

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

14 March 2007

**Public Authority:** Camelford Town Council  
**Address:** NCDC Offices  
College Road  
Camelford  
Cornwall  
PL32 9TL

### Summary

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The complainant requested the public authority to allow it to view option forms that had been completed and returned by members of the public expressing a preference for the future charging method to be employed at a local car park. The public authority failed to recognise the request as one properly made under the Freedom of Information Act ("the Act"). It thereafter dealt with a further similar request from the complainant by again refusing it, but this time relying upon an exemption under section 41 of the Act indicating that the information had been provided in confidence. Following an investigation, the Commissioner considers that the public authority did not properly respond to the initial request. It failed to release in accordance with section 1 of the Act that part of the requested information in respect of the disclosure of which it had no objection. As regards its refusal to release the part to which it did object it failed to issue the required notice under section 17 of the Act. Further, the Commissioner considers that in response to the subsequent request, the public authority (incorrectly referring to an exemption under section 41 of the Act) failed to inform the complainant at that time that the information no longer existed in its entirety and was therefore not held. In doing so the public authority again breached section 1 of the Act.

### 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 The Commissioner notes that the public authority had decided to review its charging policy at a local car park. Voting forms (“option forms”) containing the details of five possible options for future methods of charging were distributed and local residents were invited to complete and return them accordingly. In the light of this by email dated 29 March 2006 the complainant wrote to the public authority in the following terms

*As a member of the group that was involved in the conciliation meeting back in January, I would like to view the returned ‘option forms’ that you have. Please could you advise me when a convenient time would be for me to call into your office for this purpose.*

The Commissioner will refer to this as the first request.

3. The public authority responded the same day by e-mail as follows:

*Under the Data Protection Act any communication received by the council containing names and addresses is confidential. If you want to make a request under the Freedom of Information Act I can supply copies of the documents with the names and addresses removed.*

The Commissioner will refer to this response as the 29 March e-mail.

4. After further correspondence between the parties on 4 April 2006 the complainant by e-mail wrote to the public authority in the following terms:

*Could you let me have the details of the responses to the option forms please. I’m looking for the information broken up into each option and to include the responses from [named party]. As either a percentage, or actual number, or both is fine.*

The Commissioner will refer to this as the second request.

5. On 5 April 2006 the public authority provided a satisfactory response to this second request acceptable to the complainant.

6. On 8 August 2006 the complainant by e-mail wrote to the public authority in part in the following terms:

*I hereby make a formal request of the council under the Freedom of Information Act to have sight of the completed option forms which were issued consequent on the pay and display conciliation process.*

The Commissioner will refer to this as the third request.

7. On 9 August 2006 the public authority refused this request using the section 41 exemption.

8. On 15 August 2006 the complainant requested a review of the refusal.
9. On 23 August 2006 the public authority confirmed the review had taken place and that the refusal had been upheld.

## **The Investigation**

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### **Scope of the case**

10. On 14 June 2006 the complainant first contacted the Commissioner to complain about the way the public authority had handled this matter.
11. The Commissioner was invited to consider whether the public authority had through its actions committed a criminal offence. As this aspect of the case does not fall to be considered under Part 1 of the Act the Commissioner has dealt with it under other matters (see paragraph 37). The Commissioner has however considered the public authority's general application of the Act which the complainant also maintained had been incorrect.

### **Chronology**

12. The Commissioner first entered into substantive correspondence with both parties on 3 August 2006 when confirmation was sought that the first request had been made in writing.
13. On 3 August 2006 the public authority indicated that it had not received an official request under the Act.
14. On 7 August 2006 the complainant was again invited to provide the requested confirmation that a request had been made in writing. Failing this, it was advised that a request in writing would have to be made to the public authority and processed before the Commissioner could continue with his involvement.
15. On 8 August 2006 the complainant made the third request which was refused by the public authority, the refusal being upheld following internal review (see paragraphs 6, 7, 8 and 9).
16. On 15 August 2006 the Commissioner received confirmation from both parties quite separately (in each case under cover of correspondence dated 8 August 2006) that the first request had indeed been made in writing.
17. Correspondence has been ongoing since that date both parties taking the opportunity when requested to provide their respective viewpoints. In particular the public authority on 7 September 2006 and 16 January 2007 provided immediate responses to a number of issues raised by the Commissioner. In addition the complainant who had provided supporting information at the time of the original complaint also promptly dealt with a number of additional questions on 10 January 2007.

18. During the course of this correspondence both parties provided details about the background to the requests for information which the Commissioner finds it helpful to refer to at this stage.
19. When the public authority decided to consider the matter of a change to its future charging policy at the car park residents were invited to write to it with appropriate suggestions. In due course option forms were distributed containing the details of five available possibilities. Signatories were invited to tick their chosen option, provide their names and addresses and return the option forms by a deadline date of 15 March 2006. The clerk of the public authority was made responsible for the consideration and counting of the returned forms.
20. No reference was made on the option forms regarding what use would or could be made of any personal information entered.
21. On 2 March 2006 at an open public authority meeting the complainant requested a list of the people who had sent in letters for the car park review. The minutes of that meeting confirm the clerk indicated that in accordance with the Act the information would be sent within 21 working days. (This matter is dealt with in paragraph 44 below.) Unedited copies of the letters which included the names and the addresses of the writers were subsequently provided to the complainant.
22. On 20 March 2006 the public authority in open meeting made available a breakdown of the result of the voting figures contained in the returned option forms. Details of the names and addresses were not disclosed.
23. On 6 April 2006 at an open public authority meeting, a proposal to destroy the returned option forms was carried with 8 votes in favour, 2 against and 1 abstention. As a result, the numerical voting information was recorded onto the public authority's computer the option forms themselves being destroyed the following day (hence their unavailability for consideration at any stage by the Commissioner).

### **Findings of fact**

24. Three separate requests for information have been made in this case (see paragraphs 2, 4 and 6). The second of these was made not to replace or amend the first but rather to provide the complainant with some available information in the short term.
25. There was a difference between the number of option forms returned and the number of votes actually counted in the subsequent car park review as some of the option forms had been completed in joint names (i.e. couples in the same household).

### **Analysis**

26. The Commissioner has investigated this case with a view to ascertaining whether the public authority has complied with the Act, taking into account all relevant

available information. A full text of the relevant statutes referred to is contained in the legal annex.

### **Procedural matters**

27. Under section 8 of the Act a request for information is properly made where it is in writing (which includes an electronic transmission received in legible form which is capable of being used for subsequent reference), states the name of the applicant, provides an address for correspondence and describes the information requested. No reference to the Act is required.
28. The Commissioner finds the complainant's first request to have been properly made under the Act and in the circumstances under section 1 of the Act the public authority thereafter in this case had two duties, the first being to advise the complainant that the information was held. The Commissioner is prepared to accept it did this albeit somewhat indirectly in the 29 March e-mail.
29. The second duty was to make the information available promptly and in any event no later than 20 working days after the request was made in accordance with section 10 of the Act, unless it was relying on a claim that an exemption against disclosure applied. In that event the public authority was required under section 17 of the Act to issue a refusal notice to the complainant, within the same timeframe.
30. The public authority in the 29 March e-mail indicated that it was prepared to provide the complainant with part of the requested information if a request was made under the Act. Copies of the option forms could then be provided with the names and addresses deleted.
31. It is clear in its response that the public authority did not treat this first request as one properly made under the Act. It has subsequently referred to some degree of ignorance of the legislation by way of explanation. Nevertheless, in accordance with the second part of its duty under section 1, it was required to communicate to the complainant that part of the information in respect of which it had no objection to disclosure, namely copies of the option forms with the names and addresses removed. This duty was not fulfilled by the offer to provide that information if a further request were to be made.
32. In addition as the public authority was not prepared to provide the remaining part of the information, namely details of the names and addresses, it was required under section 17 of the Act to issue a refusal notice, clearly stating that fact and providing details of the application of the exemption it was employing under the Act. This it did not do.
33. By the time of the third request, the requested information had been destroyed (see paragraph 23). The public authority was accordingly required to advise the complainant that the information was not held. It did not do this but instead referred to the section 41 exemption, indicating that the information was considered to be confidential. It indicated that assurances had been sought and

given to a number of people who had returned completed option forms in person that the personal details contained on the forms would be held in confidence.

## Exemption

34. The public authority has referred to an exemption under section 41 of the Act. However the Commissioner cannot consider whether that or any other exemption would have been applicable to the requested information, given that it has now been destroyed. It is however clear that the public authority should not have tried to rely on an exemption in response to the third request as the information was no longer held.
35. In the 29 March email from the public authority to the complainant, the public authority implied that the requested information would be exempt under section 40 of the Act.
36. The section 40 exemption provides for the withholding of personal data such as in this case names and addresses. Whilst the Commissioner notes the full disclosure by the public authority of copies of letters received on the question of the parking issue (see paragraph 21), the Commissioner feels that a correct application of this exemption could well have led to the outcome suggested in the 29 March e-mail, namely the provision of copies of the requested information with the details of the names and addresses removed.
37. The Commissioner cannot provide a definitive answer as to whether this approach would have been correct, as it is unclear whether any of the option forms had any written comments on them which could be categorised as personal data. As the information has now been destroyed, it is impossible to determine this. However, where forms do not contain any personal data other than names and addresses, the Commissioner takes the view that it would not breach section 40 to provide copies of these forms with the names and addresses redacted.

## The Decision

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38. The Commissioner's decision is that the public authority dealt with the second request in accordance with the requirements of the Act.

However, the Commissioner has also decided that the following elements of the first and third requests were not dealt with in accordance with the Act:

In relation to the first request for information the public authority is in breach of section 1 of the Act in that it failed to make available to the complainant copies of the option forms with the names and addresses deleted (see paragraph 31).

It is also in breach of section 17 of the Act in that it failed to issue a refusal notice in relation to its refusal to disclose the details of the names and addresses on the option forms (see paragraph 32).

In relation to the third request for information the public authority is in breach of section 1 of the Act in that at the time of that request the information was no longer in existence and it failed to advise the complainant accordingly (see paragraph 33).

## Steps Required

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39. There are no steps that the Commissioner requires to be taken.

## Other matters

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40. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
41. The Commissioner is concerned that the public authority did not appear to destroy the option forms in accordance with a formal policy on the retention and disposal of records, which would have ensured conformity with the section 46 Code of Practice on Records Management. Instead, the public authority voted to destroy the forms on 6 April 2006 when at least one FOI request involving them had not yet exhausted the statutory complaints and appeals procedures provided for in the Act. This is contrary to the good practice advice offered by the Commissioner in "Awareness Guidance 8" (Records Management FAQs) available at [www.ico.gov.uk](http://www.ico.gov.uk). To ensure that the public authority meets its records management responsibilities the ICO will actively monitor any future complaints it receives regarding the public authority.
42. The Commissioner is concerned that the public authority failed to treat the complainant's email of 29 March 2006 as a valid FOI request, instead apparently inviting him to make a new request under the Act. Section 8 of the Act clearly defines a request for information and in addition the Commissioner's website includes significant information and advice on this matter, including "Good Practice Guidance 3" (Life Cycle of a request) and "Awareness Guidance 23" (Advice and Assistance).
43. Section 77 of the Act creates a criminal offence where, in certain circumstances, information which has been requested is subsequently destroyed with the intention of preventing its disclosure. However, despite the destruction of the information following the first request made by the complainant, the Commissioner does not believe that, in this case, it is worthwhile pursuing an investigation into whether a section 77 offence has been committed by the public authority. It is clear that the failures of the Council in dealing with this request are largely due to unfamiliarity with the Act and that time and resources would better be spent providing the public authority with the necessary information in order to prevent this happening again.

44. Having considered the public authority's handling of this case, the Commissioner also wishes to address the issues raised in paragraph 21 above, namely that a verbal request was treated as a request for the purposes of the Act and that the time for response to a request is 21 working days. Section 8 of the Act clearly states that a request for information must be made in writing, while section 10 of the Act states that a response to a request should be made promptly and in any event not later than the twentieth working day following the receipt. The Commissioner takes this opportunity to remind the public authority of its duties in relation to these issues under the Act.

## Right of Appeal

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44. 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 14<sup>th</sup> day of March 2007**

**Signed .....**

**Richard Thomas  
Information 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.”

**Section 8(1)** provides that -

“Any reference to a ‘request for information’ is a reference to such a request which -

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested”.

**Section 10** provides that -

(1) 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.

(6) 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.

**Section 17(1)** provides that -

“A public authority which ... 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.”