

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 30 March 2011**

**Public Authority: Sheffield City Council**  
**Address: Town Hall**  
**Pinstone Street**  
**Sheffield**  
**S1 2HH**

### **Summary**

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The complainant made six requests to Sheffield City Council (the 'Council') for information relating to Sheffield City Airport. The Council stated that it had already provided all of the requested information it holds to the complainant in response to previous requests. The Commissioner's decision is that the Council has complied with section 1(1) of the Act because it does not hold any information relating to the requests further to that already provided to the complainant. The Commissioner also finds that some of the requests relate to environmental information which is already publicly available under regulation 6(1)(b) of the EIR.

### **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 has made a number of requests to the Council for information about Sheffield City Airport, which opened in 1997 and was

closed in 2008. The complainant's requests have related to the Council's interaction with other organisations involved in the airport.

3. The Commissioner has previously investigated a complaint involving the complainant and the Council under the case reference FS50212479. The complaint was resolved in September 2009 and related to a request for the minutes of all meetings involving Sheffield City Airport's Joint Liaison Committee ('JLC'). Following an investigation, the Commissioner concluded that the Council had provided the complainant with all of the JLC minutes it held and that there was no evidence to suggest further meetings had taken place. The complainant did not dispute the Commissioner's conclusions in this case.
4. Since the Commissioner's investigation of the above complaint, the complainant has made further requests to the Council for information about the airport.

## **The Request**

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5. On 29 December 2009 the complainant made six requests for information relating to Sheffield City Airport. The requests are listed in full in Annex A of this Notice.
6. On 11 February 2010 the Chief Executive of the Council responded to the request and explained that it had already provided the complainant with all of the information it holds relating to Sheffield City Airport. The Council therefore believed it had already fulfilled its obligations under the Act in relation to the requests.
7. On 25 February 2010 the complainant wrote to the Council and disputed that he had been provided with all information the Council holds about the airport. He therefore requested an internal review of the Council's response.
8. On 2 March 2010 the Council responded to the complainant and maintained that it had already provided him with all information it holds about the airport.

## **The Investigation**

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### **Scope of the case**

9. On 16 March 2010 the complainant contacted the Commissioner to complain about the Council's handling of his request. He specifically asked the Commissioner to consider his view that his requests were not duplicates of his previous requests to the Council, and also his view that the Council should hold further information about the airport.

### **Chronology**

10. On 10 May 2010 the Commissioner wrote to the Council to request clarification of when it had previously provided all of the requested information to the complainant.
11. The Council responded on 11 June 2010 and addressed each of the complainant's six requests. It explained that some information had previously been disclosed to the applicant, some information was not held by the Council because it had been destroyed in accordance with the Code of Practice established under section 46 of the Act, and some information was already publicly accessible by other means.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 1 – right to access information**

##### **Information already provided**

12. The Council has explained that the only information it holds relating to requests 1(a), 3 and 5(b) is contained within the minutes of the Joint Liaison Committee ('JLC').
13. The Council adds that it disclosed all minutes of the JLC to the complainant in response to the previous request for information described above at paragraph 3. The Commissioner is satisfied that these elements of the requests relate to the same information requested by the complainant previously. The Commissioner investigated this matter under the complaint reference FS50212479 and concluded that the Council had fulfilled its obligations in relation to the request. Therefore the Commissioner does not intend to investigate this point again.

## Information not held

14. The Council states that it does not hold information relating to requests 1(b), 4, 5(a) and 6.
15. When considering a public authority's view that it does not hold requested information, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on a balance of probabilities the information is held.
16. In deciding where the balance lies, the Commissioner will consider the reasons offered by the public authority to explain why it does not hold the requested information. This will include consideration of any searches carried out by the public authority as well as considering, where appropriate, any reasons why the public authority might have destroyed the requested information.
17. The Council has explained that these requests relate to background documents and information which was nearly a decade old when the complainant submitted his request. Much of the requested information relates to information associated with meetings or activities which took place in 2001. By the date of the request, most records of background information about the airport had therefore been destroyed because there was no remaining need for the Council to hold them.
18. The Council has not provided the Commissioner with information recording when the records were destroyed. However, it has explained that this information was destroyed by the Council in compliance with section 12.2 and 12.3 of the Code of Practice issued under section 46 of the Act. These sections of the Code of Practice establish a general principle that records should be kept for as long as they are needed by a public authority, and only kept for longer in certain circumstances. The information which The Council believes that the destruction of background information relating to the airport was disposed in accordance with this principle.
19. The Council has also provided some further information relating to each request. Request 1(b) is for copies of advice obtained by the Council in the preparation of a Memorandum of Understanding ('MOU') between the Council and Peel Holdings/Airport dated 30 July 2001. The Council has explained that it holds a copy of the MOU itself, as this was

the final document in the process, but has not retained other background information which may have existed.

20. Similarly, request 4 relates to a "Draft Marketing Strategy" of Peel Holdings/Airport referred to in minutes of the Council's Cabinet meetings in 2001. The Council has confirmed that the requested document is referred to in reports and minutes but was not appended to them and is therefore not now held by the Council's Committee Secretariat. However, the Council has also explained that this information was made available for public inspection for four years after the Cabinet Report was made available, in accordance with section 100D of the Local Government Act 1972. In any event, the Council maintains that the information is no longer held by the Council because it has no reason to retain it.
21. Regarding request 5(a) and request 6, the Council has explained that it does not hold any recorded information relating to the requests. Once again, it states that any information which might have been relevant to this request would also have been contained in the files which had been destroyed prior to the date of the request.

### **Publicly available information**

22. The Council has explained that the remaining elements of requests 2 and 3 relate to information which is publicly available. Therefore the Council considers is not required to make it available in response to the requests.

### **Regulation 2 – environmental information**

23. The Council considers that these requests relate to environmental information and therefore fall for consideration under the Environmental Information Regulations 2004 (the 'EIR'). The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
24. The information covered by requests 2 and 3 relates to maintenance and construction works carried out and planning advice provided in relation to the airport site.
25. The Commissioner considers that the information requested falls within regulation 2(1)(c): information on "measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b)". Information about works carried out at the site and planning advice would clearly be

information on measures or activities which are likely to affect the elements of the environment, particularly land and landscape.

### **Regulation 6 – publicly available information**

26. Regulation 6(1)(b) provides that a public authority shall make requested information available in a particular form or format unless the information is already publicly available and accessible to the applicant.
27. The Council has explained that information about works and planning advice is held by the Council in its statutory capacity as a Highway Authority. It added that this information is accessible to the public through the Planning Register established under Article 25 of the Town and Country Planning (General Permitted Development) Order 1995 and constitutes information which has been disseminated under regulation 4 of the EIR. Therefore, the Council states that the information covered by requests 2 and 3 is publicly available.

### **Conclusion**

28. In view of the explanations outlined above, the Commissioner is satisfied that the Council has not withheld information when responding to the requests in this case. He notes the Council's statements that it has no need to retain background information about the airport which is nearly a decade old and that all of the information it has retained has already been disclosed to the applicant. Although the Council has not provided records showing when the requested information was destroyed, the Commissioner accepts that the requests relate to background and supporting documents and that therefore it would appear reasonable that the Council no longer has a need to retain this information.
29. The complainant has made a number of requests to the Council about the airport site and the Council has stated that it has provided him with all of the relevant information it has retained. The Council has also directed the complainant to information which is in the public domain. On the balance of the evidence available in this case, the Commissioner is satisfied that the Council does not hold further information of relevance to the requests.

## **The Decision**

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30. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## **Steps Required**

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31. The Commissioner requires no steps to be taken.

## Right of Appeal

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32. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 30<sup>th</sup> day of March 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## **Annex A**

### **Requests for information, 29 December 2009**

1. (a) I request details & copies of all meetings between Peel Holdings/Airports, Tinsley Park Ltd. & Sheffield Airport Ltd. or any combination of the three, at which Sheffield City Councillors &/or Officers attended leading up to the signing of the MOU (between Peel & Sheffield city Council (SCC)) dated 30<sup>th</sup> July 2001.  
  
(b) I request details & copies of any legal, technical or business advice obtained by Councillors or Council Officers in the preparation of the MOU as in 1.(a) above & dated 30<sup>th</sup> July 2001.
2. I request details of any works carried out & associated costs or grants/monies provided by SCC or its agencies either "on-site" or "off-site" of Sheffield City Airport (SCA); as an example "The Europa Way".
3. I request details & minutes of all meetings at which Council Officers provided planning advice, either general or detailed, to any organisation with regards to the Airport Site.
4. I refer to the Cabinet Meetings of 30<sup>th</sup> July 2001 & 6<sup>th</sup> August 2001; the Scrutiny Board Meeting of 13<sup>th</sup> September 2001 & Cabinet Meeting dated 17<sup>th</sup> September 2001 all of which I have a copy but which refer to "Peel's Draft Marketing Strategy". Please supply me with a copy of this document.
5. (a) The phrase (or something similar) of "Peel have done their best" (referring to the running of SCA) has been used by Councillors, attributed to Officers on the SCA website & contained within the York Aviation Report. Please supply me with the information provided to SCC to substantiate this claim such as but not limited to, the obvious information as to how many airlines were contacted by Peel? Who were they? How many times were they contacted & what systems & procedures were in place to attract suitable airlines & any other relevant information to the subject matter?  
  
(b) Please supply minutes of meetings held by SCC which vetted claims of such a nature by the Owners of SCA.
6. It is known that prior to release to the general public, a draft of the "independent" York Aviation Report was "checked for accuracy" by Councillors &/or Officers of SCC. Please supply me with the criteria used

in determining the "accuracy" & also a copy of the draft report (prior to modification) itself.

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **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.”

### **Environmental Information Regulations 2004**

#### **Regulation 6(1)**

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.