

FOIA s.1(4) – Whether information held

FOIA s.3 – Public authorities

FOIA s.50(2)(d) – Decision of commissioner

FOIA s.57 – Appeals to tribunal

FOIA s.16 – Duty to advise and assist

Mr R Day v IC & Department for Work and Pensions

EA/2006/0069

24th September 2007

Cases:

BBC v Sugar [2007] EWHC 905

Facts

The Appellant wrote to his MP asking a number of questions about the Child Support Agency. His MP forwarded the request to the CSA, who replied within 28 days of receipt by them. The Appellant was dissatisfied with that result and complained to the IC. The IC declined to issue a decision notice claiming that the request had been withdrawn under s50(2)(d). The Appellant subsequently made a second request for information to the CSA. The CSA belatedly provided this information, breaching their duty.

Findings

A request for information to an MP is not a request to a public authority within FOIA, but where the MP forwards the request to a public authority for them to answer, and the request is accepted by the authority as a FOIA request, the request falls within FOIA; time for reply runs from receipt of the request by the public authority, not by the MP.

Where the IC declines to issue a Decision Notice on the ground that the complaint has been withdrawn within s.50(2)(d) FOIA, the Tribunal has no jurisdiction to consider the appeal, applying *BBC v Sugar*. However, where in a subsequent Decision Notice, the IC deals with a second request, but fails to deal with the earlier request, repeated in the second request, the Tribunal can deal with that failure, since it relates to the content of the Decision Notice that was issued, not with the failure to issue a Decision Notice on the first request: s.50 and 57 FOIA considered.

The Tribunal agreed that the Decision Notice was defective in that the earlier request for information was not covered in it. The Tribunal found that the replies to the earlier request for information were within the FOIA. The tribunal rejected the Appellant's complaint that the reply from the CSA was out of time as it was more than 28 days from the date of the original letter: the reply was made within 28 days of receipt of the letter by the CSA.

The IC and DWP argued that Mr Day's requests to the MP for information could not properly be characterised as requests for information, since they were essentially argumentative and tendentious, resting on disputed assumptions and containing misleading statements. They did not therefore fall within FOIA at all. The Tribunal recognised that there might be requests which could be so misleading in scope as to fall outside a request for information, but found that these requests were not within that category.

Conclusion

Where information is requested about an accumulating total, the information should be provided as at the date of the request: s.1(4) FOIA, not, where the request was belatedly dealt with, at the time of the reply, even if that provided more up to date information.