

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 September 2010

Public Authority: Caddington Parish Council
Address: 10 Enslow Close
Caddington
Luton
Bedfordshire
LU1 4HU

Summary

The complainant requested information relating to requests for links to the public authority's website. The public authority refused to respond to the request, on the grounds that the request was not specific. Following the intervention of the Commissioner, a partial response was provided to the complainant but this failed to cover the entire time period specified in the request. Further information was conveyed to the complainant during the course of the Commissioner's investigation. The Commissioner finds that the public authority incorrectly used the provisions of section 1(3) of the Act in order to refuse to respond to the request and, by its failure to provide a response within 20 working days, the public authority breached section 10(1) of the Act.

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.

Background

2. The complainant submitted a request to the public authority, for a link between its website and one run by him. That request was refused.

The Request

3. On 19 February 2010 the complainant wrote to the public authority, the letter included the following request:

"I am asking under the freedom of Information Act for copies of all applications for a link that has been made to the CPC. Over the past 12 months."

4. The public authority contacted the complainant on 28 February 2010 and refused to provide information, advising the complainant that the request was not specific enough and he was advised to submit a more specific request.

5. The complainant replied on the same date, stating:

*"I cannot be any more specific than I have been, I would like under the freedom of information act data on all applications made to the CPC for linking. **especially the ones you have said you have turned down. within the two months you have been in your post** I cannot be any clearer than this."*

6. Following the Commissioner's intervention, a response was provided to the complainant on 30 April 2010, stating:

"In the time I have been in post I have accepted 3 business links and 1 link onto our website. All businesses and links are available to be viewed at www.caddington.com. I have refused 2 business listings on the basis that they were from national companies and not local organisations."

The Investigation

Scope of the case

7. On 5 March 2010 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 following points:

- The response he had received, to date, was unsatisfactory. The complainant included a copy of an email from the public authority, dated 28 February, which stated:

"Freedom of Information requests must be specific, and the request you have made is not deemed to be. I am therefore advised that I do not need to provide a response and that you may wish to reconsider the exact information you require."

- The complainant stated that the purpose of the request was to prove that no applications [for links] have been made over the past 12 months, and asked the Commissioner to 'look into' the matter for him.
8. The complainant subsequently indicated that his dissatisfaction, and complaint, related to the delays in providing the information requested and the apparent disregard of the public authority for the provisions of the Act.
 9. The Commissioner's investigation therefore focussed on the public authority's refusal of the complainant's request using the provisions of section 1(3) of the Act, and the consequent delays in its response.
 10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. The Commissioner contacted the public authority on 26 March 2010 and a further response was provided to the complainant on 30 April 2010, as described at paragraph 6, above.
12. The complainant replied to the public authority on 1 May 2010, reminding it that his request was for information *"on all those who have made applications for linking for the past 12 months and especially the ones you claimed to have refused a linking to."* This letter was copied to the Information Commissioner's Office.
13. The Commissioner contacted the public authority on 5 May 2010, to clarify those elements of this response which he considered would require further attention. He explained the requirement for the public authority to confirm or deny that it holds information, and also that the response given to the complainant related only to the time the current clerk had been in post which, at the time of the request, was only two months. Therefore, any response to the request would need to take into account the preceding 10 months.
14. On 8 May 2010, the public authority sent a further response to the complainant, which explained that it does not hold the requested information in relation to the refused requests because it was its practice

only to request written copies of requests in the case of links which were to be accepted; refusals were given verbally by telephone, at the time. With regard to information for the period prior to the current clerk's tenure, it was stated that this information was not available as any records would be with the previous clerk who was on maternity leave and therefore records could not be retrieved.

15. The Commissioner contacted the public authority by telephone on 19 May 2010 to discuss the response provided on 8 May 2010. The public authority was asked to contact the previous clerk, to establish what her procedure was in similar circumstances and ascertain whether she had retained any records for the period from 19 February 2009 until the present clerk took over the role.
16. The public authority responded on 25 May 2010. It had contacted the previous clerk, who had confirmed that she had received only 'a handful' of requests for links in the period, she, like the present clerk, did not keep records of unsuccessful requests and all those approved were uploaded to the public authority's website.
17. The Commissioner wrote to the complainant on 25 May 2010. He explained that his investigation had established the following points:
 - The council states that it does not hold information on refused requests for web links.
 - The Commissioner is satisfied that there is no 'business need' for the council to hold information on refused web links and therefore he would be likely to conclude that no information is held which meets the description specified in the request.
 - The Commissioner had identified various procedural breaches of the Act, which he had recorded.
18. The complainant replied on 25 May 2010 indicating that he required an apology and an explanation from the parish council as to why its response had taken over 3 months.

Analysis

Substantive Procedural Matters

Section 1

19. The public authority initially refused to provide information in response to the request, on the grounds that the request was "*...not deemed to be*

[*specific*]. The Commissioner considers this to be a misunderstanding of the provisions of section 1(3) of the Act, which states:

'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.'

20. The Commissioner observes that section 1(3) of the Act is intended for circumstances in which a public authority cannot easily identify the information which has been requested, and requires clarification from the applicant in order to correctly identify it. This is likely to be either, because the request does not clearly or unambiguously identify the information requested or, because a public authority may be aware (eg from other dealings with the applicant) that his interests may be other than as described in the request. In those, or similar, circumstances, a public authority may reasonably use the provisions of section 1(3) of the Act to explain to an applicant what further clarification it needs, in order to ensure that its response meets the applicant's intended purpose for his request.
21. The Commissioner observes that the Information Tribunal, in the case of *Barber and the Information Commissioner* (EA/2005/0004)¹ suggests that the use of section 1(3) of the Act should carry a corresponding duty to provide advice and assistance, under section 16 of the Act. The Commissioner agrees with this approach and notes that the public authority's engagement with the complainant fails to provide him with any advice and assistance as to how his request might be refined in order to enable it to provide a response under the Act.
22. In this case, the public authority simply refused to comply with the request, stating that it was not 'deemed' to be specific. The public authority did not, however, explain why it considered the request was not 'specific', or what it might have required the complainant to clarify. The Commissioner is aware that the request came in the course of an exchange of correspondence between the complainant and the public authority on the subject of links to its website. In that context, the Commissioner is of the view that there is a clear objective reading of the

¹ Available on line at

http://www.informationtribunal.gov.uk/Documents/decisions/barber_v_information.pdf

request which the public authority could have responded to. If the public authority had been concerned that its response might have fallen short of the complainant's requirements, it was incumbent upon it to explain this to him and indicate the sort of clarification which might assist it. Having received the complainant's restated and (slightly) clarified response on 28 February, the public authority appears to have taken no further action until prompted by the Commissioner.

23. The Commissioner observes that the purpose of the Act could be considerably frustrated if section 1(3) were to be interpreted as it was by the public authority in this case, and if a public authority could thereby be excused from the obligation to disclose information if it 'deemed' a request to be insufficiently specific. He also notes that the public authority's response of 30 April 2010 was provided without any significant clarification of the request and therefore he is not persuaded that the public authority reasonably required further information in order to identify and locate the information requested or, if it did, it failed to explain this to the complainant in such a way as to permit him to reframe his request.
24. The Commissioner considers that the public authority incorrectly relied on the provisions of section 1(3) of the Act in order to refuse to respond to a clear and unambiguous request. However, because there was no need for clarification of the request, there was no corresponding duty to provide advice and assistance to the complainant in order to help him provide that clarification. Therefore, the public authority did not breach section 16 of the Act,
25. The response of 30 April 2010 failed to state that the public authority held information of the description specified in the request, and failed to provide information for the full 12-month period specified in the request. At the time of the request, the current clerk had been in post for 2 months and no information was provided for the 10 month period prior to her assuming the role.
26. The public authority's responses also failed to provide the complainant with any information which might have identified which of the links on its website were those which had been accepted during the 12 months relevant to his request or, if that information is not held by it, failed to explain that fact to the complainant. The public authority's responses in relation to the links it had accepted simply referred the complainant to the links on its website and did not provide copies of any requests for those links. This was rectified during the Commissioner's investigation and the complainant was provided with information relating to five requests for links which were held by it, and an entry from the council's

website records which shows an update to a link which was made during the period.

Procedural Requirements

Section 10

27. The request was made to the public authority in a letter dated 19 February 2010. A partial response was provided on 30 April, following involvement by the Information Commissioner, and a further response on 8 May 2010. However a complete response to the request was not provided, until the Commissioner received clarification from the public authority on 25 May 2010 which he relayed to the complainant, no response in respect of the earlier 10 months covered by the request had been made. The final matters described at paragraph 26 were disclosed to the complainant on 25 June 2010. The period from 20 February to 25 June 2010 comprises 85 working days, which exceeds the 20 working days required for compliance with the Act. The public authority has therefore breached section 10(1) of the Act.

The Decision

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

- The public authority incorrectly relied on the provisions of section 1(3) of the Act in order to refuse to respond to the complainant's request for information.
- By its failure to comply with section 1(1) within 20 working days, the public authority breached section 10(1) of the Act.

Steps Required

29. The Commissioner requires no steps to be taken.

Other matters

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

31. During the Commissioner's investigation, the public authority explained that certain of its records were unavailable to its present clerk due to the absence of the previous parish clerk, who continued to hold some of its records.

32. The section 46 Code of Practice sets out the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records. The Commissioner accordingly notes that, in relation to this request, the public authority appears to have experienced some difficulty in locating relevant records. The Commissioner, therefore, directs the public authority to the section 46 Code of Practice and expects that its future practice will conform to its recommendations. The section 46 Code of Practice is published online at the following address:

<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

Right of Appeal

33. 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 14th day of September 2010

Signed

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

Legal Annex

S.1 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.'*

Section 1(2) provides that -

'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'

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 1(4) provides that –

'The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or*
- (b) which is to be communicated under subsection (1)(b),*

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated

under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'

Section 1(5) provides that –

'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'

Section 1(6) provides that –

'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny'.'

S.10 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.'

Section 10(4) provides that –

'The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.'

Section 10(5) provides that –

'Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and*
- (b) confer a discretion on the Commissioner.'*

Section 10(6) provides that –

'In this section –

"the date of receipt" means –

- (a) the day on which the public authority receives the request for information, or*
- (b) if later, the day on which it receives the information referred to in section 1(3);*

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'

S.16 Duty to provide Advice and Assistance

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'.

Section 16(2) provides that -

'Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under

section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'