

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2015

Public Authority: Conwy County Borough Council

Address: Bonlondeb

Conwy

LL30 8DU

Decision (including any steps ordered)

1. The complainant requested information about the ownership of Colwyn Bay Pier. Conwy County Borough Council ('the Council') provided some information and stated other information was exempt under section 21 of the FOIA as it was publicly available via the Land Registry. During the course of the Commissioner's investigation, it became apparent that the Council did not hold the information it had withheld under section 21. The Commissioner finds that the Council breached sections 1(1)(a) and 10 of the FOIA by failing to deny that it held the information requested within 20 working days. The Commissioner does not require any steps to be taken.

Request and response

2. On 30 January 2015 the complainant wrote to the Council and requested information in the following terms:
 - (a) A copy of the land certificate from the Land Registry confirming that the owner of Colwyn Bay Pier is Conwy CBC.
 - (b) A copy of the entry of the register from the Land Registry confirming that this sets out clearly that the owner of Colwyn Bay Pier is Conwy CBC.

- (c) Confirmation that if the answer to questions (a) and (b) that no such documents exist, that the Council does not and cannot demonstrate ownership of Colwyn Bay Pier"
3. The Council responded on 27 February 2015 and stated that:
- "The ownership of the Pier was transferred to the Council by virtue of the Transfer Deed dated 27th March 2012. Following completion of the Transfer Deed, an application was made to register title in HM Land Registry as per normal conveyancing procedures and a new title number CYM557182 was allocated to the site. However, the former owner lodged an objection to HM Land Registry so the application has been put on hold pending the conclusion of the litigation. This does not affect the validity of the Transfer Deed in any way".
4. On 27 February 2015 the complainant requested an internal review of the Council's handling of the request. He pointed out that the Council had provided information that had not been requested but had failed to confirm or deny whether it held the information requested.
5. The Council provided the outcome of its internal review on 5 March 2015. In relation to parts (a) and (b) of the request, the Council stated that it considered section 21 of the FOIA as the information was publicly available via the Land Registry. The Council also confirmed that it had responded to part (c) of the request and had provided additional contextual information in relation to part (c) of the request.

Scope of the case

6. The complainant contacted the Commissioner on 23 March 2015 to complain about the way his request for information had been handled. In his complaint to the Commissioner, the complainant pointed out that the Land Registry details for Colwyn Bay Pier did not show the Council as owner of the site. He asked the Commissioner to consider whether the Council has complied with section 1 of the FOIA in relation to parts (a) and (b) of the request as he believed the Council should have stated that it did not hold the information requested.
7. During the course of the Commissioner's investigation the Council confirmed that it did not hold the information requested in parts (a) and (b) of the request. The Council wrote to the complainant on 17 June 2015 to confirm its revised position.
8. The complainant asked the Commissioner to issue a decision notice relating to his complaint.

9. The scope of the Commissioner's investigation is to determine whether the Council complied with its obligations under sections 1 and 10 of the FOIA in its handling of the request of 30 January 2015.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
11. During the course of the Commissioner's investigation, he referred the Council to his guidance on the section 21 exemption¹ which states that:

"It is important to emphasise that a public authority must know that it holds the information in order to be able to apply the section 21 exemption. When a public authority receives a request for information it has a duty to establish whether it holds that specific information, as, under section 1(1)(a), the requester is entitled to be told whether the authority holds the information. In other words, it has a duty to confirm or deny whether it holds the requested information. Consequently, a public authority cannot claim the section 21 exemption on the basis that it probably holds the information or information of the same type. The authority must know whether it holds the information as specified in the request".
12. In light of the Council's explanation in its response of 27 February 2015 that its application to register ownership of Colwyn Bay Pier was "put on hold" due to an objection being lodged by the previous owner, the Commissioner asked the Council to confirm whether it held the specific information requested at parts (a) and (b) of the request, ie a copy of the land certificate and an entry of the register of the Land Registry which confirms that "the owner of Colwyn Bay Pier is Conwy CBC".
13. The Council subsequently confirmed that it did not hold the specific information requested at parts (a) and (b) of the request and wrote to

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

the complainant on 18 June 2015 to confirm it did not hold the information requested.

14. In failing to inform the complainant that it did not hold the information requested at the time that the request was made the Council breached section 1(1)(a) of the FOIA. The Council also breached section 10(1) of the FOIA by not complying with section 1(1) within 20 working days of receipt of the request.

Right of appeal

15. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

16. 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.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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