

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 May 2011

Public Authority: Enfield Council
Address: Civic Centre
Silver Street
Enfield
EN1 3XF

Summary

The complainant made a number of information requests to Enfield Council in the form of a Section 65 Race Relations Act 1976 questionnaire. Despite the intervention of the Commissioner, Enfield Council has not provided an adequate response to this request in accordance with the Freedom of Information Act. The Commissioner therefore reminds Enfield Council of its obligations under the Freedom of Information Act and requires that it either respond to the request in accordance with the Act or issue a valid refusal notice under section 17(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 30 April 2010 the complainant made a number of information requests to Enfield Council in the form of a Section 65 Race Relations Act 1976 questionnaire. The requests are detailed in Annex A.
3. An automatic acknowledge was sent by Enfield Council on the same date.

4. On 25 June 2010 Enfield Council provided a partial response to the requests for information as part of its response to the Section 65 Race Relations Act 1976 questionnaire. However, for the majority of the requests, Enfield Council failed to respond to the specific questions. In a number of cases, Enfield Council stated that the complainant should clarify why this information is requested.
5. The complainant telephoned the ICO Helpline and was advised to request an internal review if he was unhappy with the response.
6. On 26 July 2010 the complainant wrote to Enfield Council stating that a significant part of the information requested in the Section 65 Race Relations Act 1976 questionnaire is covered by the Freedom of Information Act and that he is dissatisfied with the both the delay and the failure to provide the information requested. The complainant requested an internal review and set out the information requested together with the partial response he had received and his own comments in order to clarify to what extent the information had been provided.
7. Again, an automatic acknowledge was sent by Enfield Council on the same date.

The Investigation

Scope of the case

8. Having received no response to his request for an internal review, the complainant contacted the Commissioner again on 26 August 2010 to complain that Enfield Council had failed to respond to his request for an internal review.

Chronology

9. On 24 September 2010, the Commissioner wrote to Enfield Council and reminded it of his expectations in relation to the timeliness of internal reviews, as set out in his guidance on that matter. The Commissioner asked Enfield Council to issue the findings of its internal review to the complainant with 20 working days or, if had already issued a response, to check with the complainant that he had received it.
10. The complainant wrote to the Commissioner on 26 October 2010 to inform him that she had received no response or contact from Enfield Council.
11. On 2 November 2010, the Commissioner telephoned Enfield Council who agreed to look into the case and call back.

12. The Commissioner then wrote to Enfield Council on 10 November 2010 stating that an initial assessment had been carried out and the case was deemed eligible for formal consideration under s50 of the Act. A copy of the withheld information and details of which exemptions were being applied were requested.
13. Despite the letters and telephone call detailed above, Enfield Council has failed to respond to the complainant or the Commissioner.

Analysis

Procedural Requirements

14. The Commissioner has considered whether Enfield Council has responded to the request of 30 April 2010 in line with the provisions of the Act.
15. Enfield Council did not conduct an internal review or issue a clear response to the complainant or Commissioner confirming what provisions of the legislation (if any) it is relying on.

Section 10 – Time for response

16. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
17. From the information provided to the Commissioner on this case it is evident that Enfield Council did not respond to the complainant within the statutory time frame.

The Decision

18. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that:
 - it breached section 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days and
 - it did not provide a clear response in order to permit the Commissioner to identify which provisions of the legislation (if any) it was relying on.

Steps Required

19. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - Comply with section 1(1) or
 - Issue a valid refusal notice under section 17(1)
20. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

21. 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.

Other matters

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

Internal review

23. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:

"....provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.
24. Paragraph 40 of the Code states that in carrying out reviews:

"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."
25. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal

review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority failed to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

26. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

27. 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.
28. 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 31st day of May 2011

Signed

**Andrew White
Group Manager
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.

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) states –

"Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”