

Freedom of Information Act 2000 (Section 52)

Enforcement Notice

Date: 11 June 2010

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Summary

The Information Commissioner wrote to the Independent Police Complaints Commission (the "IPCC") and asked it to provide details of its performance in relation to the handling of requests for information. This action was prompted by a letter from the IPCC which stated that it was experiencing difficulties in responding to requests for information under section 1(1) of the Freedom of Information Act 2000 (the "Act"). The IPCC confirmed to the Commissioner that it had a backlog of 72 requests, 69 of which were 'out of time'. In addition to this backlog, the Commissioner was aware that he had received nine complaints under section 50 of the Act which identified a failure to respond to requests for information within the statutory time limits, four of which remained outstanding at the time of drafting this notice. In relation to each request identified within these section 50 complaints, the Commissioner finds the IPCC to be in breach of section 10(1) of the Act and instructs it to provide the information requested or issue a valid refusal notice in accordance with section 17 of the Act.

The Commissioner's Role

1. Where the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act he may, under section 52 of the Act, serve the authority with a notice (referred to in this Act as an "enforcement notice"). This notice will explain what the public authority has failed to do, set out the Commissioner's reasons for reaching his conclusions and specify the steps the authority needs to take in order to comply with the Act.

The Investigation

Chronology

2. On 17 March 2010 the Commissioner wrote to the IPCC setting out his concerns about its compliance with section 10(1) of the Act. The letter explained that the ICO recognised that unforeseen growth in the volume of requests submitted cannot always be factored into authorities' handling procedures, and further, that Freedom of Information (FOI) must take its place amongst competing demands on public authorities' resources. However, it was explained that as the regulator, the ICO would be unable to accept repeated or systemic non-compliance with the Act or non-conformity to the associated Codes of Practice.
3. In addition to setting out the Commissioner's concerns the letter of the 17 March invited the IPCC to provide clarification on:
 - the extent of the backlog;
 - whether a target date had been set for its elimination;
 - whether the IPCC was handling new requests separately from those within the backlog;
4. On 14 April 2010 the IPCC responded to the Commissioner, confirming the following:
 - that there had been a 40% increase in the number of requests when compared with the same time last year;
 - there were currently 72 outstanding requests (backlog), of which 69 were 'out of time';
 - the date of receipt for the oldest request was 15 May 2009, with the next oldest dated 1 December 2009; the IPCC did however clarify that the May 2009 request was an exceptional case relating to a high profile investigation;
 - the present target date for elimination of the backlog was the end of September 2010;
 - the weekly target for allocation of cases is presently two FOI requests per team member, per week and the ratio of allocation for requests is one from the backlog and one 'still in time' request.
5. On 24 May 2010 the Commissioner wrote to the IPCC and informed it of his intention to issue an Enforcement Notice on 11 June 2010.

6. On 4 June 2010 the Commissioner received a letter from the IPCC which reaffirmed its intention to clear its backlog of overdue requests by September 2010. The IPCC also confirmed that a number of complaints which the Commissioner had identified as being outstanding had been addressed.

Conclusions

7. The IPCC has repeatedly failed to respond to requests for information within the statutory time limits. Further the Commissioner is concerned that the timescale proposed by the IPCC for the elimination of its backlog of overdue requests may not be met, unless the authority is compelled to take such action by way of an Enforcement Notice.

Nature of Non-Compliance

8. In relation to overdue requests in its backlog and requests identified in section 50 complaints to the Commissioner, the IPCC is in breach of section 10(1) of the Act.

Steps Required

9. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

In relation to each overdue request which the IPCC has identified as 'out of time', the Commissioner requires the authority to:

- Respond to each of the requests by 30 September 2010

In respect of the four section 50 complaints identified in the confidential annex to this Notice, and which remain outstanding, within 35 calendar days of the date of this notice the Commissioner requires the IPCC to:

- Provide the information requested or,
- Issue a valid refusal notice in accordance with the requirements of section 17 of the Act.

Failure to comply

10. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

11. The IPCC has the right to appeal against this enforcement 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

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this enforcement notice is served.

Dated the 11 day of June 2010

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Legal Annex**

**FREEDOM OF INFORMATION ACT 2000
(PART IV, SECTION 52)**

**RIGHTS OF APPEAL AGAINST NOTICES SERVED BY THE
COMMISSIONER**

1. Section 57(2) of the Freedom of Information Act 2000 gives a public authority upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.

2. If you decide to appeal and if the Tribunal considers:

- a) that the notice against which the appeal is brought is not in accordance with the law; or
- b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other notice as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be served on the Tribunal within 28 calendar days of the date on which notice of the Commissioner's notice was served on or given to you.
- b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
- c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:
- a) your name and address;
 - b) the notice which you are disputing and the date on which the notice was served on or given to you;
 - c) the grounds of your appeal;
 - d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
 - e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
 - f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 52(3), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.
6. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 57, 58, 59 and 60 of the Freedom of Information Act 2000, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).