

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 September 2010

Public Authority: The University of Cambridge
Address: University Offices
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Summary

The complainant requested information about restrictions contained in post-dismissal compensation settlements agreed by the public authority. The public authority disclosed some information in response to the request and additional information was subsequently provided to the complainant during the course of the Commissioner's investigation. The Commissioner finds that, in failing to comply fully with section 1(1)(b) of the Act within 20 working days, the public authority breached section 10(1) of the Act. The Commissioner requires no action to be taken.

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 12 February 2010 the complainant wrote to the University of Cambridge ("the University") requesting the following information:

"Without revealing any personal data, please provide, for all post-dismissal compensation settlements from December 2008 onward, the following:

1. Details of each of the different types of restriction any of these settlements placed on the individual dismissed (e.g. forbidding them from entering University property, forbidding them from communicating with current University employees, etc.) – note that the examples I've given are not intended to be exhaustive but merely to indicate the level of detail which I seek; and

2. For each restriction detailed in 1, the number of times that restriction has been used in these settlements."

3. The University responded on 12 March 2010, listing the types of restriction which may be included as standard practice but refusing to disclose details of the type of restrictions applied in any specific settlement, on the grounds that that the information is exempt under section 40(2) and 40(3) of the Act as disclosure would breach the first data protection principle.
4. The complainant requested an internal review of this response on 22 March 2010. He argued that the information requested was not 'personal data' in the terms defined by the Data Protection Act 1998 and also complained that the University's response was in breach of section 10 of the Act as it was not 'prompt'. He suggested that there were circumstances relating to the timing of his receipt of the response which gave grounds for suspicion that this had been contrived to suit the University's own purposes.
5. The University wrote to the complainant on 12 April 2010 with the outcome of its internal review. This upheld its decision in its initial response and also explained that it takes time to produce a response to a complicated freedom of information (FOI) request and that the timing of its response did not appear to the reviewer to be connected to the matters suggested by the complainant.

The Investigation

Scope of the case

6. On 19 April 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 University had not applied the exemption at section 40 of the Act correctly; and
 - The University's response had not been prompt and therefore it had breached section 10 of the Act, and that the delay had served its own purposes at a critical time.
7. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - The University recognised that it had omitted to provide information relating to the number of times each restriction had been used and this was provided to the Commissioner during the course of his investigation. The University confirmed that it had no objection to that information being provided to the complainant and the information was copied into correspondence sent to the complainant by the Commissioner.
 - The University confirmed that the information it intended to withhold under section 40 of the Act related to the identification of the individuals to whom those settlements related. The complainant subsequently confirmed that the information now forwarded to him by the Commissioner satisfied his request and he reiterated his position that he had not sought any information which would have identified the individuals.
8. 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

9. The Commissioner wrote to the University on 30 June, confirming that he intended to forward the additional material which it had indicated it had no objection to being disclosed to the complainant. He also noted that, while the University's initial response had been provided 20 working days after its receipt of the request and therefore met the statutory deadline,

it was not clear that this response had been 'prompt'. He therefore asked the University to clarify:

- the processes undertaken in preparing the University's response to this request;
- the time taken for those processes; and
- any circumstances which had a bearing on the time taken to prepare the response, including copies of relevant internal communications.

10. The Commissioner wrote to the complainant on 30 June, including the agreed information referred to above and indicating his view that this information, had it been disclosed at the time of the University's response, would have satisfied the complainant's request. He indicated that the main element of his investigation would therefore be to focus on the timing of the University's response.

11. The complainant replied on 2 July 2010. He confirmed that the information now disclosed satisfied his request and agreed that the Commissioner's investigation should focus on the timing of the University's response and possible breaches of section 10 of the Act. He also indicated his belief that University may, in addition, have committed breaches of section 1 and section 17 of the Act.

12. The Commissioner responded on 7 July 2010, confirming the agreed scope of his investigation would be an examination of the timing of the University's response and any breaches of section 10 of the Act.

13. The University provided its detailed response to the Commissioner's enquiries on 21 July 2010.

Analysis

Substantive Procedural Matters

Section 10

14. 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.'

15. The Commissioner notes that the information, which he forwarded to the complainant with the University's consent during the course of his

investigation, was provided after the statutory deadline for response had expired. Therefore the public authority failed to provide all the information requested within 20 working days.

16. The complainant also suggests that the timing of the University's response was contrived to suit its own purposes. He has explained that the requested information was required to assist him in preparing a document for an internal consultation process being undertaken by the university. The deadline for submissions to that process was 1pm on 12 March 2010 and he did not receive the University's response until approximately 2.30pm that same day. He voices his suspicion that this was deliberately done, in order to frustrate his opportunity to participate in the consultation as fully as he had intended and suggests that the University therefore failed to provide a response to his request 'promptly' as required under section 10 of the Act.
17. For this reason, irrespective of the evident finding of a breach of section 10 of the Act, above, it is also necessary to investigate the public authority's actions in preparing its response more closely, in order to determine whether the response was provided 'promptly'. The University provided a detailed response to his enquiries on this subject, which is outlined below.
18. In the period of 20 working days from receipt of the complainant's request, the University was also handling three other requests from the same complainant. The University expresses its view that, as all four of these requests related to information on the same general subject, it would have been entitled to aggregate the costs of compliance under regulation 5 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations) and issue a refusal under section 12 of the Act on the grounds of the costs for compliance with the request. It had chosen not to pursue this option and believes that this is therefore indicative of its good faith during this process. It also states that the person responsible for setting the deadline for the submissions in the University's consultation process was unaware of the complainant's requests and set the timetable completely independently.
19. In addition to the complainant's four requests, the University was also engaged in handling 38 other requests for information made under the Act during this period. For the purpose of handling FOI requests, the University has allocated staff time of 1.75 days per week, a factor which the Commissioner acknowledges will be relevant to any consideration of 'promptness' under section 10 of the Act.

¹ Available online at <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

20. The University has provided the Commissioner with a bundle of documents which consists of internal email exchanges relating to the processing of the request (and a related request for the same complainant, submitted on the same day). From these it is clear that the request was referred to relevant staff in the University's HR department on the day of receipt and a meeting was provisionally arranged with senior HR staff for 22 February to discuss any issues concerning the information which had been located. Preparations for that meeting included the location and circulation of six relevant decisions of the Information Commissioner's Office or the Information Tribunal, which the public authority considered would inform any decision about disclosure or withholding of any information.
21. In the event, the meeting was rescheduled for 23 February because the information had not been fully verified by the planned date. It is explained that the HR department had found it necessary to examine the individual compromise agreements in order to provide definitive information as each agreement, being individually negotiated, is different. The meeting decided to refer the matter to the University's in-house lawyers for advice and it is understood that this was done on or about 24 February 2010. A response from the lawyers was received on 11 March. Responses were first drafted on 11 March and final versions sent to the complainant on 12 March.
22. The University has also submitted an explanation for the time taken by its legal department during the period from 24 February to 11 March. It comments that the department provides advice to all parts of the University on all legal matters and consequently has a heavy task load, therefore turn-round times, for non-urgent matters, of more than a week are not unusual. It further explains that, aside from the six decisions of the Information Commissioner or Information Tribunal, and more general guidance issued by the Information Commissioner's Office and the Ministry of Justice which was considered, the complainant himself had referred the University to four documents available online at various sources, each of which required due consideration. Due to the wide requirements of the public authority for legal advice the University's legal team are generalists, not specialists in freedom of information matters, and might therefore be expected to need to conduct their own research before providing advice.
23. The Commissioner also notes references to a power failure on 8 March which had apparently incapacitated the University's administrative offices for an entire working day.

24. It is therefore apparent to the Commissioner that the greater part of the time taken in responding to the complainant's request was taken up with the location and verification of the requested information by University's HR department and considerations by its legal team. Noting that neither department has a primary responsibility for freedom of information and is likely to be fully engaged with its daily tasks, the Commissioner is unable to conclude that these time periods were unreasonable in the circumstances.
25. For the reasons expressed above, therefore, the Commissioner concludes that the University's initial response to the complainant's request was provided promptly and there does not appear to have been undue delay in its handling of the request.

Section 17

26. The Complainant's argument for a possible breach of section 17 of the Act is based on a comment made by the University to accompany the information disclosed during the Commissioner's investigation, that *"no exemption in respect of this information is, or has ever been, claimed[...]"*. The complainant suggested that, if the University was now claiming that its refusal on the basis of section 40 of the Act was not being maintained, this might constitute a breach of section 17 of the Act.
27. The Commissioner observes that a breach of section 17 will occur if a public authority fails to cite an exemption in its refusal notice which it subsequently relies on. The converse is not true: if a public authority cites an exemption in a refusal notice, which it subsequently decides not to rely on, that is no breach of section 17 of the Act.

The Decision

28. The Commissioner's decision is that the public authority dealt with the following aspects of the request for information in accordance with the Act.

- The information provided in its initial response was provided promptly in accordance with section 10(1) of the Act.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- By failing to provide all of the information requested and therefore comply fully with section 1(1)(b) of the Act 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.

Right of Appeal

30. 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 23rd day of September 2010

Signed

**Rachael Cragg
Group Manager, Complaints Resolution
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.12 Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

'Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.'

Section 12(2) provides that –

'Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.'

Section 12(3) provides that –

'In subsections (1) and (2) 'the appropriate limit' means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.'

Section 12(4) provides that –

'The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.'

Section 12(5) – provides that

'The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.'

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

Estimating the cost of complying with a request – aggregation of related requests

'5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

— (2) *This regulation applies in circumstances in which—*

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) those requests are received by the public authority within any period of sixty consecutive working days.*

— (3) *In this regulation, “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.*