

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 October 2010

Public Authority: Bolton at Home
Address: 1-3 The Courtyard
Calvin Street
The Valley
Bolton
BL1 8PB

Summary

On 11 December 2009 the complainant requested that Bolton at Home provide him with information on the procedure followed when a complaint about a tenant is received including the 'banning' of an individual from entering a public building. The public authority responded within 20 working days and stated that it did not have a written procedure covering the topic of the request. The complainant made a second request which was not responded to within 20 working days. The Commissioner therefore finds Bolton at Home not in breach of section 10(1) with respect to the first request, however, in respect of the second request the Council breached section 10(1).

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 11 December 2009 the complainant requested the following information from Bolton at Home:

"Please provide me, fully, with the process you must follow if a complaint is received against me, including such things as is required to inform me and the means by which I am given that information and the time scale.

I am informed that to exclude me from entering a public building including a community centre and would require exceptional circumstances to exclude me, under any means or guise. Therefore please provide me with the process you must follow.

.....Please inform me whether it is a matter for the Housing Manager or you alone (Elderly Services Manager).

I must inform you that this is not a complaint but a request for information and must be treated as such."

3. The public authority responded on 7 January 2010, within 20 working days.
4. The complainant wrote again on 14 January 2010 with further requests as specific questions, as detailed in Annex 1.
5. On 15 February 2010 the public authority explained to the complainant that no recorded responses were held in respect of the questions raised in his letter of 14 January 2010. However some general information was provided.
6. On 16 February 2010 the complainant requested an internal review and also contacted the Commissioner.

The Investigation

Scope of the case

7. On 16 February 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled.
8. On 19 April 2010 the complainant wrote to the Commissioner specifying his complaint as:
"What I am complaining about is two fold: 1st the breach of the 20 working day rule – by many days, which was caused by the unprofessional way in which the Information Officer's handling of the case [sic] and 2nd against the Information Manager's non response to my second recorded letter to him outlining my complaint against the Information Officer and requesting an internal review."

9. The complainant made it clear to the Commissioner that he is only concerned with the length of time taken by the Council to reply.
10. Therefore this investigation focuses on whether the public authority breached section 10(1) of the Act in responding to the complainant's requests of 11 December 2009 and 14 January 2010.
11. On 13 May 2010 the Commissioner wrote to the complainant attempting to clarify his complaint and thereby the scope of the case. The Commissioner explained to the complainant the calculation for the 20 working day time frame as determined by the Act.
12. On 15 May 2010 the complainant wrote to the Commissioner stating that his complaint was not that he was dissatisfied with the response of the public authority. His complaint was the breach of the Act regarding the time taken to respond.
13. An internal review was provided on 25 May 2010 following the intervention of the Commissioner.
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. His complaints against the Information Officer detailed in correspondence with the Information Manager cannot be considered. The time taken to provide an internal review is covered in Other Matters paragraph 22.

Analysis

Procedural Matters

Section 10(1) (See the Legal Annex for a full wording)

15. The complainant initially requested information on 11 December 2009 and the public authority responded on 7 January 2010, well within the 20 working days time limit. Therefore the Commissioner considers that the public authority responded in accordance with the Act in respect of the initial request.
16. The complainant's further request on 14 January 2010 comprised of questions which the complainant believed would assist the public authority in providing a further response on the same matter. The public authority acknowledged the request on 26 January 2010 and explained that a further response would be forthcoming. However the

response was provided on 15 February 2010 after 22 working days and therefore the public authority breached section 10(1).

The Decision

17. The Commissioner's decision is that the public authority dealt with the initial request for information in accordance with the timelines of the Act. However, the Commissioner has also decided that in responding to the subsequent request the public authority breached section 10(1).

Steps Required

18. The Commissioner requires no steps to be taken.

Other matters

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

Internal reviews

20. In relation to internal reviews, paragraph 40 of the Code of Practice on the Discharge of Public Authorities' Functions under Part I of the Freedom of Information Act 2000 states:

"Where the complaint concerns a request for information under the general rights of access, the review should be undertaken by someone senior to the person who took the original decision, where this is reasonably practicable. The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint".

The Code of Practice may be accessed at:

<http://www.dca.gov.uk/foi/reference/impref/codepafunc.htm>

21. The Commissioner's guidance: Freedom of Information Good Practice Guidance No. 5 - Time limits on carrying out internal reviews following requests for information under the Freedom of Information Act 2000 can be accessed at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_good_practice_guidance_5.pdf. This guidance sets 20 working days as a standard target for completion of internal reviews. In this instance, the internal review was requested on 16 February 2010. The Council's internal review response was issued 67 working days after the complainant's complaint (on 25 May 2010). The review itself does not demonstrate that the issues were properly reconsidered and does not appear to reflect the amount of time taken. The review also fails to acknowledge or apologise for the long delay in the Council's handling of the request. In these respects, the review did not conform to the Code.

22. The Commissioner expects that in future internal reviews, the Council will observe the recommendations set within the Code and in the Commissioner's own guidance.

Right of Appeal

23. 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: 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 sent.

Dated the 20th day of October 2010

Signed

**Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1

The complainant's request of 14 January 2010:

"To assist you in giving me the information I require I believe it might help if I put it in the form of questions.

(Note a complaint in this context is not one that requires police involvement, is not serious, and will not involve eviction.)

When a complaint is made against a tenant

- a) When or how soon is the tenant informed?
- b) Is the tenant informed by phone, letter or other?
- c) When the tenant is informed of the complaint is the tenant informed of the full extent of the complaint and who the complainant is?
- d) Is the tenant invited to give their version of events or deny the complaint?
- e) Would the tenant's response asked to be put in writing or would there be an interview at the office or the home?
- f) In the case of an interview at the office would the tenant be given reasonable notice and be informed of right to have another person present?
- g) How would the tenant be informed phone, letter, other?
- h) In the case of an interview at home would the tenant be given reasonable notice, informed of right to have another person present and how would they be informed?
- i) When the investigation is completed (I assume all investigations investigated) how soon would the tenant be made aware of any decision made? At the same time (if the decision went against the tenant) would they be informed of their right to appeal, and given the necessary assistance to do so?
- j) By what method would the tenant be told the decision?"

Legal Annex

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 1(3) provides that –

'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.'

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.'