

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2016

Public Authority: Department for Communities and Local Government

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has made a request to the Department for Communities and Local Government ("the department") for information about its management of complaints. The department provided some held information and withheld some under section 40(2) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested whether all relevant held information had been identified for parts 3, 5 and 6 of the request, and whether the department's application of section 40(2) was correct.
2. The Commissioner's decision is that the department has correctly withheld information under section 40(2) and that no further relevant held information is likely to be held in respect of parts 3 and 5 of the request. However the department failed to provide a valid response to part 6 of the request, and also breached section 16(1) by failing to provide appropriate advice and assistance to the complainant. The department has also breached the requirement of section 10(1) by failing to comply with section 1(1) within the time for compliance, and section 17(1) by failing to provide a valid refusal notice within the time for compliance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the FOIA:
 - For part 6 of the request provide the complainant with a fresh response that complies with section 1(1), or else issue a valid refusal notice under section 17.

4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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

Request and response

5. On 17 March 2015 the complainant requested information of the following description:

- 1) *I have experienced great difficulty complaining about the conduct of the Senior President. I should be grateful given the information you have provided if you could please inform:*
 - a) *who is now; and*
 - b) *who was - between 2009 and the time of the transfer to the MoJ; the person at DCLG with responsibility for dealing with complaints as to the Senior President's conduct during the time the DCLG were responsible for the RPTS?*
- 2) *Is an 'arms length body' the same thing as a Quango?*
- 3) *Is there any documentation detailing the responsibilities, roles and accountability as between the DCLG and the RPTS prior to the transfer to the MoJ. If so could it be provided?*
- 4) *Is there any information as to who accepted responsibility as the Data Controller for data received by the RPTS - prior to the transfer to the MoJ? – and what happened to those responsibilities when the RPTS moved over to the MoJ? I.e. does the DCLG take responsibility as Data Controller for the RPTS' processing of data at the time DCLG oversaw the RPTS – given the RPTS appears no longer to exist?*
- 5) *I also understand that the DCLG may have agreed to defend/indemnify panel members and managerial/administrative staff such as the various presidents and vice presidents from costs/damages payable due to litigation as a result of alleged actions/non-actions unless the act(s) or omission(s) complained of were shown to have been in bad faith. Is this correct? Do you hold any information on this and if so could you please supply the same?*
- 6) *Did Local Valuation Tribunals (as opposed to Leasehold Valuations Tribunals) similarly come under the auspices of the DCLG at one point?*

6. On 31 March 2015 the department responded to part 3 of the request.

7. The complainant requested an internal review on 15 May 2015 and contested that the department had not replied to all parts of the request.
8. The department provided the outcome of its internal review on 27 May 2015. It provided a response to each remaining part of the request but withheld information in respect of part 1b under section 40(2).

Scope of the case

9. The complainant initially contacted the Commissioner on 26 August 2015 to complain about the way his request for information had been handled.
10. Following correspondence between the Information Commissioner's Office and the complainant, the complainant confirmed on 16 November 2015 that he disputed the department's application of section 40(2) in respect of part 1b, and the completeness of the department's response to parts 3, 5, and 6.

Reasons for decision

Section 40(2) – Personal data of third parties

11. Section 40(2) provides that:

*"Any information to which a request for information relates is also exempt information if–
(a) it constitutes personal data which do not fall within subsection (1),
and
(b) either the first or the second condition below is satisfied."*

12. Section 40(3) provides that:

*"The first condition is–
(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–
(i) any of the data protection principles..."*

Is the withheld information personal data?

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...data which relate to a living individual who can be identified–

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

14. In order for the exemption to apply the information must constitute personal data as defined by section 1 of the DPA. In the circumstances of this case, the Commissioner understands that the information withheld in respect of part 1b of the request are the names of the three departmental officers who lead on the department's sponsorship of the Residential Property Tribunal Service ("the RPTS"). The department has clarified that during the time specified by the request these individuals would have been responsible for managing any complaints about the Senior President of the RPTS. The Commissioner considers that the names of these three individuals can clearly be defined as personal data.

Would disclosure breach the data protection principles?

15. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
16. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

17. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

18. In this case the department has confirmed that the three individuals were in junior grades (i.e. not in grades that would place them within the Senior Civil Service) and were not in public facing roles. One of these individuals is no longer employed by the Department, whilst the remaining two individuals are still in junior grades.
19. The department considers that all three individuals would hold the expectation that their identities would not be disclosed into the public domain, and has stated that of the two individuals who remain within the department, both have refused consent to their personal data being released in response to the request.

The consequences of disclosure

20. The department considers that the disclosure of the individuals' identities would represent an intrusion into their private lives. This is particularly so in relation to one of the two individuals who remains within the department, as the department considers this individual to hold an relatively uncommon name, which would increase the likelihood of the individual being identified outside their role as a civil servant.

Balancing the rights of freedoms of the data subject with the legitimate interests in disclosure

21. The Commissioner understands that the complainant's request relates to difficulties he experienced in submitting a complaint to the department about the RPTS, and that the specific identities of officers are sought in order to learn who was responsible for managing such complaints within the department.
22. However the department considers that sufficient wider information about the department's complaints process has already been disclosed in response to his request, and the identities of officers would not enhance public understanding of this area. As such, the disclosure of the individuals' names would prejudice those individuals' right to privacy without resulting in a public benefit.

The Commissioner's conclusion

23. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
24. The Commissioner accepts there is a legitimate interest in the ensuring that the complaints process managed by the department is effective. In

considering section 40(2), the Commissioner considers it relevant to consider whether the disclosure of officers' identities would enhance public understanding of this area.

25. It is reasonable for the Commissioner to consider that departmental officers act on behalf of the department to facilitate a complaints process, and not as individuals. Any associated complaint about the efficacy of the department's complaints process would therefore need to be made against the department as a public authority. It is apparent that whilst the individuals were employed in sufficiently high grades to be given responsibility for leading on the department's sponsorship of the RPTS, these were not public facing roles, and it is reasonable for the Commissioner to conclude that responsibility for their actions as civil servants remains with the department itself.
26. The Commissioner also remains aware that one of the individuals is no longer employed within the department. As such it is reasonable to conclude that this individual is likely to hold a greater expectation of privacy, particularly in that the individual did not hold the expectations and public responsibilities of a senior officer whilst within the department.
27. Having considered the above factors, the Commissioner has concluded that disclosure of the three officer's names would not be fair under principle 1 of the DPA, and that on this basis the exemption provided by section 40(2) is engaged.

Section 1(1) – Whether information is held

28. Section 1(1) states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

Part 3 of the request

29. The department's original response confirmed that no information was held in respect of this part of the request, which seeks "*any documentation detailing the responsibilities, roles and accountability*" between the department and the RPTS. The department's response advised that as the RPTS did not have Executive Non-Departmental Public Body status, its internal operation was independent of the department, and that as such there was no framework document in which the roles and responsibilities of the RPTS was outlined.
30. Whilst the complainant did not raise any dispute about this part of the request in seeking an internal review, he has advised the Commissioner

that he considers it reasonable to assume that the terms of the department's sponsorship of the RPTS would be formally recorded.

31. In response to the Commissioner's investigation, the department has undertaken further searches and has now identified a Memorandum of Understanding between the department and the RPTS. The department has confirmed that it considers this information represents the information requested and has now taken steps to provide a copy of this to the complainant. Having considered the relationship between the department and the RPTS, and that further searches have not identified any relevant information except the Memorandum of Understanding, the Commissioner must conclude that no further information is likely to be held.

Part 5 of the request

32. The complainant made this part of the request on the premise that the department may have "*agreed to defend/indemnify panel members and managerial/administrative staff*". The department responded that it had identified no evidence to suggest that the department had done this and that on this basis no information was considered to be held. The department did however refer the complainant to specific HM Treasury guidance that would have been followed in such a scenario.
33. The department has advised the Commissioner no such indemnity was offered, which is a position that has been confirmed by one of the officers responsible for leading on the department's sponsorship of the RPTS. The department has also confirmed this position through searching, both manually and by keyword, for any information about indemnity in the archived electronic files for the department's sponsorship of the RPTS, to which no relevant information has returned.
34. There is no evidence available to the Commissioner that contradicts the department's position (i.e. that indemnity was not offered) and no relevant information has been retrieved from the electronic archives relating to this subject. On this basis it is reasonable for the Commissioner to conclude that no relevant information is likely to be held in relation to this part of the request.

Part 6 of the request

35. The complainant has asked whether 'Local Valuation Tribunals' have previously fallen under the department's responsibility.
36. The department has advised the Commissioner that the term used by the complainant (i.e. 'local valuation tribunals') is not one that is used by the department, and that the department referred the complainant to the existing 'Valuation Tribunal Service' (an executive non-departmental

public body), which provides an administrative function to the 'Valuation Tribunal for England' (a tribunal non-departmental public body). The department has confirmed that it currently acts as sponsor for both these public bodies.

37. The Commissioner has noted that in the department's internal review, it advises the complainant that:

"The term Local Valuation Tribunal is not a term currently in use within DCLG. DCLG sponsors the Valuation Tribunal Service (VTS), which is an executive non-departmental public body, and the Valuation Tribunal for England (VTE), which is a tribunal non-departmental public body; the former provides the administrative function for the latter. Prior to restructuring into a single VTE, there were >50 Valuation Tribunals."

38. The Commissioner has identified, through accessing pages 23-24 of a document entitled 'Report on DCLGs public bodies 2010' (as available on the department's webpages¹), that the Valuation Tribunal for England took over the jurisdiction of 56 separate Valuation Tribunals for England on 1 October 2009. The Commissioner has also identified, from the webpages of the Valuation Tribunal Service², that the service was created on 1 April 2004 to provide support services to the 56 Valuation Tribunals (and then subsequently the Valuation Tribunal for England).
39. Having considered the content of the department's response, the matter of whether the 56 Valuation Tribunals fell under the responsibility of the department remains unclear to the Commissioner. However, it is evident from its internal review that the department was aware of the existence of these Valuation Tribunals and that the complainant's request may be seeking information in respect of them (i.e. whether they fell under the responsibility of the department when they existed). However, the Commissioner considers that the department's response, whilst attempting to provide helpful current context to the complainant, does not in itself provide a clear response under the terms of section 1 of the FOIA. The Commissioner is also aware from the department's submission that it does not assert that no information is held, only that it has attempted to provide wider contextual information to the complainant under the requirement of section 16(1).

¹ <https://www.gov.uk/government/publications/report-on-dclgs-public-bodies-2010>

² <https://www.valuationtribunal.gov.uk/about-us/who-we-are/>

40. On this basis, the Commissioner must conclude that the department's response to part 6 of the request does not comply with section 1(a) through neither confirming nor denying whether relevant information is held.

Section 16(1) – The duty to provide advice and assistance

41. Section 16(1) provides that, when necessary, a public authority should give advice and assistance to any person making an information request.
42. In the circumstances of this case the Commissioner considers that whilst the department provided wider contextual information to the complainant (i.e. that 56 separate Valuation Tribunals existed in the past), this did not actually provide meaningful advice and assistance in relation to the request as it was written. The request sought a confirmation of whether Local Valuation Tribunals fell under the responsibility the department, which the department's response did not address. On this basis the Commissioner considers that the department breached section 16(1).

Section 10(1) – Time for compliance with a request

43. The Commissioner has identified that the department failed to comply with the requirement of section 1(1) within twenty working days following receipt of the request, and on this basis breached the requirement of section 10(1).

Section 17(1) – Refusal of request

44. The Commissioner has identified that the department failed to issue a refusal notice within the time for compliance provided for section 1(1), and on this basis breached the requirement of section 17(1).

Right of appeal

45. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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