

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 August 2009

**Public Authority:** Eastbourne Borough Council  
**Address:** Town Hall  
Grove Road  
Eastbourne  
East Sussex  
BN21 4UG

### Summary

---

The complainant requested information held by the public authority which related to the names of the co-freeholders to his property. The public authority initially refused to disclose information on the grounds of the exemption provided by section 40 of the Freedom of Information Act (personal data of third parties) but subsequently fully disclosed this information. The complainant was concerned that the public authority had not disclosed all relevant information to him. The Commissioner finds that the public authority does not hold any further information in relation to the complainant's request which has not already been disclosed to the complainant. However the Commissioner has decided that the public authority did not fulfil the procedural requirements of the Act at sections 1(1)(a) and 17(b) and (c).

### 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.

### Background

---

2. The complainant has made a series of related requests to Eastbourne Borough Council (EBC) in relation to allegations of a fraud which the council's procedures were claimed to facilitate. These procedures relate to the issuing of enforcement notices on houses in multiple occupations (HMOs), known as section 352 notices,

with regard to fire safety regulations. The complainant's requests are stated to be in search of evidence to that effect.

3. The complainant believes that, prior to the s352 notice being served on him and his co-freeholders, an earlier s352 notice was issued bearing different names for the co-freeholders, which he did not receive and which has been concealed from him.

## The Request

---

4. The complainant requested the following information:

*“Any information containing the name and address of the co-freeholder of [the address of the complainant's HMO] at the time of the complaint regarding the fractured treads on the fire escape, and EBC's fire upgrades action under the Housing Act 1985”*

and secondly:

*“Has EBC kept its records intact? Or has EBC destroyed some, or all, of its records?”*

## The Investigation

---

### Scope of the case

5. On 19 September 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That the public authority had not disclosed information to him which it holds.
6. In correspondence with the Commissioner, the complainant clarified that it was his belief that an earlier s352 notice had been issued, which was being kept from him, and which he wished the Commissioner to instruct the public authority to disclose.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

8. The complainant made his request to the public authority on 3 July 2008.
9. The public authority responded on 10 July 2008, refusing the first part of the complainant's request on the grounds of the exemption provided by section 40 of the Act, that the requested information constitutes the personal data of a third

party. With regard to the second part of his request, the public authority confirmed that it maintained its records in accordance with a retention schedule. It provided the complainant with a link to that schedule on its website.

10. The complainant requested an internal review of the public authority's response on 14 July 2008. On 19 August 2008 the public authority replied, confirming that it was satisfied that the information requested is exempt under section 40 of the Act. It also confirmed that, to the best of its knowledge, no documents relevant to his requests about his property had been destroyed. The complainant has referred the Commissioner to what he perceives as an inconsistency in the public authority's responses in that it he believes it has therefore stated that it has all the information he has requested.
11. The complainant argues that the public authority's statement at the internal review, that *'no documents from the file on [the complainant's address] have been destroyed'* means that it must therefore hold copies of any earlier s352 notice. This Decision Notice accordingly examines whether a prior s352 notice, issued on the complainant's address, exists.

## Analysis

---

### Procedural Matters

12. The public authority initially provided information in response to the complainant's request, but with the names of his co-freeholders redacted under the exemption provided by s40(2) of the Act. During the Commissioner's investigation, the public authority voluntarily disclosed further copies of these documents to the complainant, without redacting these names. The Commissioner accordingly has not considered the matter of the s40(2) exemption further.
13. The complainant believes that, prior to the s352 notice being served on him and his co-freeholders, an earlier s352 notice was issued bearing different names for the co-freeholders, which he did not receive and which has been concealed from him.
14. The public authority has confirmed to the Commissioner that the database used to identify occupants of properties for the serving of section 352 notices was obtained from the Land Registry. It is aware that these data are not always up to date and it takes steps to update the data where necessary by issuing a requisition for information to property-holders.
15. The public authority has also provided the Commissioner with copies of correspondence, and associated documents, between it and the complainant in which the complainant provided information relating to the names of the co-freeholders of the flats into which the building in question has been divided. This was obtained from the complainant on 16 February 1998, prior to the serving of the section 352 notice on his property in March 1999.

16. There is also correspondence between EBC and the complainant's solicitors which seeks to verify the information provided by the complainant in relation to a transfer of the freehold in progress at the time. The public authority has advised the Commissioner that this correspondence was contained in a file disclosed to the complainant under a previous freedom of information request, albeit with the third party personal data redacted.
17. The Commissioner notes that, prior to the issue of a s352 notice, the council will issue a 'minded to' notice which acts as advance notice to property-holders that the public authority is considering the service of a legal enforcement notice in respect of their property. In this case, the public authority issued two 'minded to' notices, the first on 14 July 1998 and a second on 7 August 1998. A letter was sent from the Environmental Health Officer to the complainant on 18 February 1999 indicating that the s352 notice would be served at the end of February. In the event, the s352 notice is dated 5 March 1999. The dates of these documents are all considerably later than 16 February 1998, which is when the complainant provided the public authority with details of the freeholders of his property. The s352 notice which was issued in March 1999 was issued in respect of a faulty fire escape, which had come to the public authority's attention in July 1997.
18. The Commissioner observes that the process relating to the ultimate issue of a s352 notice has therefore taken approximately 20 months, and that the public authority was aware of the correct names of the complainant's co-freeholders for 13 of those months. The public authority has explained that its own internal studies have shown that the average length of time which elapsed between the start of a complaint about a property and the issuing of a s352 notice was 29 months. The serving of a s352 notice requires various processes, including inspection of a property, drafting of plans, liaison with external parties such as the county fire and rescue services, and standard checks to establish the correct persons to serve the notices on. In a high-priority case, with a good deal of co-operation and prioritisation from all parties, it would be conceivable to produce a s352 notice in less than 8 months, but the 29 month average does indicate how unusual this would be.
19. Therefore, the public authority would not reasonably have had sufficient time to prepare and serve an earlier s352 notice with incorrect name data. Furthermore, the public authority confirms that it would not be normal to issue a s352 notice on parties using Land Registry data alone and that a requisition for information, such as that provided by the complainant in February 1998, would be standard practice before any such notice would be issued.
20. The public authority has confirmed to the Commissioner its understanding that a s352 notice is a legal document and only one of these would be served in any given set of circumstances. A second would only be served if the first were found to be incorrect to any material degree. It is clear that the complainant believes this to have happened in his case. The document is served on all freeholders and leaseholders to a property, and a copy was also provided to the complainant's solicitors at the time. The property in question is an HMO divided into several flats, therefore there would be multiple copies of any s352 notice, including a copy sent to the complainant's solicitors. It is therefore unlikely that all copies of any

such notice would be misplaced, or fail to arrive. Furthermore, any s352 notice must be preceded by a 'minded to' notice, issued to the same recipients.

21. The Commissioner considers that, on the balance of probabilities, there is no evidence to suggest an earlier s352 notice was issued because any earlier s352 notice bearing incorrect information would have had to have been issued prior to February 1998, when the complainant provided the updated co-freeholder details. At that stage, the investigation into the faulty fire escape was insufficiently advanced to warrant the issue of a formal notice, the normal processes required take considerably longer than 8 months, the steps taken in February 1998 to verify the names of the co-freeholders are part of the process, and furthermore there is no evidence of earlier issue of any associated 'minded to' notices.
22. The Commissioner has investigated the public authority's methods for locating such information. The public authority has provided details of searches made for information in response to the complainant's many requests for information. It has repeatedly stated that during the course of responding to the complainant's various requests, it has disclosed everything which it holds pertaining to his address. The public authority has in addition, at the Commissioner's request, made repeated searches of the Environmental Health department's files and records systems for evidence of a pre-existing s352 notice, including cross-checking for any records in its legal department which might conceivably list the issuing of any such legal notices.
23. The public authority's searches, prior to and during the course of this investigation, have produced no new material. In particular, there is no evidence to suggest that earlier 'minded to' or s352 notices were ever produced. The Commissioner is therefore satisfied that, on the balance of probabilities, no more information is held.

## The Decision

---

24. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - Its response to the second part of the complainant's request, in respect of its retention of the documents.
25. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - Its failure to specify and adequately explain the exemption stated in its refusal notice of 10 July 2008, in breach of section 17(b) and (c) of the Act.
  - Its failure to deny that information was held in respect of the first part of the complainant's request, in breach of section 1(1)(a) of the Act.

## Steps Required

---

26. As the public authority has already voluntarily disclosed the information to the complainant:

- the Commissioner requires no steps to be taken.

## Right of Appeal

---

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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 3<sup>rd</sup> day of August 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### **S.1 General right of access**

**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.'*