

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 May 2011

Public Authority: Office of the First Minister and Deputy First Minister
Address: Castle Buildings
Stormont Estate
Belfast
BT4 3SR

Summary

The complainant requested information relating to payment of monies by the public authority to lesbian, gay and bisexual groups since restoration of devolution. The public authority refused to disclose some of the information citing section 12 and section 16 of the Act, and agreed to disclose the remaining information but failed to do so. The Commissioner notes a number of procedural breaches and also requires the public authority to disclose the information and provide a response in accordance with 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. On 10 January 2011 the complainant submitted the following request to the public authority:

'I request all information held by OFMDFM relating to the payment of monies by the department to lesbian, gay and bisexual groups since the restoration of devolution.'

Also, please provide me with the dates on which monies were paid by the Department and the amount paid on those dates (in tabular format if possible) since the restoration of devolution'.

3. On 27 January 2011 the public authority wrote to the complainant to clarify the terms of the request.
4. On 27 January 2011 the complainant confirmed that the wording of his original request was clear as detailed in his request of 10 January 2011. He said:

'I thought I had been clear in my request but for the avoidance of doubt I request all documentation held by OFMDFM relating to the payment of monies to lesbian, gay and bi-sexual groups including correspondence with LGBT groups relating to the payment, internal departmental emails and memos relating to the payments, copies of and [sic] correspondence to HM Government at Westminster relating to the payments, copies of correspondence to any EU body relating to payments, copies of requests for funding for any LGBT groups and the Departments response.

Also, please provide me with the dates on which monies were paid by the Department and the amount paid on those dates (in tabular format if possible) since the restoration of devolution'.

5. On 10 February 2011 the public authority wrote to the complainant to confirm that they had now extended the deadline to respond to him to 25 February 2011.
6. On 21 March 2011 the public authority wrote to the complainant to state that it was still considering the request.
7. On 22 March 2011 the public authority wrote to the complainant confirming that information was held in relation to the request but that it was refusing to disclose it citing section 12 and section 16 of the Act. However, it told the complainant that if he narrowed the scope of his request then this would keep it below the cost limit, and some of the information could be disclosed:

'For example, in this particular case, the financial details of the funding to the LGBT sector in tabular format can be provided, including information about the recipients, amounts and dates of payments made by OFMDFM to LGBT groups. I can also at this time confirm that OFMDFM has had no correspondence with HM Government at Westminster relating to such payments, nor has there been correspondence with any EU body relating to such

payments, so that in re-framing your request you need not include these elements'.

8. On 23 March 2011 the complainant spoke to the public authority and it agreed to provide some of the requested information in a '*tabular form*' which it said '*would be collated that afternoon and passed to the private office for clearance*'.
9. The complainant contacted both the public authority and the Commissioner to express his dissatisfaction with the handling of his request.
10. On 28 March 2011 the Commissioner reminded the public authority that it had assured the Commissioner that the '*financial details of funding to the LGBT sector in tabular format*' would be provided to the complainant, but these had not been received by him.
11. On 8 April 2011 the public authority wrote to the complainant and informed him that it now considered that on 22 March 2011 the complainant had reframed his request for information to be provided in a '*tabular form*' and that it would now respond by 19 April 2011.
12. Despite the Commissioner contacting the public authority on a number of occasions to remind it of its obligations under the Act, particularly in respect of its delay in providing a response to the complainant's request, at the time of drafting this Notice the information has not been disclosed.

The Investigation

Scope of the case

13. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He told the Commissioner that he was unhappy with the delays in receiving a response. He also told the Commissioner that on expressing his dissatisfaction with the handling of his request he was informed that he should submit a service level complaint to its Corporate Service Department. He told the Commissioner that he did not know whether an internal review was being carried out.
14. As the timeframe for completing an internal review had not been exceeded at the time of receiving the complaint the scope of the Commissioner's investigation focussed on whether the public authority had complied with its responsibilities under section 1 of the Act. Therefore the Commissioner has not considered in this Decision Notice

the application of section 12 and section 16 by the public authority in its refusal notice of 22 March 2011.

Chronology

15. During his investigation the Commissioner contacted the public authority to establish whether an internal review had been conducted and to ascertain whether it was in the process of conducting one. Unfortunately, the public authority was unable to confirm whether an internal review was being conducted. The Commissioner also notes that on several occasions prior to this Notice he had contacted the public authority to remind it of its obligations.

Analysis

Substantive Procedural Matters

Section 10 – Time for compliance with request

16. Section 10(1) of the Act provides that:

'...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'.

17. The Commissioner notes that the request for information was made on 10 January 2011. The public authority eventually issued a refusal notice on 22 March 2011, which is over 50 working days from the date of the request.
18. Although the public authority stated on 10 February 2010 that it was extending the time limit for its response, at that stage it neither confirmed whether it held information nor applied an exemption. In fact, an extension under the Act may only be applied where it is necessary in order to assess the public interest relating to a qualified exemption; the public authority must still confirm or deny holding the information, and notify the requestor of a valid exemption that is being applied.
19. The Commissioner therefore finds that in failing to comply with section 1(1)(a) and 1(1)(b) promptly and within the statutory timelines for handling the request the public authority breached section 10(1) of the Act.

Section 17 – refusal of request

20. Section 17(5) provides that where a public authority is relying on section 12 or section 14 it should inform an applicant of this within 20 working days of receipt of the request. The Commissioner notes that the request for information was made on 10 January 2011 and the public authority did not issue a refusal notice relying on section 12 until 22 March 2011, over 50 working days later. Therefore he finds that the public authority has breached section 17(5) of the Act for failing to issue a notice within the relevant time limit.
21. The Commissioner has considered the content of the refusal notice dated 22 March 2011 and notes that the public authority did not inform the complainant of any review procedure provided by it, nor did it contain particulars of the right to complain to the Commissioner conferred by section 50 of the Act. This is a breach of section 17(7)(a) and 17(7)(b) of the Act.

The Decision

22. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
 - in failing to confirm or deny whether it held the requested information, or to apply a valid exemption, within 20 working days, it breached section 10(1) of the Act;
 - the public authority has breached section 17(5) of the Act by failing to issue a notice of application of section 12 within the statutory time limit;
 - in failing to inform the complainant of his right to seek a review of the decision in accordance with its instituted procedure, or to complain to the Commissioner, the public authority breached section 17(7)(a) and (b) of the Act.

Steps Required

23. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - to provide a response to the request for internal review.
24. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

25. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

Internal review

26. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. The Commissioner notes that the complainant complained about the length of time taken for the public authority to carry out its internal review. At the time of drafting this Notice, although it is over 70 working days since a request for internal review was made the public authority has still not conducted an internal review of the decision.
27. A public authority is not obliged under the Act to carry out an internal review but in order to comply with the section 45 Code of Practice it should do so if possible. If a public authority is not going to carry out an internal review it should inform the complainant of this and provide details of her/his right to appeal to the Commissioner directly
28. The Act does not specify a time limit for an internal review to be carried out. However, the Commissioner considers that it should be completed within 20 working days after receipt of the request for the review. The Commissioner has issued guidance on the time that should be taken to conduct an internal review which can be found on his website. It states that a one-stage review should be completed in 20 working days. In exceptional cases it may be appropriate to take longer but even in those cases it should not exceed 40 working days.
29. The Commissioner would also expect a public authority to inform a complainant if the internal review was going to take longer than 20 working days and explain why. The Commissioner would remind the public authority of its obligations in this regard.

Part VI of the Act's section 45 Code of Practice

30. Part VI of the Act's section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt decision. As he has

made clear in his 'Good Practice Guidance No 5', the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review or, in exceptional circumstances, 40 working days. In this case the public authority exceeded these timeframes. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the public authority fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale, and in failing to provide an update to the complainant when it overran the revised timescale. He would like to take this opportunity to remind the public authority of the expected standards in this regard.

31. The Commissioner also notes that the public authority has not at any time informed the complainant of his rights to request an internal review of its decision. He also notes that both he and the complainant contacted the public authority on a number of occasions to express concerns with the delays in the handling of the request. The Commissioner refers the public authority to paragraphs 38, 39, 40 and 41 of the Code of Practice.

Advice and assistance

32. Section 16 of the Act explains the duty of a public authority to provide advice and assistance to an applicant. The purpose of this section is to ensure that the public authority communicates with an applicant in order to discover what information they want and, where possible help them obtain it.
33. Where a request is unclear and requires clarification the Section 45 Code of Practice recommends that a public authority helps an applicant with their request, such as by providing an outline of different kinds of information which may meet the terms of the request or by providing access to lists or indexes of information. The onus is on the public authority to assist the applicant and not the other way round.
34. As stated earlier in this Notice, the Commissioner has not conducted an analysis of the application of section 12 and section 16 by the public authority as the Commissioner considers that the public authority has not yet completed an internal review of its decision. Notwithstanding that the Commissioner has decided that the public authority has exceeded the time for compliance in respect of section 10(1) of the Act, however, he does note his concern with the public authority's approach to its obligations under section 16 in this regard.
35. The Code of Practice together with guidance published by the Commissioner on the subject of advice and assistance is clear on what is

required of a public authority. In this respect the Commissioner would draw the attention of the public authority to the Code, and to associated guidance for compliance with those requests where it believes further advice and assistance needs to be given.

Costs

36. As already stated at para 41 above, the Commissioner has not considered the application of section 12 at this stage. However, he draws the attention of the public authority to his current guidance and regulations on the subject of costs and its obligations under section 12 generally and also in respect of its handling of this specific request.

Right of Appeal

37. 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@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

38. 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.
39. 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 12th day of May 2011

Signed

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

Legal Annex

Freedom of Information Act 2000

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 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(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.'

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –

"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."

Section 12(5) – provides that

"The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

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'.

Section 17(1) provides that -

'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.'*

Section 17(2) states –

'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.'

Section 17(3) provides that -

'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.'

Section 17(5) provides that –

'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.'

Section 17(7) provides that –

'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.'