

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated: 23rd November 2006

Public Authority: Newry & Mourne Health & Social Services Trust

**Address: 5 Downshire Place
Downshire Road,
Newry, County Down
BT34 1DZ**

Summary Decision

The complainant originally made a request to the Craigavon & Banbridge Trust on 21st January 2005 for copy records in relation to the complainant's overseas adoption application. That public authority provided the complainant with that information held by it and transferred part of the request relating to the information held by the Southern Area Adoption Panel to the Chairman of the said panel at Newry & Mourne Health & Social Services Trust ("the Trust"). The Trust did not supply the information requested by the complainant in its entirety until 4th November 2006. The Commissioner finds that the Trust did not deal with the request in accordance with the requirements of Part I of the Act because it considerably exceeded the time for compliance, as set out in Section 10 of the Act.

The Commissioner's Role

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1. The Commissioner's role 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

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2. The Information Commissioner ("the Commissioner") has received a complaint which states that on 21st January 2005 the following request for information was made to the Craigavon & Banbridge Trust in accordance with Section 1 of the Act:

"We are writing to request copies of your complete records of our overseas adoption application including up to yesterday's panel." ("the information").

3. On 18th February 2005 the Craigavon & Banbridge Trust provided the complainant with all the information it held in relation to said adoption application; stating in its letter to the complainant that it was transferring the part of the request "*regarding records held by the Southern Area Adoption Panel*" to the Chairman of the panel, who is based at the Trust headquarters.
4. On 27th February 2005 the complainant contacted the panel Chairman directly by e-mail to ask for the information. On 31st March 2005 the complainant again contacted the Chairman by e-mail to request an update on the progress of his initial request and to request two further publications, namely "*arrangements for the monitoring, audit and quality assurance of intercountry adoption service*" and "*progress reports on the implementation of intercountry adoption related recommendations in the SSI inspection of Adoption Services in the Southern Board and Adopting Best Care*". This decision notice relates to the complainant's request of 21st January 2005 which was transferred to the Trust.
5. The complainant contacted the Chairman by e-mail on 12th April 2005 regarding the information previously requested by him.
6. On 6th March 2006 the complainant again contacted the Chairman by e-mail, having received no response to previous requests, and stated that he was going to make a complaint to the Commissioner regarding all information requests up to 12th April 2005.
7. On 9th March 2006 the complainant received a letter from the Chairman enclosing some of the information requested and referring him to a member of the Trust's Adoption Services team who would be able to assist him with access to the relevant file.
8. On 11th March 2006 the complainant again contacted the Chairman by e-mail re-iterating the requests for information of 21st January 2005 and 31st March 2005.
9. On 20th March 2006 the complainant was allowed access to the relevant file by the member of the Trust's Adoption Services team. The complainant then contacted the Chairman by e-mail and requested copies of the information previously requested together with a fresh request for "*the old Family Care Society SLA i.e. pre April 05 and operation during our home study, Intercountry Adoption Liaison Group minutes from June 2002 and Corporate Annual Reports*". This decision notice does not deal with this later request.
10. On 23rd March 2006 the complainant again contacted the Chairman by e-mail regarding all the information requested by him to that date, including the 21st January 2005 request.
11. On 17th April 2006 the complainant again contacted the Chairman by e-mail seeking the information which was still outstanding.
12. On 26th April 2006 the Chairman wrote to the complainant enclosing some

information requested and stating that the Trust's Business and Information Department would forward other material to him "*within the next week*".

13. On 27th April 2006 the Trust's Freedom of Information Co-Coordinator corresponded with the complainant to acknowledge his requests and to apologise for the fact that these requests were only now being recognised and acknowledged as such.
14. On 1st May 2006 the complainant again contacted the Chairman by e-mail with a reminder of the information still outstanding which included the 21st January 2005 request.
15. On 2nd May 2006 the Chairman again corresponded with the complainant enclosing more of the outstanding information, to which the complainant immediately replied by e-mail, acknowledging receipt of same and further requesting the outstanding information.
16. On 30th May 2006 the complainant contacted the Trust's Freedom of Information coordinator by e-mail to complain that all the information requested had still not been received, which included the 21st January 2005 request.
17. On 13th June 2006 the Trust's Freedom of Information coordinator wrote again to the complainant enclosing leaflets in relation to the Trust's Freedom of Information procedures and stating that a list was being compiled of any outstanding information requested. The complainant was informed that these would be forwarded to the complainant "*as soon as possible (a few days at most)*". The letter also stated that, in relation to outstanding minutes of meetings which formed part of the complainant's request of 21st January 2005, no minutes were in fact taken at those meetings and therefore the Trust did not hold them.
18. On 14th June 2006 the complainant contacted the Trust to request an internal review as he was unhappy with the time it had taken the Trust to state that there were in fact no minutes.
19. On 29th June 2006 the Trust's Freedom of Information coordinator corresponded with the complainant, enclosing copy comments made by the reviewing officer, and stating that the Trust upheld its initial response to the complainant.
20. On 17th October 2006 the Trust's Freedom of Information coordinator again corresponded with the complainant stating that further documentation relating to the information requested had been forwarded to the complainant by post.
21. On 4th November 2006 the complainant received the outstanding information which fully answered his requests for information under the Act.

The Investigation

Scope of the case

22. On 28th March 2006 the complainant contacted the Commissioner to complain about the manner in which his request for information had been dealt with by the Trust. The Complainant specifically asked the Commissioner to consider the fact that his original request for information had been made on 21st January 2005. The Commissioner considers that the request was received by the Trust on 18th February 2005 as this is the date on which the request was transferred to the Trust by the Craigavon and Banbridge Trust. Section 22 of Part III of the Code of Practice issued under Section 45 of the Act states that a request which is transferred from one public authority to another (“the receiving authority”) should be complied with in the same way as the receiving authority would comply with a request that is received direct from an applicant. The time for complying with such requests should be calculated by regarding the date of transfer as the date of receipt of the request. The Trust, as the receiving authority in this case, had an obligation under Section 10(1) of the Act (see Legal Annex) to deal with the request promptly and in any event within twenty working days from the date on which it received the request. In this case that date was the 18th February 2005. The Commissioner notes that the complainant did not receive all the information from the Trust until 4th November 2006.
23. The complainant also raised other issues that are not addressed in this Notice because they are not relevant for the purposes of this investigation.

Chronology of the case

24. **10 May 2006.** The Commissioner wrote to the complainant seeking evidence of the public authority’s internal review procedure having been carried out.
25. **23 May 2006.** The Commissioner wrote to the complainant stating that he had spoken to the public authority who stated that it had sent out some of the information requested and would shortly be sending out the remainder. The Commissioner again invited the complainant to invoke the public authority’s internal review procedure.
26. **13 June 2006.** The Commissioner wrote to the complainant stating that he had again spoken to the public authority who had stated that it had forwarded outstanding information to the complainant and included details of its internal review procedure. The Commissioner again invited the complainant to invoke the public authority’s internal review procedure.
27. **14 June 2006.** The complainant corresponded with the Commissioner stating that he had invoked the public authority’s internal review procedure.
28. **14 June 2006.** The Commissioner acknowledged receipt of the complainant’s correspondence and invited the complainant to forward him copies of the

documentation relating to the internal review process if he was still dissatisfied with its outcome.

29. **5 July 2006.** The Commissioner wrote to the complainant seeking a copy of the internal review carried out by the Trust in relation to his initial request.
30. **17 July 2006.** The Commissioner wrote to the public authority stating that he had received a complaint regarding the public authority's response to the complainant's request for information under the Act.
31. **27 October 2006.** The Commissioner contacted the Trust by telephone to discuss the complaint. The Trust advised the Commissioner that it had posted the outstanding information out to the complainant on 17th October 2006 but would forward the information again. The Commissioner raised the point that some of the information had been outstanding since early 2005 and made the Trust aware that he considered this to be a breach of Section 10 of the Act.
32. **30 October 2006.** The Commissioner contacted the complainant to confirm that he had spoken to the Trust and that the Trust had stated that they were forwarding the information again on 27th October 2006. The Commissioner asked the complainant to contact him to confirm when he had received the information.
33. **4 November 2006.** The complainant contacted the Commissioner to inform him that he had now received all information requested under the Act.
34. **15 November 2006.** The Commissioner contacted the Trust seeking its comments as to whether or not it had met its obligations under Section 16 of the Act. The Commissioner asked whether advice and assistance had been provided to the complainant and enquired as to whether or not the Trust was clear about the nature and scope of the information requested. Section 16 (1) of the Act states that a public authority has a duty to provide advice and assistance to those who make requests for information to it in so far as it would be reasonable to expect the public authority to do so (see legal annex).
35. **17 November 2006.** The Trust wrote to the Commissioner acknowledging and accepting its responsibility for its breach of Section 10 of the Act. The Trust assured the Commissioner in its correspondence that it had now put measures in place to ensure future compliance with all Freedom of Information obligations. The Trust's correspondence also detailed the structure and method employed by the Trust in providing the information and advice to the complainant.

Findings of the case

Analysis

36. The Commissioner has considered the Trust's response to the complainant's request for information.
37. The Commissioner, having considered the matter and having made enquiries as to the status of the Southern Area Adoption Panel and its relationship to the Trust, is satisfied that, for the purposes of Section 1(1) of the Act the information was "held" by the Trust at the time of the transferred request. That is because the information was in the possession and control of the Chairman of the panel who is a senior manager of the Trust with specific responsibility for the panel. The Commissioner is also satisfied that the Trust was in receipt of the request following the transfer from Craigavon and Banbridge Trust on the 18th February 2005.
38. Having considered the correspondence between the Trust and the complainant the Commissioner is satisfied that the Trust did provide adequate advice and assistance to him in accordance with Section 16(1) of the Act (see Legal Annex) Therefore the Commissioner considers that the Trust complied with its obligations under Section 16 of the Act.

Procedural breaches

39. The Commissioner considers the Trust's failure to provide the requested information to be a breach of the Trust's duty under Section 10 of the Act in that it failed to provide the information promptly and in any event within twenty working days of receipt of the request..

The Decision

40. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

Steps Required

41. The Commissioner requires no steps to be taken, as all the requested information has now been provided to the complainant by the public authority. However, given the substantial delay by the Trust in responding to the complainant's request, the Commissioner will monitor the Trust's future compliance with its obligations under Section 10 of the Act.

Right of Appeal

42. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 22nd day of November 2006

Signed

**Marie Anderson
Assistant Commissioner (Northern Ireland)**

**Information Commissioner's Office (Northern Ireland)
Regus House
33 Clarendon Dock
Belfast
BT1 3BG**

Legal Annex

Relevant Extracts from the Freedom of Information Act 2000 :-

Section 10 - Time for compliance with request

10. – (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 16 – Duty to provide advice and assistance

16. – (1) 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.