

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 7 February 2006

Public Authority: University of Cambridge

Address: Secretariat
University Offices
The Old Schools,
Cambridge
CR2 1TN

Summary Decision and Action Required

The Information Commissioner's (the "Commissioner") decision in this matter is that the University of Cambridge (the "University") has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1), section 10(1) and section 16(1).

- 1) The University did not confirm or deny whether it holds the information specified in the request and if that is the case communicate that information to the Complainant pursuant with s.1 and;
- 2) The University did not respond to the request within the time for compliance set out in s.10 of the Act and;
- 3) The University did not provide advice and assistance before or after the applicant attempted to clarify his request pursuant to s.16 of the Act.

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:

The University shall, on or before 7 March 2006, clarify the nature of the Complainant's request in accordance with its duty to provide advice and assistance under s.16 of the Act. On the basis of this clarification the University shall undertake a search of the information it holds and in accordance with s.1(1) of the Act, inform the Complainant in writing whether it holds any information of the description specified in the request and if that is the case communicate that information to him.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

- 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
- 1.2 Where a complainant has made an application for a decision the Commissioner is under a duty to make a decision, unless:
- a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned.
- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that on 17 January 2005 the following information was requested from the University in accordance with section 1 of the Act.
- 2.2 "Copies of any documentation produced within the last ten years relating to the handling of mail addressed to the Commissary and received at the Old Schools, including but not limited to any documents containing procedures for the handling of such mail, or relating to the establishment or amendment of such procedures."

The Complainant made his request by way of an email of 17 January 2005. The University's response of 24 January 2005 was to assert that they did not understand the request and to provide the Complainant with the Rules of Procedure for review by the Commissary. The Complainant provided further clarification as to the nature of his request in a letter dated 2 February 2005. The University did not respond. The Complainant wrote a further letter of 10 March 2005 in which he made a formal complaint. The University did not respond.

3. Relevant Statutory Obligations under the Act

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 –

“...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 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.”

4. Review of the case

In a letter of 23 March 2005 the Complainant requested that the Commissioner review the University’s handling of his request of 17 January 2005. Specifically, the Complainant asked the Commissioner to consider whether or not in dealing with his request, the University has complied with the requirements set out in Part I of the Act. The Complainant’s complaint referred to both s.10 and s.16 of the Act. In this case the Commissioner considered whether or not the University complied with s.1, s.10 and s.16.

In a letter dated 28 April 2005 the Commissioner wrote to the University requesting clarification as to whether or not the University had responded to the Complainant’s request, and if not, the reasons for the delay, and/ or the reasons for withholding the requested information. The University replied in a letter of 17 May 2005. In this letter the University outlined in general a review by the Commissary involving the Complainant. Further, the University contended that since this review by the Commissary had concluded, the complaint before the Commissioner in relation to the Complainant’s request under the Act had also been resolved.

In an email to the Complainant of 24 May 2005, the Commissioner enquired as to whether or not the Complainant wished to withdraw his

complaint. In an email of 26 May 2005 the Complainant confirmed that he did not wish to withdraw his complaint with the Commissioner.

The Commissioner wrote to the University again in a letter dated 27 May 2005. In this letter the Commissioner confirmed that the Complainant did not wish to withdraw his complaint in relation to the University's handling of his request and asked that the University provide answers to the questions outlined in the Commissioner's letter of 28 April 2005. The Commissioner also requested that the University contact his Office in order to clarify any confusion in relation to the scope of the request.

During the course of subsequent correspondence and telephone conversations between the Commissioner's Office and the University, the Commissioner explained that the Complainant's request should be considered separately from any pre-existing dispute between the University and the Complainant. In addition the obligations of the University as a public authority under the Act were explained, including the fact that the University should carry out an investigation as to whether the requested information is held by the University and that depending upon the outcome of such investigation, the University should inform the Complainant accordingly by either providing the information requested, issuing a refusal notice under s.17 of the Act or advising the Complainant in writing that no information is held.

On 6 June 2005 the University wrote a letter to the Complainant saying that the Commissioner,

“...has advised that we should issue you with a statement that the University does not hold information about the matter you refer to in your request, except for information with which you have already been supplied.”

The Commissioner was not satisfied that the response by the University in its letter of 6 June 2005 clearly demonstrates that the University had undertaken a proper search of the information it holds before confirming or denying whether it holds information of the description specified in the Complainant's request. Further, the Complainant was dissatisfied with this response and alleged that the University had not fully considered the scope of his request. The Commissioner contacted the University in order to discuss the scope of the request and to ascertain how the University had undertaken a search of the information it holds. The Commissioner was not satisfied by the University's response.

In order to ascertain how the University had gone about determining what, if any, information it holds which falls within the scope of the request the

Commissioner issued an Information Notice on 25 October 2005. The University responded to the Information Notice on 23 November 2005.

In that response the University explained that it does not consider the request to be wide in scope and therefore in determining what information it holds, the University did not search documents such as emails, minutes of meetings, reports, or memos. In particular, the University explained that its search for the information requested was limited to enquiries of a small number of individuals within the University who have dealt with mail addressed to the Commissary and received at the Old Schools over the period to which the request relates. On review of the University's response, the Commissioner is not satisfied that the University has fully appreciated the scope of the request. Consequently the Commissioner is not satisfied that the University has carried out a proper investigation as to whether it holds any information falling within the scope of the request.

Further the Commissioner noted that the University had attached the Rules of Procedure by the Commissary (the "Rules") to their letter to the Complainant of 24 January 2005 referred to above. In its response to the Commissioner of 23 November 2005, the University clarified that it does not consider the Rules to fall within the scope of the request. In particular, the University stated that the Rules of Procedure do not fall within the scope of the request because the Rules do not prescribe a procedure for the handling of mail addressed to the Commissary and received at the Old Schools as set out in the request.

The Commissioner accepts that the Rules do not address the request in its entirety in that the Rules do not set out an actual procedure in relation to the handling of mail addressed to the Commissary once received at the Old Schools nor do the Rules relate to the establishment or amendment of such a procedure. However, while the Commissioner accepts that the Rules do not address the request in its entirety, in the Commissioner's view the Rules do appear to fall within the scope of the request. The Rules do not actually list the specified address but do relate to the handling of mail addressed to the Commissary, in that applications for review by the Commissary should be sent "to the Commissary at the specified address". The Commissioner understands that in the official application for review by the Commissary the "specified address" is set out as "the Old Schools".

Therefore, although the Rules do not actually list the "specified address" the Commissioner is satisfied that the Rules do relate to the handling of mail addressed to the Commissary and received at the Old Schools in so far as it establishes that mail addressed to the Commissary should be sent to the "specified address" which is the Old Schools.

Further, the fact that information, which may include information requested under the Act, may have been supplied to the Complainant in the context of earlier correspondence with the Complainant does not, in the opinion of the Commissioner, and on the facts of this case, amount to compliance by the University with its obligations under the Act.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the University has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed

to inform the Complainant in writing whether it holds information of the description specified in the Complainant's request and;

if that is the case to communicate to the Complainant such of the information specified in his request as does not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

The Commissioner found no evidence that the University responded to the request in accordance with s.1(1) even after it received the Complainant's letter of 2 February 2005 referred to above. As explained above, the Commissioner was not satisfied that the response by the University in its letter of 6 June 2005 clearly demonstrates that the University has undertaken a proper search of the information it holds before confirming or denying whether it holds information of the description specified in the Complainant's request.

In an attempt to informally resolve this complaint the Commissioner clarified the nature of the request with the Complainant and communicated this to the University. However, on review of the University's response to the Information Notice of 23 November 2005, the Commissioner is not satisfied that the University has fully appreciated the scope of the request. Consequently the Commissioner is not satisfied that the University has carried out a proper investigation as to whether it holds any information falling within the scope of the request.

The Commissioner is therefore satisfied that the University is in breach of its obligations under s.1(1) of the Act.

Section 10(1) - in that it exceeded the statutory time limit for responding to a request made under section 1(1).

The Commissioner notes that where a public authority cannot easily identify the information requested it may rely on s.1(3) which provides a mechanism whereby the authority may seek to clarify the request, and if that further clarification is not provided the public authority is not obliged to comply with the request. Although the Commissioner found no evidence to suggest that the University explained to the Complainant that it required additional clarification under s.1(3) of the Act, the Commissioner accepts that the University's letter of 17 January 2005 may be taken as a request for clarification under the Act. However, in this case the Commissioner is satisfied that the Complainant's letter of 2 February 2005 provided the University with such clarification. As the Commissioner found no evidence that the University responded to the Complainant's request even after it received this clarification the Commissioner is satisfied that the University is in breach of its obligation under s.10(1) of the Act.

Section 16 - in that it failed to offer the Complainant advice and assistance by way of assisting the Complainant in clarifying his request.

The Commissioner has found no evidence that the University provided any advice or assistance to the Complainant either before or after the Complainant made his request.

In this case the University did not respond to the letter of 2 February 2005 referred to above, despite the fact that the Complainant attempted to clarify his request. In addition, the University did not respond to a further letter of 10 March 2005 in which the Complainant made a formal complaint. Therefore, in failing to provide advice and assistance to the Complainant so far as it would be reasonable to expect it to do so, the Commissioner is satisfied that the University has breached its duty under s.16 of the Act.

It is the Commissioner's view that the Complainant should not be expected to be familiar with the specific information held by a public authority and as such the public authority is under a duty to provide advice and assistance in order to clarify the nature of the request in relation to the information it holds. Therefore, if the University required more detail to enable them to identify and locate the information sought they should have provided the Complainant with appropriate advice and assistance in order to assist him to describe more clearly the information requested.

6. Action Required

6.1 The Commissioner requires that:

The University shall, on or before 7 March 2006, clarify the nature of the Complainant's request in accordance with its duty to provide advice and assistance under s.16 of the Act. On the basis of this clarification the University shall undertake a search of the information it holds and in accordance with s.1(1) of the Act, inform the Complainant in writing whether it holds any information of the description specified in the request and if that is the case communicate that information to him.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 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 7 day of February 2006

Signed

**Richard Thomas
Information Commissioner**

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