

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 September 2010

Public Authority: The governing body of
Pentrobin St John School
Address: Church Lane
Penymynydd
Chester
CH4 0EN

Summary

The Complainant submitted a request for information but the public authority failed to respond to the request or provide the information until a late stage in the Commissioner's investigation. The Commissioner finds the public authority in breach of section 1(1)(a) and (b), section 10(1) and section 19(1)(b) of the Act. The Commissioner requires no steps 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.

Background

2. The complainant has submitted various requests for information to church schools within the Diocese of Hawarden. He has received responses to some of these requests, but the diocese has recently adopted the practice of referring the complainant's requests to its solicitors, for response. The Commissioner is aware of several other cases which have been brought to him by the complainant and observes that this practice of delegating the task of responding to

requests has had the effect, in the other cases noted, of significantly delaying the response beyond the statutory timescales permitted by section 10 of the Act. This case has been similarly referred to the Diocese's solicitors.

The Request

3. The complainant submitted a request to the school by email on 21 October 2009, stating:

"Please send a copy of the minutes of all of the meetings of governors held since 1st September 2008.

Please send in the post an original copy of the school prospectus/ leaflet currently in use and previous ones going as far back in time as supplies remain in stock/ Please give the date of each one where not stated therein. Please do not send photocopies, only original leaflet/prospectus."

4. The complainant did not receive a response to this request and sent a reminder on 16 November 2009. No reply was received to this reminder.

The Investigation

Scope of the case

5. On 24 November 2009 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:
 - The school had not responded to his request.
 - The school had a habit of ignoring his requests.
 - One of the school governors had recently informed him that no response would be sent to him at this time, and that he was considered to be a nuisance.
6. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

7. The Commissioner attempted to contact the school by email on 14 December 2009, asking if a response had been provided to the complainant. No response was received and the Commissioner sent a further copy of the same letter, by post, to the school on 11 January 2010.
8. On 29 January 2010, having not received a response or acknowledgement of the above, the Commissioner wrote again to the school, asking it to provide a response to the complainant within the next 10 working days, and providing guidance which was judged might be of assistance to the school.
9. The Commissioner also wrote to the complainant on 11 January 2010 to keep him informed of the progress of his complaint. The complainant responded on 12 February, informing the Commissioner that no response had been received from the school.
10. On 16 February 2010, the Commissioner wrote to the school to inform it that the complaint was to be referred for formal consideration under the Act. The complainant was also informed on the same date.
11. On 18 February 2010, the Commissioner contacted the school by telephone and left a voicemail request for the head teacher to contact him about the complaint.
12. On 22 February 2010, the Commissioner again telephoned the school and spoke to the school secretary. The secretary informed the Commissioner that the matter had been passed to the chairman of the governors, for response. The Commissioner requested that a message be passed to the chairman asking him to contact the ICO, explaining that failure to respond to a request, or engage with the ICO, would be likely to lead to the issuing of an adverse Decision Notice, and that failure to comply with such a notice would be punishable as a contempt of court.
13. The Commissioner subsequently received a call, also on 22 February 2010, from the diocesan solicitor, informing him that the solicitor would be handling the matter and that a response would be provided within the next few days.
14. On 2 March 2010 the Commissioner contacted the complainant to update him on these developments.

15. On 15 March 2010 the Commissioner telephoned the diocesan solicitors and left a message requesting an update on its progress towards a response. Having not received a reply, he sent a similar request by email on 22 March.
16. On 30 March 2010 the Commissioner received an email from the complainant, indicating that he had still not received any response. The Commissioner again telephoned the diocesan solicitors and left a message requesting an update on its progress.
17. On 31 March 2010 the Commissioner wrote to the diocesan solicitors, expressing concern that no response had been provided and reminding it that responsibility for compliance with the Freedom of Information Act rests with the school, which risks censure if its response is delayed by having been delegated to a third-party.
18. The diocesan solicitors sent an apology to the Commissioner on 7 April 2010 and the Commissioner telephoned the solicitors again on 12 April. The solicitors indicated that the school was minded to issue the complainant with a fees notice, explaining that it was prepared to provide material to parents, but other requests would be subject to a fee. The Commissioner discussed the application of fees to the request with the solicitor, who undertook to advise his client to comply with the request. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) do not apply to information that should be routinely made available, for example, through a public authority's publication scheme.
19. On 26 April 2010 the Commissioner emailed the diocesan solicitors, requesting an update on its progress with the response. The solicitors replied on 29 April, indicating that he anticipated a meeting with the head teacher within the next few days, at which the matter would be addressed.
20. On 10 May 2010, the Commissioner received an email from the complainant, indicating his concern at the continued lack of a response, noting that if no response had been provided by the end of term, the matter would not be resolved during this academic year.
21. The Commissioner emailed the diocesan solicitors on 11 May 2010, advising him of the complainant's concerns and observing that, due to the apparently straightforward nature of the request, there was no apparent reason for the further delays. He requested that the solicitor warn his clients that if no response was forthcoming by the next half-term break, he would consider the serving of a Decision Notice in the matter.

22. The diocesan solicitor replied on 11 May 2010, confirming that the matter was being responded-to by the school and also its assurances that the information would now be sent out to the complainant. The Commissioner informed the complainant of this.
23. On 28 May 2010 the Commissioner attempted to contact the school, and also the diocesan solicitors, to establish whether a response had been provided, noting that the half-term break was about to begin. He was unable to reach either party.
24. On 1 June 2010 the complainant contacted the Commissioner to inform him that the requested information had still not been provided.
25. On 7 June 2010 the Commissioner received a telephone call from the school and subsequently spoke to the head teacher, who confirmed that the school maintains a publication scheme and that the requested information falls within the class of information covered by the publication scheme. The information had not been disclosed to the complainant because the chairman of the governors had taken the matter out of the head teacher's hands, informing him that the request was being referred to the diocesan solicitors for response.
26. The head teacher also informed the Commissioner that he had received instructions to disclose the information in a message from the diocesan solicitors on 27 May 2010. As he was absent from the school on that day, he did not receive the message and was unable to take action prior to the half-term break. He undertook to provide the requested information within the next few days.

Analysis

Substantive Procedural Matters

Section 1

27. The complainant confirmed receipt of the requested information on 14 June 2010. This was during the course of the Commissioner's investigation. By its failure to confirm information was held by it and for failing to disclose that information within the time for compliance the public authority breached section 1(1)(a) and 1(1)(b) of the Act.

Section 19

28. The Commissioner considers that the requested information is, material which would be likely to be freely available as it is information which his guidance suggests would be expected to be included in a school's publication scheme. His guidance suggests that the minutes of the meetings of school governors, and current school prospectuses, would be expected to be included in a publication scheme¹ and that therefore this should be considered publicly available information.

29. The school has confirmed that the requested information is contained in its scheme. The failure to make the information available in accordance with its publication scheme is consequently a breach of section 19(1)(b) of the Act.

Section 10

30. By 14 June 2010, a period of 160 working days had elapsed since the complainant submitted his request. This is a delay substantially beyond the 20 working days permitted by the Act and therefore the public authority has also breached section 10(1) of the Act.

The Decision

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

- By failing to confirm or deny that information is held, and failing to make this information available within the time for compliance, the public authority has breached sections 1(1)(a) and 1(1)(b) of the Act.
- By failing to provide a response within 20 working days, the public authority has breached section 10(1) of the Act.
- By failing to provide information contained in its publication scheme, the public authority has breached section 19(1)(b) of the Act.

¹ See

http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/definition_document_schools_england.aspx

Steps Required

32. The Commissioner requires no steps to be taken

Other matters

Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

33. The public authority has failed to engage with the complainant, preferring to refer the matter to its solicitors for response. The Commissioner observes that it is the public authority which bears the responsibility for compliance with the Freedom of Information Act and if, by delegating that responsibility to a third-party, the public authority commits breaches of the Act, for example in delays to the response beyond the statutory timescales, it is the public authority which is held responsible for those breaches. The Commissioner recommends that the authority familiarise itself with the section 45 Code of Practice² if it has not already done so. The Code contains guidance on the practice authorities should follow in dealing with requests for information and subsequent complaints.

34. The public authority has also declined to engage fully with the Commissioner's investigation, opting instead to delegate the matter to its solicitors. While the Commissioner acknowledges that it may be unrealistic to expect similar standards of compliance from a small public authority as from a large public authority with resources dedicated to freedom of information, he nevertheless finds it noteworthy that this particular public authority appears to have chosen instead to withdraw almost entirely from the matter.

35. The Commissioner notes that where professional representatives are engaged on behalf of a small public authority they should be aware that any delay on their part in resolving the matter will result in a breach of the statutory duty on the part of the public authority. Solicitors who routinely act for small public authorities such as the diocesan solicitors in this case need to be particularly aware of this.

² available online at: <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

Right of Appeal

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 23rd day of September 2010

Signed

**Rachael Cragg
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".'

S.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.'

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 –

(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.'

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 –

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

Section 10(6) provides that –

'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 Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'

S.13 Fees for disclosure where cost of compliance exceeds appropriate limit

Section 13(1) provides that –

'A public authority may charge for the communication of any information whose communication –

(a) *is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and 12(2), and*

(b) *is not otherwise required by law,*

such fee as may be determined by the public authority in accordance with regulations made by Secretary of State.'

Section 13(2) provides that –

'Regulations under this section may, in particular, provide –

(a) *that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the regulations, and*

(b) *that any fee is to be calculated in such a manner as may be prescribed by the regulations.'*

Section 13(3) provides that –

'Subsection (1) does not apply where provision is made by or under any enactment as to the fee that may be charged by the public authority for the disclosure of the information.'

S.19 Publication Schemes

Section 19(1) provides that –

'It shall be the duty of every public authority –

(a) *to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a 'publication scheme'),*

(b) *to publish information in accordance with its publication scheme, and*

(c) *from time to time to review its publication scheme.'*

Section 19(2) provides that –

'A publication scheme must –

- (a) specify classes of information which the public authority publishes or intends to publish,*
- (b) specify the manner in which information of each class is, or is intended to be, published, and*
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.'*

Section 19(3) provides that –

'In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and*
- (b) in the publication of reasons for decisions made by the authority.'*

Section 19(4) provides that –

'A public authority shall publish its publication scheme in such manner as it thinks fit.'

Section 19(5) provides that –

'The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.'

Section 19(6) provides that –

'Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.'

Section 19(7) provides that –

'Where the Commissioner –

- (a) refuses to approve a proposed publication scheme, or*
- (b) revokes his approval of publication scheme,*

he must give the public authority a statement of his reasons for doing so.'