

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 September 2011

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

Summary

The complainant requested information from Bath and North East Somerset Council (the Council) relating to the origin of a statement about the Guildhall Market in a revised list of Bath's buildings of special interest. The Council stated that the information was not held by them. The Commissioner finds that the Council did not hold the information and does not require any further steps to be taken.

The Request

1. The complainant wrote to Bath and North East Somerset Council (the Council) on 26 January 2011 in relation to the following statement in the revised listing for the Guildhall Market in Bath (LBS 5111433):

"Council presently trying to restore uniformity to design of stalls."

2. Regarding that statement, he asked the Council:

"Please could you send me copies of all documentation relating to this statement including the names and positions of the officials who proposed and approved the statement, dates of submission and approval, and any evidence that this statement was an authorised policy statement on behalf of Bath and North East Somerset Council, or other justification for including this statement in the listing. Please also provide documentation relating to any internal consultation that took place between officers of the Planning and Property Services Departments, or between officers and elected members."

3. In other words, the request in this case is with respect to the origin of a specific statement within the listing and not to the listing in general.
4. The Council responded on 17 February 2011, advising the complainant that it did not hold any information regarding the statement. The Commissioner notes that the Council did attempt to assist the complainant by suggesting another possible source of the information.
5. The complainant requested an internal review on 24 February 2011, saying to the Council:

"I would expect there to be some kind of consultation/approval/sign off process between English Heritage and the Council for such an important document as a Statutory Listing and I would expect that copies of the Council's proposals or responses to consultation to English Heritage would be kept on file".
6. The Council confirmed that it did not hold any relevant recorded information in its internal review correspondence which it sent to the complainant on 24 March 2011.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 8 April 2011 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:

"I cannot accept that English Heritage (who are the responsible authority for drafting and issuing Statutory Listings) inserted this statement into the listing without some form of correspondence with the local authority, and an audit trail showing the reasons why this statement was inserted. As the FOI Act was in force for the whole time that the two authorities claim that the Listing was in draft, there is no excuse for either authority failing to maintain and subsequently provide records".
8. The complainant has also requested information from English Heritage about the entry in the Listing. The Commissioner has addressed the handling of that request in his Decision Notice reference FS50385718.
9. The Commissioner considers the scope of his investigation in this case to be whether the requested information about the statement within the listing is held by the Council.

Analysis

Section 1 General right of access

10. Section 1 of the Freedom of Information Act (the Act) states that anyone 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."

11. In determining whether a public authority does hold any requested information, the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities.

12. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner may look at:

- explanations offered as to why the information is not held; and
- the scope, quality, thoroughness and results of any searches undertaken by the public authority.

13. In this case the Commissioner considers the explanation provided by the Council to be the most relevant factor in arriving at his decision.

14. In response to his questions, the Council explained to the Commissioner that listing is carried out by the Secretary of State for the Department of Culture, Media and Sport (DCMS) on the advice of English Heritage. It also said that Local Planning Authorities play no particular role in the listing process and that the Council did not submit a request in this case. It further confirmed that the Council has no statutory obligation to be involved in such matters.

15. The Commissioner notes that, when the revised Bath List was published by English Heritage and the DCMS on 15 October 2010, the English Heritage website described the list as having been under preparation for over ten years.

16. The Council confirmed that it held an early draft of the revised list of buildings for the city of Bath which was supplied to it by English Heritage. It told the Commissioner that it was likely to have been about

ten years ago when it received the draft. The Council also confirmed that:

"no action was taken by the Council following receipt of this draft."

17. With respect to the origin of the statement that is the subject of the request in this case, the Council confirmed in correspondence with the Commissioner that:

"The Council has had no involvement in this matter".

18. Having taken account of the Council's submissions, and the context of the request, the Commissioner considers that this explanation is reasonable and does not think it necessary to consider the scope, quality and thoroughness of any searches conducted by the Council.
19. Accordingly the Commissioner finds that the Council complied with section 1(1)(a) of the Act.

The Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

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 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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 1st day of September 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
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 –

- (c) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (d) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"