



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 29 June 2006**

**Public Authority: London Borough of Richmond upon Thames**

**Address: Civic Centre  
44 York Street  
Twickenham  
TW1 3BZ**

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1, section 10, section 17 (1) (b), and section 17 (7) It has however complied with its obligations under section 17 (2) (b) and section 16.**

**The Commissioner confirms that the public authority should release the redacted information specified in this notice to the complainant within 28 days.**

#### **1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## 2. The Complaint

- 2.1 The Complainant has advised that on 17 March 2005 he asked the public authority to provide various copy letters, memorandums, notes of meetings and telephone calls, copy minutes and e-mails, relating to a matter discussed at a particular meeting of the Strategy and Resources Overview and Scrutiny Committee. The full wording of the request is provided at the Annex to this notice.
- 2.2 The public authority firstly acknowledged the request and then on 18 April 2005 advised the complainant that non-exempt information would be provided the following day, and that it would require a further 20 working days to consider the public interest test in relation to other potentially exempt information.
- 2.3 On 19 April 2005 the complainant was sent copies of certain letters referred to in his request, which included redactions of personal information. On 17 May 2005 the Council advised the complainant that it hoped to be able to supply further non-exempt information by 20 May 2005. On 28 July 2005 the Council sent a response to the complainant confirming what information it held and supplying further information. It also advised the complainant that redactions to the letters supplied on 19 April 2005, had been made so as not to contravene Data Protection Principles.
- 2.4 In addition to the above mentioned correspondence, there were also various e-mails and letters between London Borough of Richmond upon Thames and the complainant in which the handling of the request and requirements of the Freedom of Information Act were referred to.

## 3. Relevant Statutory Obligations under the Act

- 3.1 “**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information

- 3.2 **Section 10(1)** provides that –

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.

- 3.3 **Section 16(1)** provides that –

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons would propose to make, or have made, requests for information to it”.

3.4 **Section 17(1)** provides that –

“(1) A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

3.5 **Section 17(2)(b)** provides that -

(2) Where - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority ...has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

3.6 **Section 17(7)** provides that –

“A notice under subsection (1), (3) or (5) must-

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

3.7 **Section 40** provides that -

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) 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.

(3) 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, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

#### **4. Review of the case**

4.1 In his complaint to the Information Commissioner the complainant made various allegations against the public authority which he asked to be considered. The Information Commissioner considered the allegations which related to the requirements of the Act. He did not consider further allegations which fell outside the scope of the Act. The allegations he considered, quoted from the complainant's letter of complaint, were as follows:

- i) "Failure to reply promptly or even within 20 days
- ii) Serving an extension notice out of time and without including reasons
- iii) Failure to give the Applicant details of the Council's internal appeal procedures
- iv) Failure to give advice and assistance [section 16]
- v) Refusal of access to documents without valid reason"

4.2 In his review of the case the Information Commissioner contacted the public authority to obtain its comments about its processing of the complainants request. He also obtained copies of the information that had been withheld and questioned the public authority about its reasoning for withholding this information. In order to properly assess whether an exemption given at section 40 of the Act should

apply, he obtained details of the roles of the individuals identified in the redacted information. He further obtained confirmation that no further documents relating to the complainant's request had been withheld.

- 4.3 In considering whether or not the public authority had fulfilled its obligations under section 16 of the Act by providing advice and assistance the Information Commissioner considered the extent of this obligation.
- 4.4 He firstly referred to the Code of Practice issued by the Secretary of State under section 45 of the Act, which states that "the aim of providing assistance is to clarify the nature of the information sought". This code provides guidance to public authorities in desirable practice for dealing with Freedom of Information Requests. Whilst the code itself is not statutory, section 16 of the Act provides that where a public authority has conformed with the code, then it has met its section 16 obligations. He further referred to his Freedom of Information Awareness Guidance no 23 in which it is stated that "In simple terms the provision of advice and assistance can be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants, and where possible assists him in obtaining this, maintaining a dialogue with the applicant throughout the process." In light of the above he also considered whether it would be reasonable to expect a public authority, under its section 16 obligations, to enter into an ongoing debate with an applicant about differing interpretations of the Freedom of Information Act, as appeared to be expected by the complainant. Finally he considered whether it would be reasonable to expect a public authority to make an immediate response each time a question is asked quoting the section 16 duty to provide advice and assistance.
- 4.5 In considering whether the public authority had refused access to documents without valid reason the Commissioner considered whether the public authority had correctly applied the exemption for personal information allowed under section 40 of the Act.
- 4.6 The complainant's allegation was that the Council incorrectly applied the exemption provided under section 40 of the Act for personal information, and had so redacted non-exempt information from copy documents that were sent to him. The copy documents were letters between the Council and certain individuals, and the redacted information was the names, addresses and, in certain cases, telephone numbers of those individuals. The council maintained that to leave in the redacted information would breach data protection principles and that the withheld information was therefore exempt under section 40 of the Act.
- 4.7 The Commissioner firstly considered whether the withheld information qualified as Personal Data. Personal Data is defined in section 1(1) of the Data Protection Act 1998 as :

"data which relates to a living individual who can be identified –  
from those data."
- 4.8 The Commissioner then considered whether releasing this information would breach data protection principles as argued by the public authority. In doing this he gave consideration to whether to release the data would be to process it fairly in

accordance with reasonable expectations of data subjects, and he drew a distinction between information relating to someone's private life and information relating to his or her professional or working life. He also took account of the positions held by each of the data subjects when considering whether or not they could reasonably expect this information to be withheld or released.

## **5. The Commissioner's Decision**

- 5.1 The Commissioner's decision in this matter is that the public authority has partly dealt with the complainant's request in accordance with the requirements of Part I of the Act, but that it has partly failed to do so.
- 5.2 The Commissioner finds that the public authority did not make a response in accordance with the requirements of the Act until 28 July 2005. It has therefore breached section 10(1) in that it exceeded the statutory time limit for responding to a request made under section 1(1).
- 5.3 The Commissioner finds that the notice advising that more time was needed to consider the public interest test was served within the 20 day time limit and so the public authority has not breached section 17 (2)(b). However this notice did not specify the exemption in question and so the public authority has breached section 17(1)(b) of the Act.
- 5.4 The Commissioner finds that the public authority's response letter of 28 July 2005 did not include details of its internal complaints procedure, or of the complainant's right under section 50 of the Act to take their complaint to the Information Commissioner. The council has informed the Commissioner that it sent a copy of the council's corporate complaints procedure to the complainant on 11 August 2005. However, as this was not provided in the refusal notice, the public authority has breached of section 17 (7) of the Act.
- 5.5 The Commissioner finds that the public authority has not breached section 16 (1) of the Act for the following reasons.
- 5.6 The Commissioner finds that the public authority met its obligations under section 16 of the Act, in that it engaged with the complainant sufficiently to; establish what he wanted, assist him in obtaining it, and maintain a dialogue with him. The Commissioner considers that the public authority did not require any further clarification to establish what information the complainant wanted, and did not need to assist the complainant in framing his request in a way that would assist him in obtaining the information, as the request was already clear. Further the public authority stayed in correspondence with the complainant throughout the processing of his complaint.
- 5.7 He finds that entering into an ongoing debate with an applicant about differing interpretations of the Act, would be beyond what it would be reasonable to expect a public authority to do and is not what is meant by the provision of advice and assistance. The public authority reviewed its compliance with the Act within its internal review procedures and advised the complainant of its findings. It also within this internal review detailed which sections of the Act it had relied upon in

processing the complainant's request. The Commissioner accepts this course of action, and considers that the use of the internal review procedure as a medium for reviewing compliance with the Act is appropriate.

- 5.8 The Commissioner further finds that the extent of the public authority's obligation to provide advice and assistance is not determined by an applicant's quoting of section 16 when asking a question, but by the requirements of the Act and by reference to guidance provided by this office, the Information Tribunal or the section 45 Code of Practice. The Commissioner does not consider that the obligation to provide advice and assistance requires a public authority to reply to phone calls and correspondence immediately or by return as was requested by the complainant.
- 5.9 With regard to the complainant's specific allegation that the public authority failed to provide advice and assistance, as it did not provide him with a copy of the section 45 Code of Practice. The Commissioner does not uphold this, as on the third day after this request was made the complainant advised the public authority that he had now obtained this from another source.
- 5.10 The Commissioner's decision is that the public authority has breached section 1 of the Act in that it has incorrectly applied the exemption given at section 40 of the Act for personal information to certain information, and has so withheld some non-exempt information from the complainant. For certain other information the exemption was correctly applied and this information was correctly withheld. Further details of which specific information was considered exempt and which was not, with supporting reasons for this are given in the paragraphs below.
- 5.11 The Commissioner firstly finds that if the information were not redacted from the copy letters then the individuals concerned could be identified from it, and so he accepts that it does fall within the definition of Personal Data set out by the Data Protection Act 1998.
- 5.12 He also finds that the correspondence with each of the individuals was related to their professional rather than their private lives.
- 5.13 Four of the individuals were former council officers who had previously held senior positions within the council. The correspondence with them related to matters that arose during the time of their employment with the council. The Commissioner considers that, taking account of the fact that the correspondence related to their working lives, and the seniority of their positions within the council, it would not breach data protection principles to release the names of these data subjects. However, as they were former employees, each of these subjects was written to at their home address, and he finds that to release their private addresses and telephone numbers would breach data protection principles. This is because this specific data is related to their private rather than their professional lives, and it would be reasonable for them to expect that it should not be released.
- 5.14 Another individual was a serving Councillor. The Commissioner considers that his role as an elected member means that it would be reasonable for him to expect his name to be released and that to do so would not breach data protection

principles. Again this data subject was written to at his home address, however his home address and his telephone number are included on the Council's own website, so although this constitutes private information the Commissioner finds that it would be reasonable for him to expect it to be released and that to do so would not breach data protection principles.

- 5.15 Another individual was a journalist who had written a newspaper article covering the matters under consideration. The correspondence with this data subject related to the content of this article. The Commissioner finds that as the journalist was not working in a public role or for a public authority, and had no contractual relationship with the public authority, it would be reasonable for her to expect that her name and e-mail address would not be released by them and that to do so would breach data protection principles.
- 5.16 The final two individuals were an auditor and a valuer who had previously provided professional opinions for the public authority in connection with the matters under consideration. The correspondence with these two parties was in relation to their earlier work and they were both written to at their business addresses. The Commissioner finds that it would be reasonable for providers of professional services to public authorities to expect that their names and business addresses might be released and that to do so would not breach data protection principles.

## **6. Action Required**

- 6.1 In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that London Borough of Richmond shall, within 30 days of the date of this Decision Notice, provide the complainant with the redacted data that the Commissioner has identified within this notice as not being exempt from disclosure by virtue of the section 40 exemption.

## **7. Failure to comply**

- 7.1 Failure to comply with the steps described above 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.

## **8. Right of Appeal**

- 8.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX



Reference : FS50073576

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

8.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 29th day of June 2006**

**Signed .....**

**Phil Boyd  
Assistant Commissioner  
Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex

The complainants request to the public authority of 17 March 2005 was worded :

“ At the meeting of the Strategy and Resources Overview & Scrutiny Committee held on 1<sup>st</sup> July 2003 it was reported :

1. *Fulwell Golf Club / Squires Garden Centre*

*[name] reported that, to enable the investigation to be conclude, letters seeking clarification from eight key players on a number of specific issues were being finalised.*

[extract from minutes]

Could you please supply me with the following information:-

- a. Copies of the letters sent to each of the eight individuals, all replies and all subsequent correspondence both sent to and received from the 8 individuals or anyone purporting to act on their behalf including notes of telephone calls and meeting if any.
- b. Any internal memorandums or notes relating to the correspondence in “a” between Officer and Officers and Councilors, former Councilors and their advisors if any.

Please include copies of material that you hold in the form of paper and electronic records including emails and hand written notes of telephone conversations or informal meetings/discussion

- c. Copy minutes and agendas of all 15 meetings of the Task force re Squires and Fulwell together with all working papers and documents attached to agendas.”