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Government
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Mr Nigel Hobro

By email to xxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxx.xxx

Date: 17 July 2015

Dear Mr Hobro

Thank you for your request for a review received on 22 June 2015. I am sorry that you are dissatisfied with our attempts to handle your request for information under the Freedom of Information (FOI) Act 2000.

As a Freedom of Information specialist in the Department, but with responsibility for business areas other than that to which your request relates, I was asked independently to consider your concerns. Further to my email of 24 June I am now able to provide you with a considered response.

Request for information

To recap, on 5 January this year you made the following request for information to this Department:

In Autumn 2013 your investigator was sent to Enterprise Solutions (NW) Ltd following an investigation by Grant Thornton that reported to Wirral Borough Council in March 2013 regarding abuses of the Intensive Start Up Scheme ISUS. Regardless of the fieldwork being complete by December 2013 the report-which is known to me to be written-has not been released. I request a copy of the report.

It was not until 19 June that Anna Canning sent a substantive response to your request, confirming that the report you had asked for was held, but refusing to disclose that information and relying on exemptions at section 36 of the FOI Act and, in part, those at section 41 and 40(2).

You then made your request for an internal review.

Review officer's response

Time taken to answer request

The first thing to address is the delay in sending you the substantive response of 19 June.

In line with our FOI obligations, this Department aims to issue a response to any request for information promptly and in any case within 20 working days. The exception to this is where a qualified exemption is judged to apply to information and more time is needed to decide whether the public interest is best served by disclosing the information or maintaining the exemption. In such cases the Department aims, in line with the Information Commissioner's guidance, only to extend the target date for answering a request once and to take no more than 40 working days in total to issue a substantive response.

Clearly your request was not answered within 20 working days. It was not until 10 March that Anna Canning wrote to you, and then again on 17 April, to inform you of progress in considering your request. On neither occasion was it stated that a qualified exemption applied to the information you have asked for and more time was needed to consider the public interest. In any event, this was because such an extension by 10 March would have been more than 20 working days after your request was received and therefore formally have been too late as far the Department's obligations under the FOI Act are concerned.

Generally it is not the Department's practice to carry out an internal review into just a delay in the handling of a request, to which FOI provisions apply, and where the statutory deadline for responding has been exceeded. Typically this is because there can be no legally permissible reason for missing the deadline of course, so all that formally can be offered to an applicant is an apology – which of course should already have been offered.

I have noted that Anna Canning recognised on each occasion of updating you and then sending you the 19 June response that an apology was called for, and one was offered. You have taken this to be "*...a defence of ones actions which of course you do not provide*" and noted that "*No rationale as to why you breached statutory limits in providing any answer at all*" was provided. You went on to say that "*If you were to use s36 of the Act you could have done so some months ago...*".

Having reviewed the handling of your request I can see these points from both sides. There is no doubt that the Department breached the statutory time limit in the FOI Act for answering your request. No reason was given for this in providing you with updates as to progress, partly because no acceptable reason under the FOI Act could be given. Although it would not have altered the circumstances or the delay, I conclude it would however have been helpful if an attempt at explanation had been made.

On the other hand, I can see that this has been a particularly difficult request for officials to consider.

To begin with, matters were not helped by the fact that when your request was first received it was not recognised as a request for information to which FOI provisions applied and was not logged as such on the Department's request database until 10 February. Emails from you chasing a response were not picked up in the

Department's casework management system. Nor was an acknowledgment then sent until Anna Canning's update of 10 March. Clearly there were administrative failings at these points and steps have been taken to avoid a repeat of those.

As you are only too aware, the report which you have asked for, at the time of your request and the 19 June response, had not been finalised, and considerations about it with a view to that have been ongoing throughout the consideration of your request and remain so. In that sense what the appropriate response to your request should be, ultimately, as considerations about that went back and forth between officials, was not clear enough easily to reach a conclusion. That also made it difficult, at given points, to know whether and what FOI exemptions legitimately were engaged, and any formal extension with reasons on that basis would, by the time of your FOI request having been recognised as such, in any case have been too late. The fluidity of the considerations was also the reason why the formal opinion of a qualified person, engaging cited exemptions under section 36, was not possible to obtain sooner.

Whilst I am satisfied as to these considerations, nothing alters the fact that difficulties in a particular case do not remove the obligation on the Department to respond in line with FOI timescales. But they do illustrate why that was not readily possible in this case.

Section 36 and other cited exemption sections

You have not questioned whether the exemptions cited in the 19 June response apply legitimately to the information you requested. Nor as the "reasonable opinion" for the purposes of section 36 was given by a Minister of the Department as a "qualified person" is it for me as a review officer to determine whether cited exemptions under that section were engaged properly. All that falls to me is to consider whether the Minister was sufficiently informed for the given opinion to be a "reasonable" one, and having reviewed the case papers and advice that went to the Minister I am satisfied that was the case.

Therefore, and as the exemptions at section 36 were applied to the information you requested entirely, and those at sections 41 and 40(2) only in part, I have not given any particular consideration to whether those exemptions were engaged – and, again, because you have not questioned that. But I will say simply, having considered the information and the circumstances surrounding it, I am of the view that the arguments made in support of the other exemptions in the 19 June were in line with the requirements for their engagement and are persuasive.

Public interest

All then that would fall to me as the review officer, in relation to section 36, is to consider the public interest assessments. But again, you have not questioned the assessment of the public interest in relation to the arguments weighed for disclosing or withholding the information you have requested.

I do not, mainly then for that reason, propose to address those arguments in any detail. However, again, having considered the circumstances and the arguments in

the 19 June response I am convinced they were appropriate and persuasive as to the conclusion that was reached not to disclose the information at that point.

Other points

I considered whether there was any benefit at all in carrying out a formal internal review in this instance and in providing you with a formal response in that respect. I have examined your email requesting a review very carefully. You have not raised any points about the engagement of cited exemptions or the public interest at this time in relation to those. As such, a review under the Department's procedures for handling FOI requests is not strictly speaking called for. But to offer a response just to that effect, and not to review the delay in answering the request in this case, would not have been helpful.

However, that is the limit I'm afraid of what is within my remit. Your points otherwise are concerned with the audit procedures in this case and what you see as unreasonable delays around that. As such they are not for me to respond to, and I have therefore passed your email on to colleagues in the relevant business areas of the Department further to consider.

Right of appeal

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision.

The Information Commissioner can be contacted at:

The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Phone: 0303 123 1113

Website: ico.org.uk

Yours sincerely

Martin Harding
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