

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 September 2011

Public Authority: Financial Services Authority
(The 'FSA')
Address: 25 The North Colonnade
Canary Wharf
London
E14 5HS

Summary

The complainant made a request for information under the Freedom of Information Act ('the Act') on 21 January 2011 and the FSA failed to answer the request until 4 July 2011.

The complainant complained about the delays that he had experienced. The Commissioner finds that the FSA breached section 10(1) because it failed to provide an appropriate response within 20 working days.

However, he requires no steps to be taken because the response provided the information that was requested.

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 21 January 2011 the complainant sent 23 questions to the Financial Services Authority ('the FSA'). The content of those questions are not disputed and does not need to be mentioned in this Decision Notice. However, the complainant has specifically mentioned that question 23 was made under the Act and that was worded as follows:

'Please provide data on your response time [to correspondence] for 2009 and 2010.'

3. On 27 February 2011 the complainant wrote to remind the FSA that a response was outstanding. He explained that question 23 was a request for information under the Act and said that the 20 working day limit had passed.
4. After the Commissioner's involvement, the FSA issued a detailed response to the request for information on 4 July 2011. It provided the information requested in question 23 in table form.

The Investigation

Scope of the case

5. On 27 March 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 that he had not received a response to his request for information.
6. On 14 August 2011 the complainant contacted the Commissioner again to confirm that despite now having received the information he had requested he was still concerned about the delays that he had experienced. In light of that letter, the Commissioner agreed to write a Decision Notice about those delays.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner as Regulator can undertake enforcement action. However, this is a discretionary power, is not part of Part 1 of the Act and will not be mentioned further in this Notice.

Chronology

8. On 27 April 2011 the Commissioner wrote to the FSA to explain that he had received a complaint that a response had not been issued to the request dated 21 January 2011. He provided a copy of that request and asked for a response to be issued in 10 working days. He wrote to the complainant to confirm that this was his approach.
9. On 15 May 2011 the complainant approached the Commissioner again to confirm that the FSA had still not issued a response. He said that the Commissioner should consider issuing a Decision Notice.

10. On 26 May 2011 the Commissioner wrote to the FSA to explain that this case would be reopened as a response did not appear to have been provided.
11. As noted above, on 4 July 2011, the FSA issued its response, apologised for the delays and provided the information. On 8 July 2011 the FSA told the Commissioner that this had been done.
12. On 21 July 2011 the Commissioner wrote to the complainant attaching a copy of the response. He said that if the complainant was unhappy with the information then he would need to request an internal review. He said that he had noted the delay that had been experienced, but did not propose to take further action.
13. On 14 August 2011 the complainant wrote to the Commissioner to express his dissatisfaction at this position and the Commissioner replied on 18 August 2011 to explain that he would therefore write this Decision Notice about the delays that were experienced.

Analysis

Procedural Requirements

14. Section 10(1)¹ provides that public authorities should comply with the requirements of section 1 within 20 working days.
15. Section 1 requires that a public authority confirms or denies that it holds relevant recorded information [1(1)(a)] and that it provides the information when it is not exempt [1(1)(b)].
16. In this case the FSA failed to issue any response for 91 working days. It therefore failed to comply with section 10(1) in 20 working days and breached section 10(1) of the Act.
17. The Commissioner does not require any remedial steps to be taken in respect of this procedural breach because the information was provided during the course of his investigation.

¹ All sections of the Act that are mentioned in this Notice are found in full in the Legal Annex attached to it.

The Decision

18. 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) because it did not issue a response in 20 working days.

Steps Required

19. The Commissioner requires no steps to be taken.

Right of Appeal

20. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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 5th day of September 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1 - General Right of Access

Section 1 of the Act provides that:

- (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.
- (2) Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”
- (3) 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.”
- (4) 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.”
- (5) 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).”

- (6) 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”.

Section 10 - Time for Compliance

Section 10 of the Act provides that:

(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.”

(2) 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.”

(3) 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.”

(4) 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.”

(5) Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.”

(6) 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.”