

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 December 2010

Public Authority: Nottingham City Homes Ltd
Address: 14 Hounds Gate
Nottingham
NG1 7BA

Summary

The complainant asked Nottingham City Homes Limited ('NCH') to provide information about council tenancies in his immediate neighbourhood. NCH refused his request on the grounds that it believed the request to be vexatious and applied section 14(1) of the Freedom of Information Act 2000 (the 'Act'). The Commissioner has considered the context and background leading up to this request and has decided that NCH was correct to refuse the request on the basis that it was vexatious under section 14(1) of the Act. The Commissioner also finds that the public authority breached section 17(1) of the Act in that it failed to provide a refusal notice to part of the request within 20 working days.

The Commissioner's Role

1. The Commissioner's duty 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.

Background

2. The complainant lives in a property which was previously owned by Nottingham City Council. In 2005, housing services were transferred to Nottingham City Homes Ltd which was set up as a private company limited by guarantee from 1 April 2005. Nottingham City Homes manages Nottingham City Council's rented and leasehold homes and

handles requests for information held on behalf of Nottingham City Council regarding services provided by the company.

3. In 2005 to 2006, the complainant made two complaints to the Ombudsman regarding the landlord's failure to respond to his complaints about the alleged anti-social behaviour of a nearby tenant. Neither complaint was upheld by the Ombudsman, a decision which was communicated to the complainant by letters dated 31 May 2007 and 20 October 2007.
4. In January 2009, the Audit Commission published a report into housing allocation issues during the period 2003-2005. For the majority of this period, Nottingham City Council provided housing services; however from 2005 onwards the responsibility transferred to NCH. For this reason, the recommendations contained within the Audit Commission's report applied equally to NCH.
5. On publication of the report, a series of complaints from the public followed, including complaints from the complainant. On 23 January 2009 the complainant raised a number of complaints with NCH relating to the period 2003 to 2008 which included allegations about the conduct of a nearby tenant, inappropriate allocation of a property to this tenant and issues of alleged housing disrepair at his own tenancy. The complaint about the alleged misallocation is being investigated by the Audit Commission.
6. Those complaints and the report itself continue to be a subject of investigation by both the Council and NCH and the Audit Commission with a conclusion likely to be reached by the end of 2010.
7. Whilst the initial request was split into three questions (as detailed in the Request section below), the complainant confirmed prior to the internal review result that he was now concerned only with question 1 of his request.

The Request

8. The complainant made a request to NCH on 10 July 2009 for the following information:

"1. ...a breakdown of how much money has been spent by City Council/NCH on numbers [address redacted] and [address redacted] since 1998 to the present and what in particular has

been done regards maintenance, i.e. replaced, improved, or restored at these properties since 1998 to the present.

2. *..whether the previous tenant at [address redacted][name redacted] has been financially reimbursed (compensated) for the wooden floor that she never gained permission to lay or the doors that she replaced without consent or the satellite dish as part of NCH's housing policy.*
3. *..how much money has been spent on [complainant's home address] and equivalent maintenance since 1998 to present."*
9. NCH acknowledged receipt of this request on 14 July 2009 and confirmed it would respond within 20 working days.
10. NCH provided a partial response on 10 August 2009, in which it refused to disclose the information the complainant had requested about one of the addresses on the basis of the exemption contained within section 40(2) of the Act. In its letter, NCH undertook to provide a response to the complainant's questions about the other address once it had collated all of the information. With its response, NCH enclosed documentation showing a breakdown of the costs of repairs undertaken at the complainant's tenancy which addressed question 3 of his request.
11. There followed a series of correspondence between NCH and the complainant in which the complainant reminded NCH of the need to provide a response to the outstanding questions in his request, with NCH acknowledging receipt and eventually providing him with its response on 25 November 2009. It advised it was refusing to disclose the remaining requested information under regulation 13(1) of the Environmental Information Regulations 2004 (the 'EIR') and section 40(2) of the Act.
12. On 11 December 2009 the complainant requested an internal review via the Citizens Advice Bureau of the public authority's decision.
13. NCH acknowledged it had received this request on 15 December 2009 and undertook to provide a response within 40 working days.
14. The complainant initially complained to the Commissioner on 5 November 2009, with his case being closed pending the provision of the necessary correspondence. It was subsequently re-opened on 23 December 2009, and closed pending the internal review. On 4 March 2010, following NCH's failure to confirm the outcome of the internal

review, the Commissioner advised both parties that the complaint had been deemed eligible for formal consideration under the Act.

15. On 20 April 2010 the Commissioner telephoned and subsequently wrote to NCH to confirm its agreement to hold the internal review within ten working days. The Commissioner also confirmed this to the complainant on the same day.
16. On 29 April 2010 the Citizen's Advice Bureau contacted the Commissioner on the complainant's behalf, advising that the complainant no longer required a response to question 2 of his request, confirming that he had had a response to question 3 and that his request should now only concern question 1, which for ease of reference, is as detailed below:

"...a breakdown of how much money has been spent by City Council/NCH on numbers [address redacted] and [address redacted] since 1998 to the present and what in particular has been done regards maintenance, i.e. replaced, improved, or restored at these properties since 1998 to the present."
17. The Commissioner updated NCH about the refining of the request on 4 May 2010.
18. On 12 May 2010 the Commissioner wrote to NCH requesting the outcome of its internal review, which was sent to the Commissioner on 13 May 2010. Whilst the internal review decision reiterated NCH's application of section 40(2) of the Act, it also sought to rely on section 14(1) on the basis that the complainant's request was a repeat request about issues previously raised by him with NCH.
19. On 17 May 2010 the Commissioner wrote to NCH seeking clarification as to whether NCH had also written to the complainant and requesting a copy of the outcome letter to him.
20. On 26 May 2010 the Commissioner wrote further to NCH reiterating his request for clarification about the internal review outcome.
21. On 28 May 2010 the Commissioner received a letter from the complainant querying why he had not received the outcome of the internal review.
22. On the same day NCH wrote to the Commissioner enclosing a copy of the internal review outcome letter it had sent to the complainant.

The Investigation

Scope of the case

23. On 18 June 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled by NCH. The complainant specifically asked the Commissioner to consider that his request was for information about public monies spent on repairs, alterations and the like on Council-owned properties.
24. The Commissioner has considered NCH's application of section 14(1) in relation to this particular information request.
25. The Commissioner has also noted the delay in NCH's handling of part of the request and in holding the internal review, and the latter is referred to in the 'Other matters' section of this Notice.

Chronology

26. On 28 June 2010 the Commissioner wrote to NCH seeking clarification as to which regime the request had been handled under, given its reference to both the Environmental Information Regulations 2004 and the Act in its initial decision. The Commissioner also sought any further information as to NCH's application of the exemption at section 40(2).
27. Having contacted NCH further for its response on 2 and 17 August 2010, the Commissioner received a response on 25 August 2010. NCH confirmed the request had been considered under the Act as the EIR were not applicable to this request and provided further clarification and documentation in support of its view that the request was vexatious.
28. The Commissioner wrote further to NCH on 6 September 2010 seeking additional information about NCH's application of section 14(1) to the request.
29. NCH provided its response on 20 September 2010 detailing why it had applied section 14(1) to the request.
30. On 4 October 2010 the Commissioner wrote to the complainant to advise he would proceed to a Decision Notice unless the complainant was prepared to withdraw his complaint.

Analysis

Which regime applies?

31. Whilst the Commissioner questioned whether NCH was seeking to handle the request under the Act or the EIR at the outset of his investigation, he is satisfied with NCH's confirmation that the information requested was not concerned with environmental matters as defined by the EIR. The Commissioner has concluded that NCH was correct to consider the request for information under the provisions of the Act.

Substantive Procedural Matters

Section 14(1) - vexatious request

32. Section 14(1) provides that a public authority does not have a duty to comply with a request where it is vexatious. As a general principle, the Commissioner considers that this section of the Act is meant to serve as protection to public authorities against those who may abuse the right to seek information.
33. Deciding whether a request is vexatious is essentially a balancing exercise and, in weighing up this issue, the Commissioner considers the following factors.
- Could the request fairly be seen as obsessive or manifestly unreasonable?
 - Is the request harassing the authority or distressing to staff?
 - Would complying with the request impose a significant burden in terms of expense and distraction?
 - Is the request designed to cause disruption or annoyance?
 - Does the request lack any serious purpose or value?
34. In establishing which, if any, of these factors apply, the Commissioner will consider the history and context of the request. In certain cases, a request may not be vexatious in isolation but when considered in context it may form a wider pattern of behaviour that makes it vexatious. The Commissioner recognises, however, that it is the request and not the requester that must be vexatious for the exclusion to be engaged.
35. A significant feature of NCH's submissions concern the complainant's attempts to readdress issues relating to both his tenancy and other

nearby tenancies which he had previously raised with NCH on a number of occasions. The complainant's issues and complaints on these issues date back as far as 2005. NCH has advised the Commissioner that there were no findings in the complainant's favour and that his behaviour resulted in an injunction being taken out against him in late 2009. The injunction order specifically prevented the complainant from contacting the named tenants either directly or indirectly. It was at this time that the complainant submitted his information request for details of the tenants and their properties. NCH deems that these issues are still being considered as part of the Audit Commission's investigation.

Could the request fairly be seen as obsessive or manifestly unreasonable?

36. An obsessive request or a request that is manifestly unreasonable is often a strong indication of vexatiousness. Contributory factors can include the volume and frequency of correspondence and whether there is a clear intention to use the request in a bid to reopen issues that have already been debated.
37. The Commissioner accepts that there is a fine line between persistence and a request being obsessive or manifestly unreasonable. In this instance, the Commissioner believes that the complainant has stepped over this line by using the Act in an attempt to revisit issues which he has raised with NCH from 2005.
38. The Commissioner has noted NCH's submission that the complainant had indicated in previous correspondence to NCH that, even if the disclosure was made, it would not be the end of the matter from the complainant's perspective and that he would seek to verify the authenticity of any documents disclosed.

Does the request have the effect of harassing the public authority or causing distress to staff?

39. The Commissioner acknowledges that there will often be an element of overlap between the various vexatious criteria. For instance, where a request is considered obsessive, it may be the case that it will have the effect of harassing a public authority. Whilst the complainant may not intend to cause distress, the Commissioner must consider whether this was the effect. This is an objective test, based on whether a reasonable person would be likely to regard the request as harassing or distressing.

40. The Commissioner has taken into account the likelihood that a response ending the ongoing exchange of correspondence could ever realistically be provided. Additionally, the Commissioner is mindful of the threatening and intimidating nature of two of the complainant's letters to NCH employees, which NCH brought to his attention.

41. Having regard to these factors, and given the length of time that NCH has been dealing with this issue and the nature of the enquiries, the Commissioner believes it is reasonable to conclude that the effect of the request would be to harass the public authority or its staff.

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

42. When considering whether this factor applies, the Commissioner would expect a public authority to be able to show that complying with the request would cause a significant burden in terms of both costs and diverting staff away from their core functions.

43. The Commissioner has noted that NCH has been dealing with the complainant's correspondence relating to this matter since 2005. In its letter of 13 May 2010 it provided details of the communications which it had had with the complainant. Whilst NCH has conceded that complying with the request in question would not prove to be resource-intensive, it would seem reasonable for NCH to consider that compliance would be likely to lead to further correspondence, thereby imposing a significant burden. This view is reinforced given the complainant's correspondence with NCH in which he had indicated he would seek to verify the authenticity of any documents disclosed by NCH.

Was the request designed to cause disruption or annoyance?

44. The Commissioner observes that the actual effect of much of the complainant's contact with NCH, particularly the raising of issues relating to his and neighbouring tenancies, some of which are being examined by the Audit Commission, is to cause disruption and annoyance, although he notes that this would not seem to be the likely intention for much of the complainant's correspondence.

45. NCH is of the view that set against the background and content of complaints made by the complainant, including those to the Ombudsman which were not upheld, and the nature of correspondence submitted by the complainant, in particular his response to a court injunction, the request was designed to cause disruption or annoyance. The Commissioner considers there is insufficient evidence to conclude

that any disruption or annoyance caused by the request was done so with deliberate intent.

Does the request lack any serious purpose or value?

46. By itself, whether a request does or does not have value is not of significance given that the freedom of information legislation is not concerned with the motives of an applicant, but in promoting transparency for its own sake. However, the Commissioner acknowledges that should a public authority be able to show that a request has no value or purpose, this may help bolster the application of section 14(1) when taken together with other supporting factors.
47. The Commissioner believes after considering all the correspondence that the request has become a manifestation of the complainant's substantive complaints. As such, he has concluded that the request has no serious value or purpose in its context.

Conclusion

48. The Commissioner recognises that there is a fine balancing act between protecting a public authority from vexatious requests and the promotion of transparency in the workings of an authority.
49. Taking all the relevant matters into account, including the history and context of the request, together with the complainant's explanation as to why he feels this request should not be deemed vexatious, the Commissioner has found that the number and strength of the factors in favour of applying section 14(1) are of sufficient weight to deem this request vexatious.

Procedural Requirements

Section 17 – Refusal of request

50. Whilst NCH provided a partial response to the request within 20 working days of receipt, it did not provide its refusal notice to part of the request to the complainant within 20 working days of the request. As such, the public authority breached section 17(1) of the Act.

The Decision

51. The Commissioner's decision is that the public authority correctly applied section 14(1) to the request.

52. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- by failing to provide a refusal notice to part of the request to the complainant within 20 working days, the public authority breached section 17(1) of the Act.

Steps Required

53. The Commissioner requires no steps to be taken.

Other matters

54. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
55. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 100 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 16th day of December 2010

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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 communicated to him."

Vexatious or Repeated Requests

Section 14(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious"

Section 14(2) provides that –

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request."

relation to that case.

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, 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."

Section 17(2) states –

“Where–

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

(i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible 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.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (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.”