

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 August 2010

Public Authority: The British Council
Address: 10 Spring Gardens
London
SW1A 2BN

Summary

The complainant requested information from the British Council relating to its sponsorship of students on English language courses at its Teaching Centre in Tripoli, Libya. The Council provided some information and withheld other information under section 40(3) of the Act. The complainant argued to the Commissioner that the Council held further information which had not been provided to him. The Commissioner's decision in this case is that no further recorded information is held in relation to the complainant's request. However the Commissioner found the Council breached section 10(1) of the Act as it failed to provide the complainant with all non exempt information within twenty working days of the request.

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 British Council is a non-departmental public body which acts as the UK's international cultural relations body. The Council provides international educational and cultural opportunities, including the sponsorship of students on English language courses at various British Council Teaching Centres. The complainant in this case has

made a number of information requests to the Council in relation to these sponsorships and other matters that are the subject of separate Decision Notices. This Decision Notice deals only with the complainant's request of 21 January 2007 regarding the nature of student sponsorships by some British Council Centre Directors and a refined request dated 17 February 2007 for information relating to the sponsorship of students by the British Council in Tripoli, Libya.

The Requests

The first request

3. On 21 January 2007 the complainant made the following request for information to the Council via email:

"I was recently informed that at some British Council Centres, the Director sponsors students on English language courses at their Teaching Centre. I am very interested to know whether these are charitable acts by the Directors themselves who personally provide sponsorship, whether it is the British Council policy to provide, in effect local scholarships.

I would appreciate it if you could provide me with information – for example a policy document – that would answer the above questions, define what this sponsorship entails and detail the criteria the British Council recommends in respect of sponsorship, e.g. how should candidates be selected? Are there any limits on numbers or the amount of sponsorship?"

4. The complainant contacted the Council on 31 January 2007 and again on 15 February 2007 as he had not received any acknowledgement of his request.

The second request

5. On 17 February 2007 the complainant repeated his original request and also submitted a further request as follows:

"This is a request under the FOI Act.

Please supply me with information relating to the sponsorship of students by the British Council, Tripoli, Libya. The courses in question are those English language courses conducted at that centre's own Teaching Centre. Courses first started in November 2006 and the second term is now in progress. I would like information relating to all courses conducted/in

progress to date together with information currently available for future terms.

The information required is:

For each term:

The number of students sponsored (paid for) by the British Council.

The cost of this sponsorship.

The names of sponsored students.

For each student, the justification for sponsoring.

And more generally:

Where the money for sponsorship comes from – i.e. what budget is used and where the available funds originate.

Please include copies of material which you hold in the form of paper and electronic records including emails.

I would be grateful if you would supply this information by email. If this is not possible for any item please contact me by email...

I look forward to hearing from you promptly, as required by the legislation, and in any case within 20 working days..."

6. On 20 February 2007 the Council responded to the complainant, providing a précis of the information requested in response to the first sponsorship request and suggesting to the complainant that it concentrates its resources on his second request. The complainant agreed with the Council's proposed approach in managing his requests.
7. On 12 March 2007 the Council provided the complainant with its response to the second request. The Council provided most of the information requested but withheld some personal information under section 40(3) of the Act.
8. On 21 March 2007 the complainant emailed the Council disputing the completeness of its response on the basis that it was at variance with the facts as he understood them. The complainant stated that he required copies of the actual information and information relating to the justification of each individual student sponsorship. He did however accept that certain personal information would be exempt.
9. The Council responded on the same day to advise that it had checked with the Council's Tripoli Teaching Centre and believed the information they supplied to be accurate. The Teaching Centre had

however agreed to double-check this information. The Council did however ask the complainant in what way he believed the information supplied to him was inaccurate.

10. On 1 April 2007 the complainant emailed the Council to enquire if there had been any further progress in relation to his enquiry. The complainant did not respond to the Council's request for clarification.
11. On 3 April 2007 the Council emailed the complainant to advise that the Tripoli Teaching Centre had rechecked its records and identified one additional place that had not been originally communicated to him. The rechecking exercise also identified two instances where students listed as sponsored had actually paid for their places themselves.
12. On 17 April 2007 the Council advised the complainant that it would ask the Tripoli Teaching Centre for further clarification on sponsorship justification. The Council also referred the complainant to several publications available on the internet.
13. On 18 April 2007 the complainant emailed the Council and requested sight of non-personal information from the receipts he had requested. The Council responded on the same day providing copies of the two receipts requested with the personal data removed.
14. On 24 April 2007 the complainant emailed the Council and advised that its responses had excluded one of the sponsored students he was aware of. The complainant then went on to provide information on the student in question and asked the Council to recheck its records. The Council agreed to again check with the Tripoli Teaching Centre.
15. On 30 April 2007 the Council confirmed to the complainant details of one additional sponsored student which had not been included in its response. The Council went on to provide the complainant with some details of the student in question and apologised for the confusion caused. The Council did however express concern about the level of knowledge the complainant had about student numbers.
16. On 2 May 2007 the complainant responded to the Council and repeated his request for further documentation relating to student sponsorship justification as requested on 21 March 2007. He sent a further reminder to the Council on 16 May 2007.
17. On 18 May 2007 the Council acknowledged the complainant's email and advised it would respond shortly.

The Investigation

Scope of the case

18. On 22 May 2007 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant asked the Commissioner to consider the following points:
- The Council's failure to answer his requests within 20 working days;
 - The Council's response to the complainant's request was incomplete;
 - Excessive delays in replying to the complainant's communications and "seemingly deliberate attempts to be obstructive and hide information".
19. The complainant also advised the Commissioner that the FOI section of the Council's website was not working correctly. The Commissioner has dealt with this issue in 'other matters' section below as it relates to good practice rather than a requirement of the Act.
20. Having made his complaint to the Commissioner the complainant continued to correspond with the British Council on the matter. The complainant remained dissatisfied with the Council's responses, and the Council maintained that it had provided all the relevant information it held, with the exception of some personal data which was exempt under section 40(3) of the Act.

Chronology

21. Regrettably the Commissioner was unable to commence his investigation in this case until August 2008, owing to the large volume of complaints under consideration.
22. On 5 August 2008 the Commissioner wrote to the Council in relation to its handling of the request. On 1 September 2008 the Council provided a detailed response to the Commissioner.
23. On 11 November 2008 the Commissioner contacted the Council with further enquiries. The Council responded on 20 January 2009. The Commissioner sought and received further clarification on student sponsorship from the Council.

24. On 1 April 2009 the Commissioner wrote to the complainant to update him on the progress of the investigation and seek his views on the prospect of an informal resolution. The complainant remained dissatisfied with the Council's response regarding student sponsorship and further enquiries ensued.
25. On 8 September 2009 the Commissioner's staff met with Council staff. During that meeting the possibility of informal resolution was again discussed. Following this meeting the Commissioner again explored this possibility with the complainant, however the complainant remained dissatisfied and asked that the Commissioner make a formal decision in the case.

Analysis

Substantive Procedural Matters

Section 1 – information not held

26. Section 1(1) provides:

"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".

27. In this case the complainant has alleged that the information provided by the Council in response to his request of 17 February 2007 was "incomplete" as it did not provide the justification for sponsorship of each student. The complainant was not happy that he had received a summary rather than copies of the documents as he had requested and argued that he was in possession of certain "facts that the British Council failed to provide".
28. In this case the standard of proof that the Commissioner has applied in determining whether the public authority does hold information falling within the scope of these requests is the civil standard of the balance of probabilities as outlined by the Information Tribunal in the case of *Linda Bromley v Information Commissioner & the Environment Agency* (EA/2006/0072). In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness

and results of the searches carried out by the public authority as well as the reasons offered by the public authority to explain why the information is not held.

29. Where the public authority has stated correctly that it does not hold information falling within the scope of a request, the Commissioner will conclude that the public authority has complied with the requirement of section 1(1)(a).
30. The Council has advised that it does not hold information to justify individual sponsorship of students in Libya other than the "on the spot" justification already provided to the complainant in respect of student 'X'. The Council provided the Commissioner with evidence outlining the extent of its search for the information. This included checking and rechecking records at the Council's Tripoli Teaching Centre as well as contact with Her Majesty's Ambassador (HMA) to Libya regarding any information he may have held regarding his role in student sponsorship. The Commissioner was provided with evidence indicating that files and emails were reviewed for details of any recorded communications on the subject of student sponsorship between HMA and the Council's then Director in Libya. This correspondence confirmed that no records relating to justification for sponsorship were located and that any justification for individual student sponsorship would have been verbally communicated.
31. The Council advised the Commissioner that sponsorship of students in Libya was approved informally. Normal circumstances would typically mean students could be sponsored through a scheme such as the Chevening Programme, a formal scheme running for several years managed on behalf of the Foreign and Commonwealth Office. In these circumstances comprehensive and relevant records would be kept on each student in line with programme objectives. However, the Council stated that sponsorship of students at the teaching centre in Libya fell outside of normal operating procedures and was different in nature when compared to the likes of a Chevening scholarship. The Commissioner notes that it is not within his remit to comment on these types of operating processes or procedures. However, the Council's explanation makes it more likely that the information requested by the complainant was not held in recorded form.
32. The Council has explained to the complainant throughout this investigation that it does not hold information to justify individual sponsorship of students in Libya. Following the Commissioner's intervention, the Council explained to the complainant that student sponsorship in Libya was an informal arrangement approved by the Country Director at that time. However the complainant remained dissatisfied with the Council's response and believed it contradicted

information in his possession. At the Commissioner's request, the complainant agreed to allow the Council to review and comment on the information in question.

33. The Council argued that the information provided by the complainant was not inconsistent with its stance that it does not hold information on student sponsorship in Libya, nor did it raise new information that had not already been provided to the complainant. The Council accepted that formalised accounting procedures and more clearly recorded reasons for student sponsorship would be considered 'normal practice'. However, the Council reminded the Commissioner of its view that the unique operating circumstances in Libya justified the informal arrangement.
34. The Commissioner has reviewed the complainant's additional evidence and accepts this information is not inconsistent with the Council's stance that it does not hold this information. As previously stated, it is not within the Commissioner's remit to comment on these types of operating processes or procedures, however the Council's explanation makes it more likely that the information requested by the complainant was not held in recorded form.
35. The Commissioner has carefully considered the information provided by the Council and by the complainant. The Commissioner is satisfied that on the balance of probabilities, the Council did not hold justification for individual student sponsorship in Libya at the time of the request. Therefore the Council complied with section 1(1)(a) in denying that this information was held.

Procedural Requirements

Section 10 – time for compliance

36. Section 10(1) of the Act provides that subject to subsection (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.
37. The Commissioner has concluded that in this case, the Council breached section 10(1) in failing to provide all non exempt information within twenty working days of the request.

The Decision

38. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The Commissioner is satisfied that on the balance of probabilities the British Council did not hold records justifying individual student sponsorship in Libya the time of the request. Therefore it complied with section 1(1)(a) in this regard.
39. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The Council breached section 10(1) of the Act as it failed to provide the complainant with all non exempt information within twenty working days of the request.

Steps Required

40. The Commissioner requires no steps to be taken.

Right of Appeal

41. 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 10th day of August 2010

Signed

**Steve Wood
Head of Policy Delivery**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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.

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.

Section 12 - where cost of compliance exceeds appropriate limit

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Regulation 5 - Estimating the cost of complying with a request - aggregation of related requests

(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart

from the appropriate limit, to any extent apply, are made to a public authority -

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.