

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 February 2011

Public Authority: Wigan Metropolitan Borough Council
Address: Town Hall
Library Street
Wigan
WN1 1YN

Summary

The complainant requested information relating to an on-street parking bay. The public authority disclosed the requested information but failed to do so within 20 working days. The Commissioner finds that, in failing to comply with the request within 20 working days, the public authority has breached section 10(1) of the Act. He requires no action 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.

The Request

2. On 4 August 2010, the complainant submitted the following request¹ to the public authority:

"Having spotted what appears to be the narrowest loading bay in the UK in Elliot St Tyldesley, I would like to ask under the FOIA.

- 1. What are the dimensions of the loading bay*
- 2. This bay as it stands requires special authorisation from the secretary of state please supply a copy of the authorisation*
- 3. Please supply the page number in the TSRGD where it states this type of bay can be used.*
- 4. Are Wigan Council parking services enforcing this Loading Bay in Elliot St Tyldesley.*
- 5. Are the council aware of their responsibilities under the disability discrimination act that they must provide at least 1.2 metres of footway for disabled in wheelchairs, Please provide the relevant legislation that the council use in order for them to decide that extending the loading bay onto the footpath is lawful.*
- 6. Please provide the information that the council uses to determine the minimum width of a footpath."*

The Investigation

Scope of the case

3. On 14 September 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 had requested information but had not received any response.
4. The Commissioner notes that, subsequent to the complaint being received, WMBC provided a response to the complainant's request. The complainant has not complained about the content of that response but has requested the Commissioner to issue a Decision Notice in respect of the delay in the response being provided.

¹ See http://www.whatdotheyknow.com/request/loading_bay_elliot_street_tyldes#outgoing-84398

Chronology

5. On 4 August 2010, the complainant submitted his request for information to Wigan Metropolitan Borough Council (WMBC). This was acknowledged by WMBC on the same day.
6. On 14 September 2010, the complainant contacted WMBC to inform it that its response was *"2 weeks late"* and that he had made a complaint to the Information Commissioner's Office.
7. On 22 September 2010, the complainant again contacted WMBC and asked it to respond to his request.
8. On 25 September 2010, the Commissioner wrote to WMBC and asked it to provide a response to the complainant's request.
9. On 27 September 2010, WMBC responded to the complainant's request.

Analysis

Procedural Requirements

Section 10 - 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."

10. In this case, the complainant submitted his request on 4 August 2010, a Wednesday. Normally, therefore, the twentieth working day following that date would have been Thursday 2 September, however due to the bank holiday of Monday 30 August, the twentieth working day was Friday 3 September.
11. The complainant was therefore mistaken in his characterisation of the response as *"2 weeks late"* by Tuesday 14 September 2010, two weeks from the statutory date for response being, in this case, Friday 17 September 2010.
12. Nevertheless, the public authority failed to provide its response until Monday 27 September, which exceeds the statutory 20 working days provided at section 10(1) of the Act. The Commissioner therefore finds that the public authority has breached section 10(1) of the Act.

The Decision

13. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- By its failure to comply with the request for information by the twentieth working day following the date of receipt of the request, the public authority breached section 10(1) of the Act.

Steps Required

14. The Commissioner requires no steps to be taken.

Right of Appeal

15. 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

16. 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.
17. 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

Pamela Clements
Group Manager, Complaints Resolution

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."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that –

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that –

"The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.

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(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(c) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(d) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

(e) prescribe different days in relation to different cases, and

(f) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(g) the day on which the public authority receives the request for information, or

(h) 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.”