

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 15 May 2007

**Public Authority:** Surrey Heath Borough Council  
**Address:** Surrey Heath House  
Knoll Road  
Camberley  
Surrey  
GU15 3HD

### Summary

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The complainant requested a copy of two letters from the public authority. The public authority informed the complainant that one of the letters was not held but did not inform the complainant that the second letter was not held. The Commissioner is satisfied that the public authority does not hold the two letters and does not therefore see value in requiring the public authority to inform the complainant that the second letter is not held.

### The Commissioner's Role

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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 Act. This Notice sets out his decision.

### The Request

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2. On 1 March 2006, the complainant requested via email, among other information, the following:
  - A) "Copy of letter from [the Assistant Chief Planner - name redacted] to [name redacted] dated 2<sup>nd</sup> June 2000
  - B) The letter from [name redacted] which instigated that letter"

In this Decision Notice these are referred to as "Letter A" and "Letter B" respectively.

3. As a result of the request, the public authority carried out the searches detailed in paragraphs 8 to 10 below. On 2 March 2006, the public authority informed the

complainant that it was unable to locate the letter dated 2 June 2000. The public authority also stated that it would post a letter dated 30 May 2005, which it implied would be a response to part B of the request.

4. No internal review was offered and the matter was referred to the Commissioner. The Commissioner did not consider that an internal review would result in a different response from the public authority and used his discretion to investigate this complaint in the absence of such a review.

## **The Investigation**

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### **Scope of the case**

5. On 15 June 2005 the complainant contacted the Commissioner to complain about how a previous request for information had been handled. The complaint at issue here evolved from that complaint and the Commissioner sought clarification of the issues. On 26 October 2006 the complainant clarified that he specifically wished the Commissioner to consider the following point:
  - Whether the public authority had provided the information it held in response to the request for Letters A and B.

### **Chronology**

#### **15 December 2006**

##### **Letter A**

6. On 15 December 2006, the Commissioner wrote to the public authority asking it to provide details of its searches for the letter dated 2 June 2000.

##### **Letter B**

7. He also asked the public authority if it believed that the letter of 30 May 2005 referred to in paragraph 3 above was information provided in response to the request for Letter B.

#### **5 February 2007**

##### **Letter A**

8. On 5 February 2007, the public authority informed the Commissioner that the complainant, in his request of 1 March 2006 had also requested 'the plans associated with planning application 00/859.' This led the public authority to search for the letter dated 2 June 2000 in the file relating to that planning application. The public authority stated that the letter would logically be found in that file because the date of the letter would coincide with the dates of that

particular planning application. However, the public authority had not located the letter as a result of this search.

9. The public authority's planning records showed that, in addition to planning application 00/859, there had been two previous planning applications relating to the same property, namely 96/0051 and 99/970. These files were also searched in the event that the letter dated 2 June 2000 had been misfiled, but the letter was not located.
10. The public authority confirmed that there was no record of deletion of the letter.

### **Letter B**

11. The public authority stated that the letter of 30 May 2005 was clearly not, in the complainant's view, a response to the request for Letter B. The public authority stated additionally that the letter does however appear to relate to the same planning application.

### **8 March 2007**

12. The Commissioner was satisfied that he had enough information to reach a conclusion in relation to Letter A, but wrote again to the public authority on 8 March 2007 in relation to Letter B. The Commissioner stated that he did not think a letter dated 30 May 2005 could be said to have instigated a letter dated 2 June 2000, simply by reason of the dates involved. He asked the public authority to confirm whether it held a letter which it believed to have instigated the letter of 2 June 2000. The Commissioner also asked the public authority to provide details of its searches for that letter.

### **2 April 2007**

13. The public authority wrote to the Commissioner to confirm that it did not hold a letter which instigated the letter of 2 June 2000. The public authority confirmed that it had conducted the same searches for the instigating letter as it had for the letter of 2 June 2000 itself. These searches are outlined in paragraphs 8 and 9 above.
14. The public authority confirmed that there was no record of deletion of any such letter.

### **Analysis**

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#### **Letter A**

15. The chronology section of this Decision Notice details the searches carried out by the public authority for Letter A. In the absence of any evidence to the contrary, the Commissioner is satisfied that the public authority does not hold this information and notified the complainant of this in accordance with the Act.

## Letter B

16. The chronology section of this Decision Notice details the searches carried out by the public authority for Letter B. In the absence of any evidence to the contrary, the Commissioner is satisfied that the public authority does not hold this information.
17. The public authority has not at any stage informed the complainant that it does not hold this information. However, the Commissioner is satisfied on the evidence before him that the information is not held and therefore he does not consider that there is any useful purpose in issuing a Notice requiring the public authority to communicate it to the complainant.

## The Decision

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18. The public authority informed the complainant in response to the request of 1 March 2006 for Letter A that it did not hold the information. The Commissioner's decision is that the public authority dealt with this part of the request in accordance with section 1(1) of the Act.
19. The public authority did not inform the complainant that it did not hold the information in response to the request of 1 March 2006 for Letter B. The Commissioner's decision therefore is that the public authority did not deal with this part of the request for information in accordance with section 1(1) of the Act.

## Steps Required

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20. The Commissioner requires no steps to be taken.

## Other matters

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21. During correspondence with the Commissioner, the public authority stated that under its Record Retention and Disposal Schedule (incorporated in their Records Management Policy and Procedures), planning applications and appeals are retained indefinitely. Despite this, searches of various planning files failed to locate the requested information. In addition, the Council had no record of deletion for the letter. The Commissioner is concerned that the public authority has failed to follow its own procedures in this instance and recommends that the authority review the relevant processes and/or training to ensure records are created, maintained, retained and destroyed in line with the appropriate policies. The Commissioner considers that this is necessary if the public authority is to conform to the section 46 Records Management Code of Practice, respond accurately to requests for information and ensure the transparency of its activities.

22. The Commissioner will monitor the public authority's future performance and may take enforcement action if necessary.

## Right of Appeal

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23. 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](mailto: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 15<sup>th</sup> day of May 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal annex

**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.”