the CoL two days after the date of the complainant's request to ask it to reconsider its position.

24. For the reasons explained above, the Commissioner is satisfied that the complainant's email of 31 May 2010 was a valid request for information under the Act. The CoL should have treated the email as a valid request and, in accordance with its duty under section 1(1), informed the complainant whether it held any recorded information which answered his question. As this question simply asked for a 'yes' or 'no' answer, it is likely that recorded information would only have been held at the time of the complainant's request if a decision had been reached by CoL on whether to release further information.

Procedural Requirements

25. As the CoL failed to treat the complainant's email of 31 May 2010 as a valid request for information under the Act, it failed to inform the complainant whether it held any recorded information of the description specified in the request. The Commissioner has therefore found that the CoL was in breach of section 1(1)(a) of the Act in this case.

26. As the CoL failed to accept the complainant's email of 31 May 2010 as a valid request for information under the Act, it failed to comply with section 1(1)(a) within 20 working days of the request. The Commissioner has therefore found the CoL in breach of section 10(1) of the Act in this case.

The Decision

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27. The Commissioner's decision is that the CoL did not deal with the complainant's request for information in accordance with the Act for the following reasons:

- it failed to identify the complainant's email of 31 May 2010 as a valid request for information under the Act, and in doing so;
- breached section 1(1)(a) by failing to inform the complainant whether it held any recorded information of the description specified in the request; and
- breached section 10(1) by failing to comply with section 1(1)(a)of the Act within 20 working days following the date of the request.

Steps Required

28. The complainant's email of 31 May 2010 should have been dealt with as a valid request for information under the Act. The Commissioner requires CoL to write to the complainant to confirm or deny whether it held any recorded information which answered his question at the time of the request. If it did hold recorded information, it should either provide this or issue an appropriate refusal notice explaining why the information was not disclosable at the time the request was made (ie 31 May 2010).

Right of Appeal

29. 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 9th day of February 2011

Signed ……

Gerrard Tracy
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

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.

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 the date of receipt.

Section 14(2)

Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.