

Reference 4852 | 4 June 2010

# Internal Review

Freedom of Information Act 2000

## Introduction

1. This internal review has been requested by Mr. Steve Elibank following a request under the Freedom of Information Act. The chronology and content of Mr. Elibank's request are available on the Web at [www.whatdotheyknow.com/request/protected\\_pdfs](http://www.whatdotheyknow.com/request/protected_pdfs): an abridged version of events (up to and including the request for an internal review) is included in the [Appendix](#) hereto.
2. Mr. Elibank requested the review on the following grounds:
  - a. That the tone of the response was brusque and snide and therefore contrary to the spirit of the Freedom of Information Act.
  - b. That the response was late.
  - c. That the University either deliberately misrepresented or did not know that "office closed" days still count towards the time limit.

## Summary of conclusions

3. As a result of conducting the internal review, the University's conclusions are as follows:
  - a. The complaint that the tone of the University's communication was brusque and snide is unsupported, although the communication was firm.
  - b. The complaint that the tone of such communication goes against the spirit of the Act is unsupported. As a learning point, the procedure on the University's web page [www.soton.ac.uk/inf/foi.html](http://www.soton.ac.uk/inf/foi.html) should be expanded to cover most of the points raised in paragraphs 4 and 5 of the s.45 Code of Practice.
  - c. The complaint that the communication was late is well-founded: the response was one day late.
  - d. The complaint that the University's interpretation of working days was a deliberate false representation is unsupported.
  - e. The complaint that the University's interpretation of working days was due to lack of knowledge is well-founded to the extent that the legislation should have been double-checked before the University's response was sent. As a learning point, the legislation will be double-checked before responses are sent.

## Ground 1: response brusque, snide and not in keeping with the spirit of the Act

4. The [OED](#) definitions of 'brusque' and 'snide' (when used as adjectives) are shown below:

### Brusque:

1. Tart. (= It. brusco.) Obs.
2. Somewhat rough or rude in manner; blunt, 'offhand'.

### Snide:

1. Counterfeit, sham, bogus. Also more widely, inferior, worthless.
2. Of a person: cunning, sharp.
3. Insinuating, sneering, slyly derogatory.

5. Was the University's response brusque and/or snide? This should be determined in the context of Mr. Elibank making two allegations on a public web site which required rebuttal. The allegations were potentially damaging to the University's reputation, so the response had to be forceful yet measured (in view of the fact that responses are published on the public web site). The allegations were (a) that the University had previously ignored this request from another individual and (b) that [in failing to respond within the statutory deadline], the University was breaking the law.
6. The first allegation was not only incorrect, but Mr. Elibank must have known it to be incorrect. The University's [response](#) to the previous request was set out on the WhatDoTheyKnow web site: that applicant chose not to believe the University's response that there was no documentation, but the response was made – the request was not ignored. Furthermore, Mr. Elibank's choice of words ("you have previously ignored this request") suggested (to the world at large) that the University had disregarded its obligations under the Act, when that was not in fact true.
7. With regard to allegation (b): Mr. Elibank was correct to state that the University had failed to respond within the statutory deadline. However, his ensuing choice of words ("*and are thus breaking the law*") was perhaps ill-advised. Breaking the law, to most people, suggests criminal activity, and this remark was posted on a public web site. A more accurate and appropriate turn of phrase might have been "and are thus in breach of your obligations under sections 1 and 10 of the Act".

### **Was the communication not in keeping with the spirit of the Act?**

8. The spirit of the Act is that information should be disclosed – there is a presumption in favour of disclosure. There is also an explicit provision in [section 16\(1\)](#) requiring every public authority "to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."
9. The spirit of the Act had been observed, both in the previous request referred to above and in this request, in that the University complied by responding that it did not hold the information requested (as all information relating to this matter consisted of conversations). As the University did not hold the information requested, there was nothing the University could do in terms of providing advice and assistance.
10. Mr. Elibank also specifically refers to section 16 ("*particularly the section explicitly requiring public authorities to be helpful to applicants*"). The duty to advise and assist is dealt with in [Part II](#) of the s.45 Code of Practice. The paragraphs that are relevant are 4, 5 and 15:
  4. *Public authorities should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:*
    - *what the public authority's usual procedure will be where it does not hold the information requested (see also III - "Transferring requests for information"), and*
    - *when the public authority may need to consult other public authorities and/or third parties in order to reach a decision on whether the requested information can be released (see also IV - "Consultation with third parties"),*
  5. *The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.*
  15. *An authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14 of the Act. Guidance on what constitutes a vexatious request*

can be found in the DCA Handbook - 'Guidance on Processing Requests'. The Information Commissioner has also issued advice on dealing with vexatious and repetitious requests.

11. As regards paragraph 4 of the Code: an abridged procedure is set out at [www.soton.ac.uk/inf/foi.html](http://www.soton.ac.uk/inf/foi.html) (which is accessible by clicking on [Freedom of Information](#) at the foot of every University web page): this page does not, however, include the statements enumerated in paragraph 4.
12. As regards paragraph 5 of the Code: the web page above contains links to the online request form FOI-8, but does not contain an email address (although the FOI-8 form itself does) or a telephone number. There is no named individual, although the Head of Legal Services is mentioned by title.
13. As regards paragraph 15 of the Code: the Code stipulates that public authorities are not expected to provide assistance to applicants whose requests are vexatious. The ICO has issued [long](#) and [short](#) guidance on what constitutes a vexatious request. The ICO suggests considering the following (according to the ICO, to judge a request vexatious one should be able to make relatively strong arguments under several of the headings below, but one does not need to be able to answer yes to every question):

**Consider:**

**Comments**

Can the request fairly be seen as obsessive?

According to the ICI, relevant factors can include requests for information the requester has already seen...

Would complying with the request impose a significant burden in terms of expense and distraction?

Not in this case.

Is the request harassing the authority or causing distress to staff?

Is the request designed to cause disruption or annoyance?

Does the request lack any serious purpose or value?

Arguably, as this request has already been answered before.

It is possible that Mr. Elibank's request could be construed as vexatious: and if that was the case, there would be no duty under the Code of Practice to provide assistance.

14. **Learning point:** the procedure on the web page [www.soton.ac.uk/inf/foi.html](http://www.soton.ac.uk/inf/foi.html) should be expanded to cover most of the points raised in paragraphs 4 and 5 of the Code.

## Ground 2: late response

15. Mr. Elibank is correct in suggesting that the University failed to respond within the statutory deadline of 20 working days. Working days are defined in [section 10\(6\)](#) as "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."
16. The University acknowledges that it failed to respond within the statutory deadline and extends its apologies to Mr. Elibank.

17. Mr. Elibank states "*I have no idea why you chose to close your university office on April 6th-7th*": the answer is that the University, in common with other universities and schools, has closure days which reflect the fact that its students are away. Although the University closure days do not count as non-working days for the purpose of section 10 of the Freedom of Information Act, it is interesting to note that maintained schools are entitled to exclude non-school days from the calculation: the deadline is the earlier of 60 working days or 20 working days excluding non-school days: see [reg.3 Freedom of Information \(Time for Compliance with Request\) Regulations 2004/3364](#).

### **Ground 3: deliberate false representation or lack of knowledge**

18. The University is satisfied that there was no deliberate false representation: had [section 10](#) been double-checked beforehand, a different response would have been sent to Mr. Elibank.
19. As regards the allegation of lack of knowledge: the entire Act runs to 156 pages of A4. Although the Act will have been read in its entirety by staff dealing with Freedom of Information requests, it would be unreasonable to expect it to be committed to memory. Normally, the relevant sections are read again, not only to refresh the memory but also to check for updates or amendments. On this occasion, however, in his haste to respond, the member of staff responsible did not check the section carefully enough or in full.
20. **Learning point:** this has been a useful lesson - the legislation should always be double-checked before a response is sent.

### **Appeal to the Information Commissioner**

21. This internal review concludes the University's appeal process. If Mr. Elibank is not satisfied with the internal review, he has the right to appeal to the Information Commissioner, either in writing (FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF) or [electronically](#).

## Appendix

22. On 19 March 2010 at 08:50 Mr. Elibank made a request for:

*"...copies of all the advice and discussions held by the University of Southampton or provided to you in relation to the way you mark Freedom of Information requests to warn applicants of your rights under Copyright and Intellectual Property law.*

*Please provide any documents from 1.1.04 to the current date. I appreciate that this may include advice and discussion that has now been overtaken by newer advice and discussions.*

*Note that you have previously ignored this request from another individual, but I shall be expecting an answer."*

23. On 21 April 2010 at 06:52 Mr. Elibank sent the following email: "You have failed to respond to my Freedom of Information request within the statutory deadline, and are thus breaking the law. If I do not receive a full response within 24hrs, a complaint will be lodged with the Information Commissioner."

24. The same day at 17:49 the University responded as follows:

*We refer to your emails of 19 March 2010 and 21 April 2010.*

*You assert in your email of 21 April: "You have failed to respond to my Freedom of Information request within the statutory deadline, and are thus breaking the law." This is incorrect: the statutory deadline is 20 working days following the date of receipt. Working days are Monday to Friday, and the University was closed on 6 and 7 April as well as on the bank holidays of 2 and 5 April. The 20-working-day deadline therefore expires tomorrow (22 April).*

*You assert in your email of 19 March: "Note that you have previously ignored this request from another individual, but I shall be expecting an answer." This is incorrect: our response to that individual, available elsewhere on this site [FN1], was quite unambiguous and the substantive text of that response is set out below, not only for your convenience but also as a substantive response to your request:*

*"The University does not hold any recorded advice or discussions with regard to marking of responses to FOI requests. Informal discussions were held within Legal Services (the University's in-house legal department) with regard to how to respond to Freedom of Information requests where the University's response would be published directly on the Internet. It was felt appropriate to remind applicants who intended to publish the University's response to their request on the Internet that their entitlement is only to the information contained in the response and not to any material protected by intellectual property laws."*

25. Mr. Elibank responded the same day at 18:04 and asked for an internal review:

*Thank you for your response. I wish to request an Internal Review of your handling of this matter, due partly to the brusque and snide tone of your communication, which goes against the spirit of the Freedom of Information Act (particularly the section explicitly requiring public authorities to be helpful to applicants).*

*The other part is that this response WAS late. Section 10(1) of the Act required you to respond within 20 working days, while Section 10(6) clearly states, "'working day' means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday."*

*I have no idea why you chose to close your university office on April 6th-7th, but they were not bank holidays under the Banking and Financial Dealings Act 1971, and so are not excluded from the timescale for responding to Freedom of Information requests.*

*The third element of my grounds for insisting on an Internal Review is that you either deliberately falsely represented this to me, or did not know that "office closed" days still count towards the time limit - neither situation is acceptable.*

*Please reply to this message to confirm that you are working on an Internal Review.*

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