

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 March 2009

Public Authority: National Offender Management Service (part of the Ministry of Justice)

Address: Data Access and Compliance Unit
Floor 1, Zone C
102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information from the public authority which consisted of all files and documents held by the Home Office, Merseyside Probation Service and Liverpool Offending Services in connection with the death of his son. The public authority repeatedly extended the deadline for its response. After a delay of five months, in response to a letter of complaint, the public authority explained that the delay in responding to the request was due to the sensitive nature of the information and the need to collate the material from a number of different departments. The Commissioner has found that, in not responding, the public authority has breached section 10 of the Act. The Commissioner requires the public authority to either provide the information or issue a valid refusal notice that complies with section 17 of the Act within 35 days of the date of this notice.

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. The Commissioner notes that the National Offender Management Service "NOMS" is not a public authority itself, but is part of the Ministry of Justice. Therefore the public authority in this case is actually the Ministry of Justice not

NOMS. However, for the sake of clarity, this Decision Notice refers to NOMS as if it were the public authority.

3. On 14 April 2008 the complainant made the following request for information in accordance with the Act:

'I would be grateful if you could provide me with copies of all files/documents, including inter-departmental and e-mail correspondence held by the Home Office, Merseyside Probation Service and Liverpool Youth Offending Services in connection with the death of my son Iain Jones on 1st July 2001, including all documentation/transcripts and notes in connection with any relative complaints/reviews/inquiries to date.

I would be grateful if you could ensure that copies of the following are included with this request:-

- *Copies of any and all legal opinions sought following my wife's complaint in connection with the offence of Aggravated Vehicle Taking/Death, as per Paul Goggins letter dated 17th February 2005 which is held by the Home Office/Ministry of Justice.*
 - *Copies of any/all instructions requesting the above legal advice, as per the above offence.*
 - *Copies of the four requests which Merseyside Probation Service claim to have made to Merseyside Police between September 2001 and May 2002 in connection with victim contact details re:- all three offenders (Terence Rigby, John Black, Paul Evans). This information was previously sought in May/June 2002 but access was refused by Merseyside Probation Service, resulting in the ongoing complaint.'*
4. On 21 April 2008 the public authority acknowledged receiving the request and informed the complainant that it aimed to provide a response by 15 May 2008.
 5. On 15 May 2008 the public authority apologised for the delay and informed the complainant that it aimed to provide a response by 12 June 2008.
 6. On 12 June 2008 the public authority apologised for the delay and informed the complainant that it aimed to provide a response by 14 July 2008.
 7. On 14 July 2008 the public authority apologised for the delay and informed the complainant that it aimed to provide a response by 14 August 2008.
 8. On 14 August 2008 the public authority apologised for the delay and informed the complainant that it aimed to provide a response by 2 September 2008.
 9. On 17 September 2008 the public authority apologised for the delay and informed the complainant that it aimed to provide a response by 3 November 2008.

The Investigation

Scope of the case

10. On 19 June 2008 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 the continual delay offered by NOMS. He felt the delay gave the public authority an unfair advantage because it meant the public authority could remove sensitive pieces of correspondence and had time to find legal loopholes to prevent the release of the information.

Chronology

11. On 1 August 2008 the Commissioner wrote to the public authority and asked for a response to the complainant within twenty working days. The public authority was asked to state whether the information was held in a recorded form. The public authority was asked to either provide the information or issue a refusal notice.
12. On 1 August 2008 the Commissioner wrote to the complainant and informed him that the public authority had been asked to respond to him within twenty working days.
13. On 7 August 2008 the public authority wrote to the Commissioner to acknowledge receipt of the letter of 1 August 2008.
14. On 24 September 2008 the public authority wrote to the complainant and informed him that in response to his request of 1 September 2008 they had performed an internal review. It concluded that the time delay was justified because the material requested was sensitive and it was necessary to collate the information from a number of different departments. The public authority promised a substantive response shortly.
15. On 5 November 2008 the complainant informed the Commissioner that he had not yet received a satisfactory response from the public authority.
16. On 7 November 2008 the Commissioner requested that the complainant send a copy of his original request.
17. On 20 November 2008 the complainant sent the Commissioner a copy of his original request.
18. On 14 January 2009 the Commissioner informed the public authority that this case was now under review.
19. On 19 January 2009 the Commissioner wrote to the complainant and informed him that NOMS had been contacted regarding this case.

20. On 20 January 2009 the Commissioner informed the public authority that this Decision Notice had been drafted and asked that the case be considered as a priority.
21. On 20 January 2009 the public authority asked for two more weeks to draft a response to this request. This was granted.
22. On 5 February 2009 the public authority informed the Commissioner that it was seeking consent for disclosure from relevant parts of its own department and from Merseyside Probation. It also noted that some of the information requested was held by Liverpool Youth Offending Services. The public authority suggested that it should now write to the complainant and put him in touch with Liverpool City Council.
23. On 12 February 2009 the Commissioner wrote to the public authority agreeing that it would be a good idea to refer the complainant to Liverpool City Council. This referral would be in accordance with the section 45 code of practice. The Commissioner informed the public authority that a short extension could be offered before the Decision Notice was signed.
24. On 18 February 2009 the public authority informed the Commissioner that work was continuing on the case.
25. On 18 February 2009 the public authority wrote to the complainant and referred him to Liverpool Youth Offending Services. An apology was given for the time delay in providing a substantive response.
26. On 26 February 2009 the Commissioner asked the public authority if there had been any progress with the case.
27. On 26 February 2009 the public authority informed the Commissioner that considerable progress had been made and a substantive reply was expected shortly.

Findings of fact

28. The Commissioner is also aware of this public authority dealing with a number of other information requests in a similar way and issued NOMS with a Practice Recommendation on this issue on 10 March 2008. This can be found at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/notices/noms_s45_pr_final_4_mar_08.pdf

Analysis

Section 10

29. Section 10(1) (full wording in the legal annex) states:

'...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.'

The information request in this case was made on 14 April 2008. The public authority has failed to comply with section 1(1) (full wording in the legal annex) in respect of this request by the date of this notice. In failing to provide a response compliant with section 1(1) within twenty working days of receipt of the request, the public authority breached section 10(1).

The Decision

30. The public authority has breached section 10(1) by failing to provide a response compliant with section 1(1) of the Act within twenty working days of receipt of the request.

Steps Required

31. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Provide a response to the request that is compliant with section 1(1). This should either disclose the requested information to the complainant, or should constitute a refusal notice valid for the purposes of section 17.

32. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

33. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

34. The Commissioner is concerned that the public authority is offering internal reviews into its ongoing delays (prior to providing a substantive response). In this case the public authority had breached the Act as a matter of fact and an internal review would not change this.

35. The Commissioner also feels that conducting such internal reviews into the issue of delay in providing a response that complies with section 1(1) is an unproductive drain on the already apparently overstretched resources of the public authority. For this reason he has raised the matter with the public authority and he is pleased to note that NOMS is taking steps to improve its efficacy in this regard.

36. The Commissioner notes that NOMS did not refer the complainant to Liverpool City Council for information regarding part of his request until 18 February 2009. Part III of the s45 code of practice sets out good practice in relation to transferring requests for information to other public authorities. In particular, paragraph 23 specifies that “all transfers of requests should take place as soon as is practicable”. While the complainant was eventually referred to Liverpool City Council in accordance with this part of the code, the Commissioner is concerned that this was not done until 10 months after the initial request for information was received.

Failure to comply

37. 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

38. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 17th day of March 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

General Right of Access

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.”

Time for Compliance

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(2) provides that –

“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.”

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.”