

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 September 2009**

**Public Authority:** Tameside Metropolitan Borough Council  
**Address:** Council Offices  
Wellington Road  
Ashton-under-Lyne  
Tameside  
OL6 6DL

### Summary

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The complainant requested information about whether the Council censored the local press, pointing to guidance for local authorities on community cohesion issued by the Department of Communities and Local Government that indicated that they worked together. The public authority responded that it did not hold any recorded information about this issue. The parties have agreed that on the balance of probabilities no relevant recorded information was held. However, the Commissioner has determined that the Council has breached sections 1(1)(a) and 10(1) in failing to explicitly deny it held relevant recorded information within the statutory timescales. The Commissioner requires no remedial steps to be taken in this case.

### 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

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2. The complainant complained to the Commissioner as he believed that the public authority's response to the questions of his request were not correct. The Commissioner has explained that the Act only applies to recorded information and the complainant has informed the Commissioner that he was satisfied on the balance of the probabilities that no recorded information is held in this case.

3. The request was inspired by the 'Guidance for local authorities on community cohesion contingency planning and tension monitoring', issued by the Department of Communities and Local Government. This report was issued on 12 May 2008 and on page 40 this report contained a pink box containing the following information, the opening line of which was directly referred to within the information request:

**Tameside Metropolitan Borough Council.**

*Tameside holds regular meetings with local newspaper editors to gather information and stop sensationalist reporting which might otherwise start or add to rising tensions, e.g. in response to a Kick Racism out of Football campaign, an extremist political group wanted to picket a football stadium. A local newspaper was going to print the story on its front page – an action that was likely to bring unwanted publicity to the picket and fuel rising community tensions. The intervention of the Community Cohesion Partnership prevented the story from being run and in the event no-one turned out for the picket.'*

4. The Commissioner has also considered whether a response had been provided to a second information request. He determined that it had and a copy of this response was resent to the complainant during the investigation. The Commissioner regards this part of the case as being informally resolved.

## The Request

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5. On 26 September 2008 the complainant requested the following information from the public authority in accordance with its obligations under section 1(1) of the Act:

- 1. How long has the council been meeting with local editors with a view to censoring the news?*
- 2. From whence did there [sic] authority come?*
- 3. Who meets with the press and to whom do they report (scrutiny panel. Committee etc)?*
- 4. How long has TMBC been meeting with local newspaper editors to 'gather information and stop sensationalist reporting'?*
- 5. What info has been gathered and what reports censored?'*

6. On 24 October 2008 the Council provided a response. It stated the following:

- 1. The Council does not meet with local editors 'with a view to censoring the news' and has never done so.*

2. *The Council in common with all UK Councils, has no authority to censor newspaper reports or stories.*
  3. *The Council may hold occasional ad hoc meetings with a view to discussing media campaigns and advertising to promote cultural services. However most of these transactions are carried out by phone and email with the communications officers (See 4). Each media organisation, whether it is in print, broadcast or online, has the final say as to which stories they run. The council may try to interest the media in campaigns that it would like to run and highlight, but has no power to force the media to carry them as stories or features. The final say lies with the media.*
  4. *As detailed in 3, the Council does occasionally meet press and will, as part of its day-to-day function, respond to queries from a variety of print, broadcast and online media organisations. Once the information requested has been satisfactorily supplied, it is a matter for each media organisation to decide whether they publish a given story, or not. All media enquiries are directed through the marketing and communications unit, and I head up that team.*
  5. *The Council does not gather information with a view to censoring media reports; it has no power to do this, as stated in the answer to question 2.'*
7. Later on 24 October 2008 the complainant expressed his dissatisfaction about the answers that he received, comparing the extract (that was not mentioned previously) to the response he had now received:

*'I would like to compare, point for point, your reply to me with the above extract.*

1. *"The council does not meet with local ecitors [sic] "with a view to censoring news and never has done". "Tameside holds regular meetings with local newspapers to gather information and stop sensationalist reporting."*
2. *"This council, in common with all UK Councils has no authority to censor neaspaper [sic] reports or stories" Quite right. No authority. How therefore has the situation arisen where "Tameside holds regular meetings with local newspapers to gather information and stop sensationalist reporting."*
3. *"The council may hold occasional ad hoc meetings with a view to discussing media campaigns.. " Tameside holds regular meetings with local newspaper editors"*
4. *"... it is a matter for each media organisation to decide..." "he [sic] intervention of the Community Cohesion Partnership prevented the story from being run"*
5. *" The council does not gather information with a view to censoring media reports." "Tameside holds regular meetings with local newspaper editors to gather information" "Perhaps I could ask therefore what is the purpose for which the information is gathered.*

*As you can see [member of staff redacted], whoever wrote the piece for the Government paper clearly disagrees with your views. Perhaps you can find out under the FOI Act who that person is/was and how they came to write the report reproduced above?'*

8. On 4 November 2008 the complainant emphasised the contradiction again and said that he felt that the public authority should contact the Department of Communities and Local Government to set the record straight. The public authority responded to the two expressions of dissatisfaction on the same day. It informed the complainant that the Act only provides access to information and that the Council's belief is that the information had been provided. It stated that it could not comment on the information itself.
9. On 4 November 2008 the complainant responded and informed the public authority that he was satisfied that the request for information was fulfilled. Also on 19 November 2008 the complainant confirmed in related correspondence that:

*'the original FOI questions I submitted last month to yourself was answered to my satisfaction. Tameside denied any regular meetings with the local editors and also denied suppressing stories. I believe TMC.'*

10. On 21 November 2008 the public authority responded to the last line of the email dated 24 October 2008 and said that it was unable to ascertain who wrote the report that was referred to. The complainant has made a separate request to the Department of Communities and Local Government and it provided him with the information the public authority had provided to it, including the name of the source of the report.

## The Investigation

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### Scope of the case

11. On 18 February 2009 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That the information in the Department of Communities and Local Government guidelines contradicts the information that he has been provided with and consequently he had not received the information to which he was entitled.
  - The second request for information dated 18 December 2008 had not yet been responded to and should have been responded to under the Act.
12. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:

- The second request for information dated 18 December 2008 was responded to on 22 January 2009. The Council provided the complainant with another copy of its response and the complainant acknowledged that he has now received it. The Commissioner will not consider this request any further.
- On 4 June 2009 the complainant agreed that the Commissioner should only look at the Council's response in relation to parts 3, 4 and 5 of the original request dated 26 September 2008. The complainant has confirmed that he is satisfied on the balance of probabilities that no recorded information is held by the Council for the request dated 26 September 2008 and therefore the Commissioner has only considered whether the Council's initial handling of the request was compliant with the Act.

## Chronology

13. On 21 and 28 May 2009 the Commissioner wrote to the complainant in order to set the scope of this investigation. He also explained that he could only investigate whether recorded information was held that was relevant to his request and could make no comment about other matters. He suggested the investigation should focus on elements 3 to 5 and obtaining a response to the request dated 18 December 2008.
14. On 4 June 2009 the complainant agreed with the scope of the investigation to be as suggested by the Commissioner and indicated that he understood that the Act only applied to existing recorded information.
15. On 10 June 2009 the Commissioner spoke to the public authority about its handling of the requests for information. He asked about whether a response had been provided to the request dated 18 December 2008 and was informed that it was. He asked for copies of it to be sent to the complainant and himself. He also explained that the Commissioner would be required to ask questions about the public authority's position in relation to the requests contained within the scope.
16. On 23 July 2009 the Commissioner received a response from the public authority to the enquiries that he made on 10 June 2009. This was dated 15 July 2009. This response included a copy of the documentation exchanged with the complainant and included a response to the request dated 18 December 2008 that had been forwarded to the complainant.
17. On 25 August 2009 the complainant telephoned the Commissioner. He explained that he understood that relevant recorded information was not held in this case. On 26 August 2009 the complainant wrote to confirm his position in writing and he commented that while it was highly unlikely recorded information was held, he still was not happy with the original handling of his request for information.

## Analysis

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18. There is no dispute in this case that on the balance of probabilities further recorded information is not held in this instance. The Commissioner has therefore only considered whether the public authority breached the Act procedurally in its initial handling of the request.
19. It can be seen from the response above that the requests for information were dealt with as questions within the normal course of business and were not considered fully under the Act. The public authority should have indicated specifically for each request whether it held relevant recorded information. In failing to deny specifically for requests 3 and 4 that it held relevant recorded information the Commissioner therefore finds two breaches of section 1(1)(a).
20. In failing to specifically deny that it held relevant recorded information within the statutory timescales [twenty working days] for requests 3 and 4, the Commissioner also finds two breaches of section 10(1).

## The Decision

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21. The Commissioner's decision is that the public authority breached the following requirements of the Act in its initial handling of the request for information:
  - The public authority failed to explicitly deny that it held relevant recorded information in relation to two of the parts of the request for information that the Commissioner considered, before the Commissioner's involvement and therefore breached section 1(1)(a) twice.
  - The public authority in failing to explicitly deny that it held relevant information in relation to two of the parts of the request for information that the Commissioner considered in twenty working days breached section 10(1) twice.

## Steps Required

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22. The Commissioner requires no steps to be taken.

## Other matters

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23. Although it does not form part of this Notice the Commissioner wishes to mention one area that is of concern. This is that the Commissioner could not find evidence of a specific internal review for the requests that he was considering, despite

numerous expressions of dissatisfaction. The Commissioner's view is that any expression of dissatisfaction should automatically be regarded as a request for an internal review of the decision. This is in line with paragraph 38 of the Section 45 Code of Practice. The Commissioner hopes that the public authority will ensure that an internal review procedure is in place when dealing with future requests for information. He does however accept that the situation has been complicated by the public authority entering into general correspondence with the complainant and the complainant informing it that he believed the request had already been answered.

## Right of Appeal

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24. 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 14th day of September 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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

## Legal Annex

### The Freedom of Information Act 2000

#### Section 1 - General right of access to information held by public authorities

(1) 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.

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

(3) 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.

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#### Section 10 - Time for compliance with request

(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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

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