

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 September 2011

Public Authority: The British Library
Address: 96 Euston Road
London
NW1 2DB

Summary

The complainant requested a copy of a book from the British Library in an electronic format. The Library refused the request under section 21 of the Act, (available to the requestor by other means), and provided details to him as to how he could buy or inspect the book at his local library or at the British Library without using his rights under section 1 of the Act. The Complainant then wrote back stating that he was aware that he could access the information in these ways, however he had asked for the information to be provided in electronic format, and this was not currently accessible in that format. The Commissioner's decision is that the British Library was correct to apply section 21 to the information.

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 2 March 2011 the complainant requested from the British Library:

"Under FOIA, I request that you provide, in electronic format to this email address, the following book:

Attack, Jon. A piece of blue sky : Scientology, Dianetics, and L. Ron Hubbard exposed / (New York, NY : Carol Pub. Group, 1990.)

91/10703 (081840499X) "

Please include all pages. Monochrome will be fine."

3. The British Library responded on 4 March 2011. It accepted that it held the information however it refused the request on the grounds that section 21 of the Act applies. Section 21 of the Act provides that information is exempt from disclosure under the Act where it is available to the applicant by other means. The Library also provided the complainant with information on how to access the information through the normal library service should he wish to do so and also highlighted that it could be bought from commercial booksellers.
4. On the same day the complainant wrote back to the authority and requested that it review its decision. He stated that he was aware that he could buy a copy of the book or order it via the normal library service; however he wished an electronic copy of the book, which was not currently available through these means.
5. The authority responded on 1 April 2011. It said that the information was exempt under section 21 and that it would not in any event provide the information in the format requested as doing so would breach copyright laws.

The Investigation

Scope of the case

6. On 1 April 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 information which he had asked for should have been disclosed to him.

Chronology

7. On 26 April 2011 the Commissioner wrote to the authority confirming that an eligible complaint had been made by the complainant. The Library wrote to the Commissioner on 26 April 2011 confirming that the information which was exempted was a published book, in copyright, and widely available for sale.

Findings of fact

8. The exempted information is a published book which can be bought quite freely from various sources. The Commissioner has not been able to find any electronic copy of the title for sale.

Analysis

Exemptions

9. Section 21 of the Act provides that information will be exempt from disclosure where the information is reasonably accessible to the applicant otherwise than under section 1. Hence where the applicant is able to easily obtain access to the information without making a request under the Act then the information will be exempt from disclosure under the Act.
10. In its response to the complainant the British Library confirmed that it held the information in hard copy form, and told the applicant various means of obtaining or inspecting a copy of the book. It said that he could visit the library itself to inspect a copy, or arrange with his local library to obtain a copy of it in order that he could inspect the information there. It also confirmed that copies of the book would be available to buy from commercial outlets.
11. The Commissioner notes that the library's refusal was an outright refusal under the Act. It was not a refusal to provide the information in the format requested by stating to the complainant that he could inspect the information on its premises etc. It clearly refused the request under section 21 and clarified how that information could obtain be accessed in order to justify its reliance on the exemption.
12. The Commissioner is satisfied that the complainant could have obtained the information from any of the suggestions which were made, and that the information was itself therefore easily accessible to the complainant. The Commissioner has checked with online book merchants and can confirm that they do currently provide copies of the book for sale. The library was also clear that a copy could be inspected at its facilities or provided to the complainant's local library if he so wished.
13. The Commissioner notes the complainant's argument that the information is not available in an electronic format, and under section 11 of the Act he has a right to express the format in which he wishes to receive the information concerned. However the Commissioner agrees with the British Library's counter argument; the provisions of

section 21 refer to the accessibility of the information, not the format in which that information is available. The Commissioner has established that the complainant has the ability to access that information easily, albeit not in the format in which he wishes, and therefore section 21 is applicable to the information. The provisions of section 11 are not therefore relevant in establishing whether section 21 is applicable or not. The Commissioner therefore considers that section 21 is applicable to the information.

14. Section 21 of the Act is an absolute exemption. There is therefore no requirement for the Commissioner to carry out a public interest test as regards this information.

The Decision

15. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

16. The Commissioner requires no steps to be taken.

Right of Appeal

17. 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,
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

18. 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.
19. 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 13th day of September 2011

Signed

**Andrew White
Group Manager
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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Means by which communication can be made

Section 11(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

Section 11(2) provides that –

“In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so”

Section 11(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination”

Section 11(4) provides that –

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

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.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (d) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (e) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”