

Freedom of Information Act 2000 (Section 50)

Decision Notice

24 February 2009

Public Authority: Staffordshire County Council
Address: 1A Bailey Street
Stafford
ST17 4BG

Summary

The complainant requested a hard copy of a photograph he had inspected at Cannock Library from Staffordshire County Council (the "Council") on 5 June 2007. The Council responded on 14 June 2007 stating that the photograph was exempt from disclosure under section 21 of the Freedom of Information Act (the "Act"). The complainant was unhappy with the Council's response and requested an internal review on 25 June 2007. The Council replied on 23 July 2007 stating that it was not obliged to provide a copy of photograph under section 1(1)(b) of the Act as it was reasonably accessible to the complainant by inspection at Cannock Library under its publication scheme. The Commissioner has concluded that the Council correctly applied section 21 of the Act to the requested information and does not require it to take any further action. However the Commissioner has also decided that the Council breached section 17(1) as it did not state why it was relying on section 21 within the time stipulated in section 10.

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. The complainant wrote to the Council on 5 June 2007 and requested a copy of a photograph he had inspected at Cannock Library which was of interest to him as a local historian.
3. The Council responded to his request on 14 June 2007 stating that the photograph was exempt under section 21 of the Act and also suggested that if

copied it would probably breach copyright and Staffordshire's Library and Information Services Policy.

4. The complainant replied on 25 June 2007 stating he was unhappy with the Council's response as it had failed to explain why section 21 applied to his information request. He said that under section 11 of the Act the Council was obliged to give effect to his preference, so far as was reasonably practicable, to have the information made available to him in the specific format requested (namely a hard copy). He also referred to procedural guidance issued by the Department of Constitutional Affairs (now the Ministry of Justice) which stated that public authorities complying with their statutory duty under sections 1 and 11 of the Act by releasing information to a complainant were not breaching the Copyright, Designs and Patents Act 1998.
5. The Council responded on 23 July 2007. It acknowledged that the refusal notice dated 25 June 2007 did not contain sufficient detail or follow their internal procedures for which it apologised. The Council explained that the photograph was exempt under section 21 of the Act as it was included in its publication scheme. It said it had considered the complainant's individual circumstances and concluded that the photograph was reasonably accessible to him under their publication scheme as he had been able to inspect it at his local library in Cannock.

The Investigation

Scope of the case

6. On 27 August 2007 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled and the Council's refusal to provide him with the information requested.

Chronology

7. On 22 July 2008 the Commissioner wrote to the Council requesting details of where within their on-line publication scheme it stated that the requested information was available and also in what format.
8. The Council replied on 28 July 2008 saying that the relevant section of their publication scheme was the one headed 'Library Services: Local Studies' under which it was stated that 'many items in the Local Studies collections are available only for reference in the Library'.
9. The Commissioner wrote back to the Council on 12 August 2008 seeking its views as to how it would handle a similar request to the one made by the complainant if it was submitted by someone for whom the inspection of the photograph was not reasonably accessible due to (for example) their distance from the Library. The Commissioner suggested that in such a scenario, the information would not be reasonably accessible and therefore invited the Council

to acknowledge, whether in such a case, it would provide the applicant with a hard copy.

10. The Council replied on 6 October 2008 stating that if a similar request was received from another person for whom the information was not reasonably accessible for whatever reason (be it distance, disability or other reason) it would consider the specific circumstances of the case before making a decision on the application of section 21. However, the Council maintained that in this particular case section 21 was applicable in that the information was reasonably accessible to the complainant who had inspected it at Cannock library.

Findings of fact

11. The Council's publication scheme has been approved by the Commissioner under section 19 of the Act.

Analysis

Procedural matters

Section 17

12. Section 17(1) of the Act provides that where a public authority is relying upon an exemption in Part II it must, within the time for compliance with section 1(1), let the applicant know this and specify which exemption applies and if not apparent, why it applies.
13. Section 17(1)(c) of the Act requires a public authority to state the reasons (if not apparent) why the exemption applies. The Commissioner is of the view that although the Council did not do this in its initial refusal notice, it did clarify the position in its subsequent internal review letter dated 23 July 2007 and apologised for its earlier oversight. However, the Commissioner has nonetheless decided that the Council breached section 17(1) as it did not state why it was relying on section 21 within the time stipulated in section 10.

Exemption

Section 21

14. Section 21 of the Act provides that information which is reasonably accessible to the applicant otherwise than under section 1 (for example because it is available under a public authority's publication scheme) is exempt.
15. Section 21(3) of the Act 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 authorities

- publication scheme and any payment required is specified in, or determined in accordance with, the scheme.
16. In the Commissioner's view section 21 makes it clear that as long as the information is made available in accordance with the authority's publication scheme then it is to be regarded as reasonably accessible to the applicant (and, therefore, exempt).
 17. Section 19(1) of the Act provides that every public authority should adopt and maintain a publication scheme approved by the Information Commissioner. Section 19(2) provides that the publication scheme must specify the classes of and the manner in which the information is published or intended to be published and the cost of obtaining it.
 18. The nature of a publication scheme is that it refers to classes of information rather than particular documents. Therefore, there is only a certain degree of detail that can be included. In this case, the scheme in question makes it clear that local studies material (which might include photographs) is available at all 45 of the Council's libraries. It also states that many items are available only for reference in the library.
 19. As set out above section 21(3) provides that if the information is made available in accordance with the authority's publication scheme it is regarded as reasonably accessible to the applicant and therefore exempt.
 20. Section 1(1)(a) of the Act provides that a person making an information request is entitled to be informed in writing whether the public authority holds the information and if that is the case, under section 1(1)(b) to have it communicated to him. Section 2(2)(a) provides that where information is subject to an absolute exemption (such as the one in section 21) the public authority's duties under section 1(1)(b) do not apply. Therefore in this case the public authority was not under an obligation to provide the information.
 21. Although it does not form part of the decision in this case, in the Other Matters section of this notice, the Commissioner has set out what he considers to be best practice when a public authority receives a request for a hard copy of information made available through its publication scheme.
 22. In light of the Commissioner's finding in relation section 21 he has not gone on to consider the application of section 11 of the Act.

The Decision

23. The Commissioner has decided that the Council has correctly applied the exemption at section 21 to the information requested by the complainant.
24. However, the Commissioner has also decided that the Council breached section 17(1) as it did not state why it was relying on section 21 [as required by section 17(1)(c)] within the time stipulated in section 10.

Other matters

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
26. Under the Freedom of Information Act it is the duty of every public authority to adopt and maintain a publication scheme. To reduce duplication and bureaucracy and to ensure consistency in the release of information, the Information Commissioner's Office has developed one model publication scheme that all public authorities should use. The model publication schemes provide for the proactive release of information and play a crucial role in supporting and providing greater openness and transparency across the public sector. The scheme sets out the kinds of information that a public authority will make routinely available. The information should be easy for the authority and any individual to find and use. For further Information on the [Guidance](#) published by the Information Commissioner's Office please refer to its [website](#).
27. The Commissioner considers it good practice for a public authority to provide where requested, a hard copy of any information which is made routinely available through the website.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. 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@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

30. 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.
31. 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 24th day of February 2009

Signed

**Nicole Duncan
Head of FOI Complaints**

**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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

- (a) the provision confers absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

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,
- (g) section 41, and
- (h) section 44”

Section 11(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

Section 11(2) provides that –

“In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so”

Section 11(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

Section 11(4) provides that –

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

Section 19(1) provides that –

“It shall be the duty of every public authority –

- (a) to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a “publication scheme”),
- (b) to publish information in accordance with its publication scheme, and
- (c) from time to time to review its publication scheme.”

Section 19(2) provides that –

“A publication scheme must –

- (a) specify classes of information which the public authority publishes or intends to publish,
- (b) specify the manner in which information of each class is, or is intended to be, published, and
- (c) specify whether the material is, or is intended to be, available to the public free of charge or on payment.”

Section 19(3) provides that –

“In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest –

- (a) in allowing public access to information held by the authority, and

(b) in the publication of reasons for decisions made by the authority.”

Section 19(4) provides that –

“A public authority shall publish its publication scheme in such manner as it thinks fit.”

Section 19(5) provides that –

“The Commissioner may, when approving a scheme, provide that his approval is to expire at the end of a specified period.”

Section 19(6) provides that –

“Where the Commissioner has approved the publication scheme of any public authority, he may at any time give notice to the public authority revoking his approval of the scheme as from the end of the period of six months beginning with the day on which the notice is given.”

Section 19(7) provides that –

“Where the Commissioner –

- (a) refuses to approve a proposed publication scheme, or
- (b) revokes his approval of publication scheme,

he must give the public authority a statement of his reasons for doing so.”

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.”