

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 19th October 2005

Name of Public Authority: Cardiff County Council

**Address of Public Authority: County Hall
Atlantic Wharf
Cardiff
CF10 4UW**

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 5th January 2005 the following information was requested from Cardiff County Council under section 1 of the Freedom of Information Act 2000 (the "Act"):

In summary, all documents relating to the consideration of a particular employee's position within Cardiff County Council, that employee's employment tribunal, and the outcomes of that tribunal.

It is alleged that Cardiff County Council failed to respond to the above information request.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

Cardiff County Council initially responded by stating that they required an extension of time to consider the Public Interest Test, giving an estimated date to reach a decision about whether they would release the information of 11th February 2005. They did not advise under which exemption the Public Interest Test was being applied. They did not advise the complainant of a decision by their estimated date, and have still not done so. Neither has the complainant received the information that he requested.

The reason given by the council for this delay is an initial lack of resources being allocated for the FOI function, leading to delays with more complex applications. They state that they have now taken steps to address this issue.

The Commissioner's decision in this case is that Cardiff County Council has not dealt with the request in accordance with the requirements of Part I of the Act, in that it has failed to comply with section 1(1) and section 17(1)(b)

Section 1 (1) states :

"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 17 (1) (b) states :

"Where a public authority is to any extent relying on a claim that any of the exemptions in Part II apply to the request it must, not later than the twentieth working day following the date of receipt of the request, give the applicant a notice which -

(b) specifies the exemption in question."

The Commissioner further finds that the time taken by Cardiff City Council to consider the Public Interest Test is not reasonable in the circumstances, and exceeds their estimated date by an unreasonable amount of time. They have therefore failed to comply with section 10 (3) of the Act.

Section 10 (1) states

"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."

Section 10 (3) states :

"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."

Sections 2 (1) (b) and 2 (2) (b) relate to circumstances where the public interest in maintaining an exclusion or exemption outweighs the public interest in disclosing whether such information is held, or in disclosing the information itself.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that Cardiff County Council shall, within 30 days of the date of this Decision Notice –

- (a) inform the complainant whether it holds information of the description specified by him in the request and, if it does, provide that information to him, or
- (b) provide the complainant with a separate notice, in accordance with section 17 (3) of the Act, stating the reasons why it is considered in the public interest to withhold the information, or to not disclose if the information is held.

Failure to comply

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.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 19th day of October 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF