

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 01 March 2011

Public Authority: The Information Commissioner
The Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Summary

The complainant asked the Information Commissioner to provide information in relation to five companies and their entries in the Data Protection Public Register. The Information Commissioner provided the information held by the Information Commissioner's Office (the 'ICO') and confirmed which parts of the requested information it did not hold. It upheld this response at internal review. The complainant argued that the Commissioner's responses were either wrong or incomplete. The Commissioner has considered the arguments of the complainant and has provided further information to clarify the responses. The Commissioner finds no breaches of the Freedom of Information Act 2000.

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. On 26 May 2004 the complainant had written to the Information Commissioner regarding a subject access request he had made to [company one]. This was handled as a Data Protection complaint.

3. On 26 January 2009 the complainant wrote to the Information Commissioner concerning the processing of his personal data by [company two]. He was informed that two case files had been created to handle his complaint.
4. On 30 July 2009 with regard to one of his complaints made on 26 January 2010, the complainant was informed by the Information Commissioner that in this case it was likely that [company two] had complied with the Data Protection Act 1998 (the 'DPA').
5. The above assessment of 30 July 2009 led to further correspondence between the Commissioner and the complainant about the same issue which culminated in a further information request of 4 February 2010 to the Information Commissioner.
6. This request concerned information held on the Information Commissioner's Data Protection Public Register and the processing of the complainant's staff records by [company one] and [company two]. The Commissioner's response to this request is the subject of another Decision Notice (FS50320645) and led to this current request of 30 March 2010.
7. The Data Protection Public Register is a public register of data controllers which is maintained by the ICO. Each register entry includes the name and address of the data controller and details about the types of personal information they process. A sample entry can be found on the ICO website at the following link:

<http://www.ico.gov.uk/ESDWebPages/SearchSample.html>

The Request

8. On 30 March 2010 the complainant wrote to the Information Commissioner and requested:

'I hereby ask the ICO to forward me the registration date and address for the following during the period 16 July 1998 (DPA 1998 date) thru the date at the head of this letter:

1. *[Company three] (all ICO registration numbers).*
2. *[Company two] (all numbers excl. [registration number one and registration number two]).*
3. *[Company one] (all numbers including [registration number three]).*

4. *[Company four] (all numbers).*
 5. *[Company five] (all numbers including [registration number four]).'*
9. On 13 April 2010, the Information Commissioner provided the following information in response to each of the above requests:
1. [Company three], unable to find registration, no trace on Companies House.
 2. There are no other register entries other than those listed above.
 3. [Company one], [registration number three], addresses amended 13 February 2007. Previous address was [address 1]. Copy of register entry enclosed.
 4. [Company four] unable to find registration and no trace on Companies House.
 5. [Company five], [registration number four], address not changed since first registered 03 September 2008. Copy of register entry enclosed.
10. On 21 April 2010 the complainant asked for an internal review of this response. He raised the following points:
- The statement 'no trace on Companies House' is false in answer to both questions 1 and 4.
 - The ICO did not enclose a copy of the register entries for [company two], [registration numbers one and two].
 - The previous address given for [company one] in this response contradicts the address given by the ICO in its response to the complainant on 22 February 2010 regarding a separate request. The complainant argued that this response is either wrong or the ICO has omitted to specify the period that the previous address applied to.
 - The ICO should be aware that the date 3 September 2008 should read 29 August 2008.
 - The field "Companies House Registration Number:" is not held "as part of the public register" and does not appear on any other register entry.
11. On 18 May 2010 the Information Commissioner provided an internal review. He informed the complainant of the following with respect to each question:
1. The information he requested is not held.

2. Since his request specifically excluded [registration number one and registration number two] the Commissioner had not provided this information. No other information is held.
3. The request did not ask the Commissioner to state the period of any previous address. However the previous address provided covers the period 16 July 1998 until 13 February 2007.
4. The information requested is not held.
5. A copy of the register entry [registration number four] had been sent to the complainant and incorporates the requested information.

The Investigation

Scope of the case

12. On 22 June 2010 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - He received information, but not within 20 working days.
 - The information he received was not what he requested.
 - He was refused information he had requested.
13. The complainant explained the background to his complaint and summarised events since 2004. As part of this summary, he argued that the Commissioner's past responses to his information requests were incomplete and inconsistent and he raised the following points:
 - The initial registration date for [company one's] entry cannot be 16 July 1998 because according to Companies House, it did not exist before 18 November 1999. (In the internal review, the Commissioner had stated that the previous address provided for [company one] covered the period 16 July 1998 until 13 February 2007).
 - [Company one] cannot have had two concurrent registered addresses as implied by past ICO responses:
 - On 9 October 2009 the complainant argued that the ICO had verbally informed him that no entry for [company one] or [company two] (at a given postcode) had ever existed in the ICO's Data Protection Public Register.

- On 22 February 2010 the ICO had informed the complainant that the address for [company one] was [address two] registered between 6 May 2004 and 3 May 2005.
 - On 13 April 2010 the ICO had informed the complainant that [company one's] address was [address one] during the period 16 July 1998 and 13 February 2007.
 - The ICO had yet to provide [company one's] address for the period 13 February 2007 onwards.
 - He believed that some of the ICO's responses had "consciously and deliberately" referred to a generic name for [company one] rather than [company one] or [company two] or [company five].
14. Although they were raised in the complaint, the Commissioner's past responses to information requests are not part of this case. However, in the interests of clarity, the above inconsistencies have now been addressed by the Commissioner.
15. The complainant also asked the Commissioner to resolve the following issues with a Decision Notice; however, these issues are not addressed in this Notice because they are not requirements of Part 1 of the Act.
- He argued [company one] is guilty of an offence under section 21(2) of the DPA in unlawfully failing to notify the ICO of changes to its entry in the Register of Data Controllers.
 - He argued [company two] is guilty of an offence under section 55(3) of the DPA in unlawfully obtaining and processing his personal data without the consent of the data controller [company one].
16. As it is not a requirement of Part 1 of the Act, the scope of this case does not include the issue of entries on the Companies House register.
17. The Commissioner therefore considered the ICO's responses to the information required regarding the five companies and their entries in the Data Protection Public Register as within the scope of this investigation.

Chronology

18. On 12 October 2010 the Commissioner wrote to the complainant and defined the scope of this case. The Commissioner explained that he

considered question 2 of the request to be complete. The complainant had argued that the ICO had not sent him a copy of two register entries for [company two]. However, in his request, the complainant had specifically excluded these register entries as not required.

19. On 13 October 2010 and 15 October 2010 key individuals within the ICO met to discuss the requirements of this case.
20. On 18 October 2010 the Commissioner wrote to the complainant. He explained that he was satisfied that all elements of the request had been handled correctly by the ICO and that the requested information had been provided in accordance with the Act. However, for the sake of clarity, the Commissioner addressed the issue of inconsistencies in information which had previously been provided and had been raised in the complaint.

Analysis

Substantive Procedural Matters

Section 1

21. 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."*

22. The Commissioner has confirmed the following in relation to each question:
 1. [Company three] has never been registered on the ICO's Data Protection Register. This information is not held.
 2. The ICO did not hold any other register entries for the named company, other than the two entries the complainant had specifically excluded from the request.

3. The Commissioner provided the complainant with the current register entry for [company one]. This is the only entry it held for [company one].
 4. [Company four] has never notified the ICO and therefore does not have an entry on the Data Protection Register. This information is not held.
 5. The Commissioner provided the complainant with the register entry for [company five]. This is the only entry it held for [company five].
23. With regard to the issues raised by the complainant concerning question three and inconsistent information, for the sake of clarity, the Commissioner has provided the following explanations.
24. [Company one] was registered on 26 July 2001, with the address at [address one]. It had changed its address twice since then. In summary therefore [company one's] address was:
- | | |
|-----------|-----------------|
| 2001-2007 | [address one] |
| 2007-2008 | [address two] |
| 2008-2010 | [address three] |
25. The Commissioner considers that this answers the inconsistencies regarding the addresses that have been provided to the complainant. It would appear that the complainant had been provided with misleading information in the past. However, the Commissioner is confident that the complainant was provided with the correct information in respect of this case.
26. With regard to question five and the dates questioned by the complainant, the Commissioner has explained that [company five] was registered on 29 August 2008 when notification was received; however it was actually put onto the register on 3 September 2008. This explains the two apparently conflicting dates.
27. In view of the above, the Commissioner is satisfied that the response provided on 13 April 2010 was in accordance with section 1(1)(a) and (b).

Procedural Requirements

28. The request was made on 30 March 2010 and a response was sent on 13 April 2010 providing the information the ICO held and confirming what information it did not hold. The Commissioner therefore considers

that the ICO provided a response to the complainant within 20 working days and complied with section 10(1) of the Act.

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. 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

32. 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.
33. 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 1st day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
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.”

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.”