

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 August 2011

Public Authority: The Consumer Council for Water
(‘CCW’)
Address: 1 Victoria Square House
Victoria Square
Birmingham
B2 4AJ

Summary

The complainant requested information about ‘grievance complaints’ and ‘internal complaints and appeals from staff’. The CCW refused to provide this information under section 40(2) of the Freedom of Information Act 2000. During the investigation the complainant agreed to limit his complaint to the procedural aspects of the case. The Commissioner finds that the CCW failed to meet the requirements of sections 17(1), 17(1)(b) and 17(7)(b).

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 wrote to the CCW on 21 March 2011 and requested the following information:

“[1] Upon speaking to your office, I understand that you have three Human Resources staff. I would like to know how were they recruited into your organisation? Whether they applied for the post and attended interview, or head-hunted, or offered by an internal officer without application nor interview?”

[2] How many grievance complaints had been brought within the Council between 1 January 2008 and 15 March 2011?

[3] How many of these grievance complaints had been upheld?

[4] Please provide a brief summary of these grievance complaints?"

3. On 23 March 2011 the CCW issued its response. It provided the information for request (1) and it confirmed or denied whether it had information for requests (2) to (4).
4. On the same day the complainant requested an internal review. He disputed the information that was provided in response to requests (2) to (4). The CCW replied also on the same day to explain its interpretation of what constituted a 'grievance complaint' – a complaint under its grievance procedure that had not been resolved informally.
5. Later that day, the complainant made a new request for the following information:

"[5] I also wish to obtain all information related to internal complaints and appeals by your staff, regardless whether they were dealt formally or informally, according to the specified period of time [1 January 2008 and 15 March 2011]."

6. On 25 March 2011 the CCW provided a partial answer to request (5). It provided summaries of the complaints received and their outcome. It explained that any further detail would contravene the Data Protection Act 1998. However, it did not specify any exemption that was being applied.
7. On 25 March 2011 the complainant wrote to explain that he was unhappy with the response and would refer it to the Commissioner. The CCW treated this as a request for an internal review.
8. On 11 April 2011 the CCW communicated the results of its internal review. It changed its position as follows:
 - it confirmed, for requests (2) to (4), that it should have said that it was unable to provide this information by virtue of section 40(2) – because the disclosure of any relevant information would lead to living individuals being identified;
 - it maintained its position for request (5);
 - it offered another chance for an internal review, but did not provide the Commissioner's details.

The Investigation

Scope of the case

9. On 25 March 2011 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 whether the exemptions were applied correctly. The Commissioner advised the complainant to wait for the internal review to be completed.
10. On 14 April 2011 the complainant confirmed that he had received the internal review and remained dissatisfied with it.
11. Following an exchange of correspondence, on 27 July 2011 the complainant confirmed that he wanted to limit his complaint to whether the CCW had satisfied the procedural requirements of the Act. Therefore, this Decision Notice only addresses whether the procedural requirements were satisfied by the CCW.

Chronology

12. On 18 April 2011 the Commissioner wrote to the complainant and the CCW to confirm that he had received an eligible complaint. He asked the CCW for a copy of the withheld information.
13. On 6 May 2011 the CCW provided the Commissioner with a copy of the withheld information and a file explaining why it had handled the request in the way that it did.
14. On 7 July 2011 the Commissioner wrote to the complainant to explain the nature of his role and to confirm the scope of his investigation. On 11 July 2011 the complainant agreed with the proposed scope of the investigation.
15. On 15 July 2011 the Commissioner wrote to the CCW to ask further questions about its handling of the request and to obtain its internal policies about grievances and complaints. On 27 July 2011 he received these answers.
16. On the same day the Commissioner wrote to the complainant to explain his preliminary verdict about the operation of the exemptions in this case. The complainant responded on the same day to confirm that he wanted a Decision Notice on the procedural issues that his case raised. On the following day, the Commissioner confirmed to both parties that this was what would be issued.

Analysis

Procedural Requirements

Section 17(1)

17. Section 17(1) requires a public authority to state and explain what exemption it is applying when withholding information. In the Commissioner's view this means that the public authority should state the exemption that it is applying down to its subsection, as well as explaining its application.
18. The CCW failed to state what exemption it was applying to the remaining information it held for request (5) at any time and so breached section 17(1)(b) and (c).

Section 17(7)(b)

19. Section 17(7)(b) requires that a public authority mentions the complainant's right to appeal to the Commissioner in each refusal notice and when each internal review outcome is communicated.
20. The CCW failed to mention the Commissioner's details in any of its communications with the complainant and therefore breached section 17(7)(b).
21. The full text of section 17 can be found in the legal annex attached to the end of this Notice.

The Decision

22. The Commissioner has decided that there were a number of procedural breaches of the Act in this case:
 - The CCW breached section 17(1) because it failed to issue a complete and accurate refusal notice in 20 working days;
 - The CCW breached section 17(1)(b) because it failed to state the exemption that it was relying upon for request [5]; and
 - The CCW breached section 17(7)(b) because it failed to provide the Commissioner's details.

Steps Required

23. The Commissioner requires no steps to be taken. This is because the remedial steps would not be able to remedy the breaches that have been noted above.

Other matters

24. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
25. Firstly, he wants to make a comment about the structure of the CCW's internal review procedure. Part VI of the section 45 Code of Practice recommends that complaints procedures (internal reviews) *'should be as clear and simple as possible'*. In his Good Practice Guidance No.5, the Commissioner qualifies this further by explaining that he does not expect an internal review to have more than one stage. In this case he has been concerned that there were at least two stages to the CCW's internal review procedure and would advise that this be reviewed.
26. In addition, the complainant has made a specific complaint about the internal review being conducted by a less senior individual than the one who answered his request. CCW explained that the review was conducted by someone independent but of equal seniority, but it was signed off by a less senior member of staff than the person responsible for the original response. Paragraph 40 of the section 45 Code of Practice explains:
- 'Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint.'*
27. The Commissioner considers that the lack of clarity in the internal review procedure was not ideal and led to the complainant having concerns about the internal review itself. He would advise as a matter of good practice that the CCW makes sure it is clear to the requester who is making the decision in the internal review and to explain why it is not reasonably practicable for more senior individuals to consider internal reviews when that is the case.

Right of Appeal

28. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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 25th day of August 2011

Signed

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

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

(3) 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 10 - Time for compliance with request

(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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid 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.

(3) If, and to the extent that—

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

(b) 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.

(4) 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.

(5) Regulations under subsection (4) may—

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—
 - (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

Section 17 - Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or 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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

- (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) 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.

Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—
 - (a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,
 - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
 - (d) alignment, combination, blocking, erasure or destruction of the information or data;
- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.