

Freedom of Information Act 2000 (Section 50)

Decision Notice

8 December 2008

Public Authority: Office for Standards in Education
Address: Alexandra House
33 Kingsway
London
WC2B 6SE

Summary

The complainant requested information from the evidence relating to a school inspection which took place in March 2006. Initially, the public authority stated that it did not hold the information but later provided some information that the complainant had intended to be covered by the scope of the request. In not providing the information within 20 working days, the Commissioner finds that the public authority breached section 10 of the Act.

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 made a request to the public authority (PA) on 30 March 2006 in the following words:

"In the [March 2006] school inspection report it states that over recent years the governing body has "effectively addressed some difficulties"

Using the Freedom of Information Act I request copies and/or information of these "difficulties"

3. The PA responded to the request on 28 April 2006. It stated that it did not hold any information matching the request and went on to say that the inspection

record did “not include any detail of the ‘nature of the difficulties’ referred to in the report, about which you requested clarification.”

4. The complainant wrote again to the PA on 4 May 2006 to explain that it had incorrectly interpreted his request and made reference to a telephone conversation with an individual at the PA. It seems that the type of information that the complainant wants access to was discussed. The complainant states that he was advised by this individual to write again to request the information.
5. Within this letter, the complainant made a further request for information, seemingly to clarify the initial one. This time, he requested:

“... copies and/or information, including, to avoid any misunderstanding, all notes and documents, including pre-inspection briefing notes, evidence forms relating to “difficulties” concerning the sentence that over recent years the governing body has “effectively addressed some difficulties” which appeared in Ofsted school inspection number:- 276942. This request is the basis of my previous request dated 30/03/06.”
6. A letter from the PA dated 19 May 2006 states that a representative of the PA tried to discuss the matter with the complainant but that the complainant felt it was unnecessary to do so.
7. The PA wrote again on 25 May 2006 and stated that the above request was the same one as was dealt with in its 28 April 2006 response and reiterated that the information was not held.
8. In reply to this letter, the complainant wrote on 27 May 2006 to request an internal review. Within that letter, the complainant made reference to the telephone conversation with a representative of the PA. He stated that he telephoned the PA to discuss the scope of his request. The PA gave the example that a new head teacher would be classed as a “difficulty” in accordance with the quote in the report and the complainant stated that this was the type of information that he was requesting. He went on to say that the representative’s tone became aggressive and that this was why he wrote again on 4 May 2006.
9. The complainant clarified that his request was for notes taken during the inspection and stated, with reference to the statement that a new head teacher would be regarded as a “difficulty”, that it was that and similar information that he had requested. He also stated that the notes taken in the meeting between the Ofsted Inspector and himself were what he had requested.
10. On 14 June 2006, the PA wrote to the complainant with the outcome of the internal review. It states that the reviewer was unable to find a request, prior to 27 May 2006, for the notes taken during the meeting between the inspector and the complainant but encloses them. It goes on to say that the single reference within the inspection evidence to the “difficulties” faced by the governing body does not provide an explanation of what those difficulties were. A quote from the handwritten notes is provided within the letter.

11. The review concluded that all information relating to the complainant's requests has been provided and that it is unable to assist where information has not been recorded.

The Investigation

Scope of the case

12. On 28 June 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. The complainant also raised other issues in relation to an investigation by the Independent Complaints Adjudicator that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

14. The Commissioner wrote to the PA on 24 August 2006 to explain that he had received a complaint and to request its input into his investigation of it.
15. On 1 September 2006, the PA responded to the Commissioner, the letter enclosed two evidence forms – the one completed at the meeting between the complainant and the inspector and the one completed at the meeting between the inspector and the Chair of Governors. It also confirmed that the former had been provided to the complainant along with relevant text from the latter, at internal review stage.
16. It further states that no additional information was held and that the complainant did not request the notes pertaining to his own meeting with the inspector until the request for internal review.
17. The Commissioner discussed this matter with a representative of the PA on the telephone on 17 October 2006. The PA agreed to release the full document of the handwritten inspector's note from the meeting with the Chair of Governors. This was on the understanding that it would be a one-off disclosure in confidence and that the complainant would not allow anyone else access to the information.
18. In the above circumstances and as the complainant appeared to have received all information that related to his request, the Commissioner felt it appropriate to conclude the matter on the basis that the complaint had been informally resolved. This was confirmed in a letter each to the PA and the complainant of 14 November 2006.
19. The complainant was not satisfied with this outcome, however and complained on 22 November 2006 via the Commissioner's complaints procedure alleging that the PA had deliberately delayed in providing him with the information pertinent to his request.

20. On 4 January 2007, the Commissioner wrote to the PA to ask for its comments in light of the service level complaint regarding the Commissioner's decision to informally resolve the case.
21. A comprehensive response was sent by the PA on 28 January 2007. This stated the PA's position on all aspects of the matter:
 - That the complainant only requested the notes relating to his meeting with the inspector, in the 27 May letter within which he requested an internal review.
 - It does not accept that it acted improperly with regard to information provided to the complainant or that any section of the Act was breached.
 - The information provided does not satisfy the request as it does not provide details of the difficulties referred to in the inspection report. The requested information is therefore, not held.
 - The complainant's opinion that release of information was deliberately delayed is disputed, as is the suggestion that information was only released as a result of an investigation into another complaint from the same individual by the Independent Complaints Adjudicator.
 - It feels that the request was sufficiently clear and no clarification was necessary. It therefore also feels that its obligations under section 16 of the Act with regard to advice and assistance were fulfilled.
 - The quote from the evidence form relating to the meeting between the inspector and the Chair of Governors and then, later, the full document as provided in confidence to the complainant were given in order to demonstrate the limitation of information that was held, not as the information that was requested.
 - It properly discharged its duties under the Act.
22. In an email of 1 June 2007, the Commissioner posed a series of further questions to the PA in order to establish the process followed when the request was received and to confirm that due searches had been carried out to identify any/all information held.
23. Those questions were responded to on 4 June 2007 by the PA and the Commissioner subsequently attended at the PA's offices on 30 November 2007 to inspect all the records held in relation to the Inspection Report. The Commissioner is satisfied following his inspection, that no further information pertinent to the request is held.
24. The PA followed the meeting up with an email to the Commissioner of 7 December 2007. This addressed section 16 of the Act which had been briefly discussed at the meeting and included consideration of the Information Tribunal's decision in *Berend v the Information Commissioner and London Borough of Richmond upon Thames (LBRT) EA/2006/0049 & 50*.
25. Having considered section 16 and the section 45 Code of Practice, the PA felt that the request was perfectly clear and did not require any clarification. This being the case, it felt that the circumstances were different and therefore, that *Berend* did not apply.

26. On 13 February 2008 the Commissioner put the point to the PA that the complainant felt that for a sentence such as the one in the report to make reference to 'difficulties' there was an argument to support that one would expect there to be a record of what those difficulties are. The response from the PA of 27 February 2008 enclosed a complete copy of the evidence used for the report, it also explained that all the information relied upon for reports is contained within the evidence and that the only reference to the difficulties is made within the evidence form recorded in the meeting between the inspector and the Chair of Governors which has now been provided to the complainant. The Commissioner is satisfied with this explanation.

Analysis

27. Section 1(1) of the Act states that a person making a request is entitled to be informed whether information is held and if it is, to have that information communicated to him. Section 1(3) states that a public authority is not obliged to comply with section 1(1) if it requires further information in order to deal with the request, unless that further information is supplied.
28. Section 16(1) of the Act states that public authorities have a duty to provide advice and assistance. In line with the decisions made by the Information Tribunal in the cases of *Berend / LBRT* (as quoted above), *Meunier / National Savings & Investments EA/2006/0059* and *Barber / Inland Revenue EA/2005/004* the Commissioner's viewpoint is that:
- a) where a PA is aware that a request can be interpreted in more than one way and it therefore needs further information to identify the information requested, it will have a duty under section 16 to assist the complainant in clarifying the request, whereas;
 - b) where a PA is only aware of one objective reading but it is later found that the request can be objectively read in two or more ways, there will be a breach of section 1(1) relating to the complainant's intended alternative objective reading of the request if the public authority has not confirmed or denied it holds the information, or it has not been provided; but
 - c) where the request as phrased does not make sense and there is, therefore, no objective reading of it; the PA will need to clarify under section 1(3) and will have a duty to assist the applicant in accordance with section 16.
29. In this case, the PA has made it clear that it sees only one objective reading of this request, similar to b) above. The Commissioner, having considered the points made by the complainant and his own reading of the request, is satisfied that it later transpired that there was another possible objective reading. In the circumstances however, the PA did not breach section 1(1) as all the information held in relation to the request read either way was provided by the time the internal review was concluded. The Commissioner's approach will be to consider the position at the time of the completion of the internal review although in some cases he will look at the circumstances as they stood at the time for statutory compliance. Such cases will include where the public authority has failed to carry

out an internal review or where no valid response to the request was made at all. This approach is supported by comments made by the Information Tribunal in *McIntyre v Information Commissioner and Ministry of Defence EA/2007/0068*:

“...the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made...”

30. As the PA was not aware of another objective way of reading the request, there is no breach of its duty to provide advice and assistance under section 16.
31. Section 10 of the Act states that a PA must comply with section 1(1) within 20 working days. The PA did not provide the pertinent information – the quote from the handwritten notes regarding the meeting between the inspector and Chair of Governors - in response to the request but rather to demonstrate the limit of what was held in the belief that the scope of the request did not include this information. However, it was nonetheless, provided at internal review stage. The Commissioner feels, therefore, that it is appropriate to find the PA in breach of section 10 as it did not provide the information within 20 working days of receipt of the original request. The Commissioner is satisfied that this information falls within the scope of that requested by the complainant.
32. The complainant feels that the record of his own meeting with the inspector prior to the inspection of the school was included in his original request for information of 30 March 2006 as clarified by his letter of 4 May 2006. The Commissioner is satisfied that this particular information amounts to the complainant's personal data and as such, should be considered under the data protection legislation, not freedom of information. He will therefore give this aspect of the matter no further consideration save for reference made to it in the 'Other Matters' section of this Decision Notice.

The full text of each of the sections of the Act referred to above can be found in the attached legal annex.

The Decision

33. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. It breached section 10(1) in not providing the information within 20 working days.

Steps Required

34. The Commissioner requires no steps to be taken.

Other Matters

35. The Commissioner's role is one of dual capacity; he is the regulator for both the Freedom of Information Act and the Data Protection Act (DPA). It is therefore appropriate that he take this opportunity to point out that the PA, when responding to the complainant's request for the notes taken at his meeting with the Ofsted Inspector, should have dealt with it as a subject access request under the provisions of the DPA as opposed to a request for information under the Act.
36. Finally, the Commissioner notes that the complainant seems to feel that the PA deliberately delayed or avoided providing the information requested. Such an issue, if found to be the case, would be a breach of section 77 of the Act. The Commissioner is satisfied that there is no evidence of this having taken place. Although it later (when requested to by the Commissioner) provided the complete evidence form document, (from the meeting between the inspector and the Chair of Governors) to the complainant, it does not appear that the rest of document beyond the quote provided at internal review stage is relevant to the request. The pertinent information therefore was disclosed, albeit not until review stage.. No deliberate delay appears to have occurred.

Right of Appeal

37. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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 served.

Dated the 8th day of December 2008

Signed

**Steve Wood
Assistant Commissioner**

**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.”

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.”

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”.