

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 September 2010

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Summary

The complainant requested that Northumberland County Council (the 'council') should provide her with a copy of a file of inquest papers held by its County Archives Service. The complainant did not wish to pay the fees charged by the Archive Service and wanted the council to provide the information under the Freedom of Information Act 2000 (the 'Act'). The council refused to provide the information under section 21 of the Act. The Commissioner considers that the information is available to the complainant via the council's Archive Service and that it is clear in the council's publication scheme that a charge may be made for copying. The Commissioner is therefore satisfied that the council was correct to refuse the information under section 21(1) of the Act. However the Commissioner finds that in not specifying the relevant exemption in its refusal notice or at internal review the council is in breach of section 17(1)(b). In failing to provide a substantive refusal to the complainant within the statutory time period the council is also found to be in breach of section 17(1).

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.

The Request

2. On 7 December 2009 the complainant made the following freedom of information request to Northumberland County Council (the 'council'). This was for inquest papers:

'I would like to receive a copy of the file held at Woodhorn Archives under reference COS/354/'.
3. The complainant explained that the Archives Department had offered to provide her with a copy of the file for a fee which she has described as 'extortionate'. The archive also required that she should sign a legally binding agreement which would prevent her from showing the document to anybody else.
4. The complainant had been informed by a member of staff at Woodhorn Archives that the records she required are held as 'public records' under the Public Records Act.
5. As the complainant did not feel the cost and restrictions imposed by the Archives Department were justified, she wished to make a request for these inquest papers under the Act. The complainant asked the council if necessary to provide her with advice and assistance under section 16 of the Act.
6. The council acknowledged this request on 7 December 2009.
7. On 7 January 2010 the complainant asked the council to inform her of the status of her request.
8. On 8 January 2010 she complained to the Information Commissioner's Office (the 'ICO') about the lack of a response.
9. On 12 January 2010, the council replied to the complainant's request. It informed her that the inquest papers she required were open to public inspection and that it was therefore not necessary to make a freedom of information request to access these records. They were available to view in the search room of the County Archives Service at Woodhorn or photocopies could be provided for a charge.
10. The council explained that the Archive Service charges 40p per sheet plus the standard 20% photocopying estimate charge plus postage. As the file comprises 96 sheets, the total charge would be £48.08.

11. On 18 January 2010 the council provided a further response to the complainant. It explained that it considered that the requested information was exempt under section 21 of the Act which states that an authority does not need to provide information under section 1 of the Act if that information is reasonably accessible to the applicant by other means.
12. The council confirmed that the requested information is available via the Northumberland County Council Records Office and that the papers had been offered to the complainant for a photocopying fee.
13. On 20 January 2010 the complainant requested an internal review of this response. She made the following points:
 - The council had not replied within 20 working days.
 - She did not accept that the information was 'reasonably accessible' to her.
 - The required charge was not justified.
 - She had not received any advice and assistance.
 - There was no explanation as to why she had to sign a declaration.
 - She was not offered an internal review by the council, only the opportunity to complain.
14. On 5 February 2010 the council provided the complainant with an internal review. The council confirmed that it had encountered some uncertainty regarding the status of Coroners' Records and freedom of information requirements; however it considered that the Coroners' Records were covered by the Act.
15. The council confirmed that the requested information is available to the complainant from the Archives Division. It understood that the complainant thought the charge to be excessive but believed that this reflected staff time and costs as well as direct printing costs.
16. The council explained that the Copyright Declaration is a standard format used by many local authorities. Its use is part of the Council's Archives policies and procedures and all such requests are subject to the acceptance of these conditions.

The Investigation

Scope of the case

17. On 24 March 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the issue of the council's charge for photocopying and its requirement that she should sign a declaration that would impose restrictions upon what she could do with the information.

Chronology

18. Given its earlier deliberations on the issue, on 20 May 2010 the Commissioner asked the council to clarify the status of the information that had been requested. The Commissioner wished to know upon what basis the council had decided that it held the requested information and explain why it had concluded it was not held on behalf of the Coroner. The council was also asked to confirm the age of the inquest papers which had been requested.
19. On 25 May 2010 the council confirmed that it was of the opinion that it held the requested information. It confirmed that the inquest papers dated from 1931.
20. On 10 June 2010 the Commissioner informed the council that he would now proceed to consider the council's application of section 21 to the requested information. He would consider the issue of the fees charged by the council's Archive Service for copying the information and its requirement that an applicant should sign an agreement regarding the use of the copied document.
21. The Commissioner asked the council the following:
 - Whether there was a specific statutory scheme under which inquest information located at the council's Archives Department is provided for a fee.
 - Whether the requested information was covered by the council's publication scheme. If so, the council was asked to provide documentary evidence of this.
 - To provide a further breakdown of the charge it makes for the copy of inquest documents beyond the information already provided to the complainant. She had been informed that:

- i. There is a charge of 40p per sheet for photocopying;
 - ii. Photocopies from documents incur a handling charge of 20%;
 - iii. Postage charges are added.
- Whether the 'Copyright Declaration and Order Form' on the Woodhorn Archives website was the only agreement that it would have asked the complainant to sign when she applied for the relevant documents to be copied.
22. On 23 June 2010 the council informed the Commissioner that there was no statutory scheme for charging for copies provided by a Local Authority or National Archives. However the council explained that it was common practice to charge in every local and national office in the country. It also explained that the Local Authority Archive Services traditionally looked to The National Archives ('TNA') for good practice and guidance. It provided two links to guidance offered by TNA regarding their copying services and a further link which indicated that TNA makes a charge for photocopying estimates as well as the cost of any copies made plus postage:

<http://www.nationalarchives.gov.uk/help/faqs.htm#ordercopies>

<http://www.nationalarchives.gov.uk/recordcopying/>

<http://www.nationalarchives.gov.uk/legal/recordcopying.htm>

The above mirrors the fees charged by the council.

23. The council explained that its publication scheme was clear that charges might be made for certain services. The council's website was clear as to the fees that would be charged and provided a breakdown of how the fees were calculated.
24. The council provided a breakdown of the fees that it charged for and confirmed that the 'Copyright Declaration and Order Form' on its website was the only agreement that it would have asked the complainant to sign when she applied for the relevant documents to be copied. This agreement requires the complainant to agree that she will not supply a copy of the document to any other person and that she will only use it for research or private study.

Analysis

25. The full text of section 10, section 17(1)(a),(b) and (c), and section 21 can be found in the Legal Annex at the end of this Decision Notice.

Substantive Procedural Matters

Section 1

26. 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.”*

27. The council has confirmed that it considers it holds the requested information.

28. The complainant has provided a link to a National Archives document which states that once coroner’s records have been transferred to a place of deposit under section 4(1) of the Public Records Act 1958 (the ‘PRA’) they become the responsibility of the authority running that place of deposit, acting on behalf of the Lord Chancellor. The document states that the Lord Chancellor is a ‘public authority’ for the purposes of the Act and therefore potential rights of access will apply to information contained in these records. This link can be found at:

http://www.nationalarchives.gov.uk/documents/foi_update_autumn2005.rtf

29. The commissioner’s interpretation of the PRA is that the coroner’s records are public records which have been transferred to a place of deposit by the Lord Chancellor. The place of deposit is authorised to act on behalf of the Lord Chancellor in respect of facilitating access in accordance with the Act.

30. The Commissioner is therefore satisfied that this information is held by the council and that this is the public authority which must deal with the information request. The council holds the information, provides administrative support and deals with enquiries about the information. Crucially the council controls access to it and is entitled to charge for copying it.

Exemptions

Section 21

31. Section 21(1) of the Act provides that a public authority does not need to provide information under section 1 of the Act if that information is reasonably accessible to the applicant by other means.
32. Section 21(2)(a) of the Act states that information may be reasonably accessible even though there may be a charge.
33. The Commissioner's guidance to section 21 explains that there are two cases where charges may be made:
 - Where there is a specific statutory scheme under which information is provided for a fee, such as information from the local land charges registry.
 - Where the information is provided under the authority's publication scheme and the scheme indicates that a charge may be made for information falling within a particular class.
34. This guidance can be found at:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_6_-_information_reasonably_accessible_to_the_applicant_by_other_means.pdf
35. The council has informed the Commissioner that it has no statutory scheme for charging for copies of archive information from the Local Authority or National Archives.
36. However, the council has demonstrated to the Commissioner that the Local Authority Archive Services look to TNA for good practice and guidance in providing information to the public.
37. The council provided a link to TNA website which explains that TNA makes a charge for photocopying estimates as well as the cost of any copies made plus postage. This mirrors the procedure that is followed by the council.
38. The council also provided the Commissioner with two links to guidance offered by TNA with respect to its copying services. These links explain

that TNA charges for its record copying service. It charges £30 per hour of staff time for reprographic services. Postage and insurance are charged at cost. Paper copies at research quality are charged at 40p per print.

39. This would be consistent with the council's charge for this information request which has been broken down as follows:

96 pages @ 40p	=	£38.40
20% handling charge	=	£7.68
Postage	=	£2

Total = £48.08

40. As there is no statutory scheme for charging for copies of such archived information, the council's Archive Service may only charge fees if these are outlined in its publication scheme.
41. Section 21(3) of the Act states that information may be regarded as 'reasonably accessible' if it is made available in accordance with the public authority's publication scheme. Any payment required must be specified in, or determined in accordance with, the scheme.
42. The council has demonstrated to the Commissioner that its publication scheme indicates that there are:
- 'Services for which the Council is entitled to recover a fee together with details of those fees'.*
43. The council's website is also clear as to the fees which will be charged and it provides a breakdown of how the charges are calculated. Its Reprographic charges can be found at:
- <http://www.northumberland.gov.uk/default.aspx?page=1671>
44. The Commissioner is therefore satisfied that the council's publication scheme is clear that charges may be made for certain services and that the council's website provides the details of how those charges are calculated.
45. The ICO's published guidance to charging for information under its publication scheme states that:

'the level of charges should be compatible with the principle of promoting public access to the information held by public authorities. While we cannot be prescriptive about the level of charges, we would expect a public authority to be able to justify them based on a transparent and publicly available charging policy or policies.

In making information available proactively an authority must consider the public interest in allowing access to the information. We will consider high levels of charges for routine information to be contrary to promoting public access to official information. Also information that is subject to high charges may not be considered as being reasonably accessible for the purposes of section 21 of the Act.

This guidance can be found on the ICO's website at:

http://www.ico.gov.uk/what_we_cover/freedom_of_information/publication_schemes/charging_for_information.aspx

46. The council is providing a public service in the Archives Service and it allows the inspection of the information held there for no fee. It is entitled to charge for the costs of providing a copying service. It is transparent about these charges and refers to them in its publication scheme. Full details are provided on its website. The charges mirror those made by TNA. The Commissioner does not consider the charges to be so high that they inhibit public access to the information, particularly as inspection is free.
47. The Commissioner is therefore satisfied that the council's publication scheme is clear that charges may be made for certain services. The council's website is also clear as to the fees which will be charged and it provides a breakdown of how the charges are calculated.
48. The complainant has indicated that she considers the charge required by the council to be 'extortionate'; however the Commissioner would consider that the basis of the charge is justified, clear and transparent and that it is not unreasonable.
49. The Commissioner therefore concludes that the information the complainant requires is reasonably accessible via other means. The inquest papers can be inspected for no charge at the County Archives Service at Woodhorn or photocopies can be provided for a reasonable fee.

Procedural Requirements

50. Section 10(1) of the Act states the following:

"Subject to subsections (2) and (3), 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."

51. The request was dated 7 December 2009. The council provided an initial response to the complainant 22 working days after this date, on 12 January 2010 and a further response on 18 January 2010, 26 working days after the request.

52. The Commissioner therefore finds that the council failed to comply with section 10(1) as it did not inform the complainant whether it held the information within twenty working days.

Section 17

53. The request was dated 7 December 2009. The council provided a response to the complainant 22 working days after this date, on 12 January 2010. However, this response informed the complainant that it was not necessary to make a Freedom of Information request as the required information was available to view in the council's Archives Service at Woodhorn.

54. The council provided a further response to the complainant 26 working days after the request (on 18 January 2010) and this time informed her that the requested information was exempt under section 21 of the Act.

55. The Commissioner therefore finds that the council failed to issue a refusal notice to the complainant within the statutory time period for compliance with section 1(1). The council is therefore found to be in breach of section 17(1).

56. Section 17(1)(b) states that should a public authority claim that the information requested is exempt, it should specify the exemption in question. In its initial response, the council explained that it was not providing the information as it was available elsewhere. In failing to cite the relevant exemption in this initial response, the council is found to be in breach of section 17(1)(b).

57. At internal review, the council explained why it was not providing the information but again failed to cite the relevant exemption. This response therefore also breached section 17(1)(b).

The Decision

58. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The council correctly applied section 21(1) to the request for information.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The council failed to provide a response to the complainant within the statutory time period contained within the provisions set out in section 10(1).
- The council failed to provide a failed to provide a refusal notice to the complainant within the statutory time period contained within the provisions set out in section 17(1).
- The council is found to be in breach of section 17(1)(b). It failed to cite the relevant exemption in this initial response and at internal review.

Steps Required

59. The Commissioner requires no steps to be taken.

Right of Appeal

60. 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 30 day of September 2010

Signed

**Andrew White
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

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.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”