

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 May 2007

Public Authority: Bath and North Somerset Council
Address: Guildhall
High Street
Bath
BA1 5AW

Summary

The complainant requested access to information held by the Assistant Director of Environmental Services at the Council, regarding the Former Fuller Earthworks Site. Although the Council disclosed the information it held, the complainant remained dissatisfied with how the information had been presented and felt for this reason that the Council had not complied with the Act. The complainant requested the Council to resend the information but in a different format. As correspondence continued the Council agreed to reconsider the way the information was supplied and the possibility of resending the information in the manner the complainant required. The Council concluded that it was unwilling to comply with the complainant's wishes as it would simply be resending the same information to that already provided. The Council informed the complainant that it had already supplied the information held and had therefore met its obligations under the Act. The Commissioner was asked to consider the case and he concluded that the Council had supplied the information it held and had therefore dealt with the complainant's information request in accordance with section 1 of the Act. In respect of the way the information was communicated to the complainant, the Commissioner concluded that section 11 of the Act could not be applied in this case, as the complainant made no specific request to receive the information in a particular format at the time of making his initial request to the Council.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The complainant contacted the Assistant Director of Environmental Services (the "Assistant Director") at the Council by email on 20 February 2005 to make the following information request in accordance with section 1 of the Act. (The full text of this section of the Act is available in the Legal Annex to the end of this Notice):

"Access to all information you hold regarding The Former Fullers Earthworks Site. This should include correspondence, details of meetings including minutes and agendas, emails to and from yourself and any telephone attendance notes. I am particularly interested in your contacts with Cllr Todd, Executive Member for Sustainability and the Environment regarding the site."
3. The Council responded on 18 March 2005 forwarding copies of the information held by the Assistant Director relevant to his request. In addition, it provided recorded information that was also held by two further council officers regarding the site.
4. The complainant was unhappy with the information provided in that it supplied information from two council officers who did not form part of his initial request and that it appeared that the Council had amalgamated the information. He continued to correspond with the Council regarding this matter asking questions to different council officers regarding the information provided and for the information to be sent to him again but this time in its original form from the individual computers used to respond to his initial request.
5. The Council wrote to the complainant on 18 April 2005 to inform him that it would consider his complaint in accordance with its internal review procedure. It held a meeting with the complainant on 28 April 2005 to discuss his concerns and other matters and requests he had raised. Following this meeting the Council continued to correspond with the complainant suggesting that it would resend the information it held in the format he required. However, it later wrote to the complainant on 1 July 2005 to confirm that it had reconsidered the situation and it felt that it had already supplied all recorded information it held in accordance with the provisions of the Act. The Council therefore informed the complainant that it was unwilling to resend the same information in the manner he required.
6. The complainant remained dissatisfied with the Council's decision and approached the Commissioner for adjudication on whether it had complied with the requirements of the Act. He felt that the Council did not comply with his original request to supply information held by the Assistant Director and instead provided an amalgamation of information from three council officers.

The Investigation

Scope of the case

7. As the role of the Commissioner is to decide whether a request for information has been dealt with in accordance with section 1 of the Act, the investigation sought to establish what information the Council held in relation to the complainant's request and how this was communicated to him.
8. The complainant was particularly unhappy with the way the information was presented to him and that the Council was unwilling to meet his requirements. The Commissioner therefore considered whether section 11 (full text of this section of the Act is available in the Legal Annex to the end of this Notice) of the Act applied in this case. Section 11 outlines that a public authority shall give consideration to an applicant's preference to the way the information is communicated when this is expressed at the time the information request is first made. The investigation sought to establish when the complainant's request to have the information communicated in a particular way was made and whether the Council was under any obligation to consider such preferences.

Chronology of the case

9. The Commissioner wrote to the Council on 1 December 2005 to request further information about the handling of the complainant's information request. The Commissioner sought clarification on what information it held, how this was communicated to the complainant and why it considered that it had met its requirements under the Act.
10. The Council responded on 20 December 2005 and advised that it fully complied with the complainant's request on 20 February 2005 by supplying all information it held relevant to his request in hard copy. It confirmed that no information was withheld under the Act. It stated that it received a series of queries and complaints from the complainant regarding his request and the information supplied. In particular the complainant felt that the Council had failed to comply with his request and was unhappy with the way the information was presented. He felt the information had been altered in format and requested the Council to resend it individually in separate groups of data from each council officer's computer. The Council stated that these issues were reviewed independently in line with its procedures and it spent considerable time and effort answering the complainant's questions, advising and assisting him beyond what it believed might be considered reasonable.
11. The Council confirmed that the complainant made no specific request to receive the information held in a particular format at the time he made his request, and all information held by the Assistant Director, including that which he had received or been copied into from other officers, was provided. It advised that the information was not altered in anyway prior to it being forwarded to the complainant, as was alleged. However, some of the information was printed by individuals other than the Assistant Director and the Council provided an explanation of this. It

explained that because the Assistant Director is a Head of Service he often receives and is copied into information sent by other council officers. It explained that the Council has established link officers in all services to assist with the Act and any information requests received, with each link officer responsible for collating and coordinating the required information. The Assistant Director also has a personal assistant who has access to his emails and is able to print these off. As a result some of the emails sent to the complainant were printed by individuals other than the Assistant Director and therefore those officer's names appeared at the header of the page printed.

12. In its response the Council explained that a meeting was held with the complainant to discuss his outstanding concerns with the Council, including this particular information request. As a gesture of goodwill it advised the complainant that it was willing to reconsider how the information was presented and whether it was able to resend the information in the format he specified. The Council continued to correspond with the complainant regarding this matter but then decided on reflection that it had dealt with his request in accordance with the Act and therefore there was no requirement for it to resend the same information.
13. The Commissioner wrote to the Council on 16 January 2006 to obtain further clarification. The Commissioner noted that the Council had agreed in correspondence with the complainant to attempt to resend the information it held in the format he specified. He therefore requested a further explanation from the Council as to why it subsequently declined to comply with the complainant's requirements and to establish what attempts were made to honour these.
14. The Council replied on 18 January 2006 and stated that it acknowledged that it had agreed and informed the complainant that it would reconsider the way the information was presented. It explained that it advised the complainant during the meeting he attended on 28 April 2005 that it was under no obligation to re-provide the same information but was willing to reconsider the situation and if possible re-print the information in accordance with his wishes as a gesture of goodwill. It stated that these attempts demonstrated the additional advice and assistance it had provided to the complainant and the efforts it had made to satisfy his request.
15. The Council confirmed that, following this meeting, it reviewed this matter. However, it identified that to comply with the complainant's wishes it would simply be resending the same information that he had already received. It explained that initially the Council found it difficult to understand the complainant's queries and why he was unhappy with the way the information was presented. It confirmed that attempts were made to clarify any issues and assist the complainant. However, it felt that as time passed this became increasingly difficult as the complainant became more aggrieved by the Council's actions. It carried out a review of the complainant's information request and its handling of the matter and concluded that it had complied with his initial request fully and supplied all information the Assistant Director held, in line with the complainant's requirements. The Council advised that it also proved impossible to resend the information in the manner required, as by this time some of the information no longer existed because email boxes had been cleared and one of the council officers concerned had retired.

Analysis

16. The Act provides applicants a general right of access to recorded information held by public authorities. It does not entitle access to copies of original documents whether they be hard copies or emails. Although the complainant suggested that he only expected to receive information generated by the Assistant Director, this was not made clear at the time of his initial request. The Assistant Director's senior position in the Council means that he would not only hold information he generated but also information he received and was copied into by other council officers as well. The Commissioner is of the view that information provided to and copied to the Assistant Director is information held by the Council, which was relevant to the complainant's request and he would expect this information, in addition to the information generated by the Assistant Director himself, to be disclosed to the complainant in accordance with its obligations under section 1 of the Act.
17. With regards to the complainant's request to receive a further copy of the information supplied in a different format, it is apparent that he did not specify at the time of making his initial request that he required the information to be communicated to him in a particular way. It is clear from the documentation available that the complainant's preferences to the way the information should be presented were submitted to the Council after its initial disclosure of the information held. Although section 11 of the Act states that a public authority should consider the applicant's preference for the method by which the information is communicated, the public authority is only obliged to do so when this preference is expressed by the applicant "on making the application" (section 11 of the Act). As the complainant made no specific request at the outset, the Commissioner is of the view that section 11 cannot apply in this case and therefore the Council was under no obligation to reconsider the way it presented the information or to comply with the complainant's subsequent requirements.
18. It is important to highlight at this point that it is Commissioner's view that section 11 of the Act relates to the means by which communication is made, for example a preference to receive the information by electronic form or by letter, as opposed to the actual format in which the information is presented. For this reason, had the complainant in fact specified how and by whom he wished the information to be collated or indicated that he required the information collated individually from each council officer's computer at the time of making his request, it would have been the Commissioner's view that such preferences are outside the scope of the Act.
19. The Commissioner accepts that the complainant was led to believe that a further copy of the information would be supplied in the manner he required. However, it is apparent that the Council later concluded that it was unable to do so. Firstly, the Council decided that it was under no obligation to comply with the complainant's wishes and secondly, some of the information no longer existed by this time.

The Decision

20. The Commissioner is satisfied that the Council complied with section 1 of the Act in that it forwarded to the complainant all recorded information that the Assistant Director held at the time of his information request. With regards to the way it communicated the information to the complainant, the Commissioner is satisfied that the Council was under no obligation to honour his requirements, as section 11 of the Act cannot be applied to this case for the reasons explained in paragraphs 17 and 18.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

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

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 17th day of May 2007

Signed

**Jane Durkin
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act (2000)

Section 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 communicated to him.”

Section 11

(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination