

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 March 2011

Public Authority: Nottingham City Council
Address: The Guild Hall
Nottigham
Nottinghamshire
NG1 4BT

Summary

The complainant requested information about a decision taken by the council to hire lift maintenance consultants Dunbar & Boardman. The council initially stated that Dunbar & Boardman had not been appointed. In its review it confirmed that Dunbar & Boardman had been appointed, but stated that no information was held as to why that decision had been taken. The Commissioner has concluded that on a balance of probabilities the council was correct to state that it did not hold the requested information. He requires no steps to be taken.

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. On 13 July 2010 the complainant asked the council for the following information:

- i) The annual budget for the lift maintenance team for each of the years prior to its disbanding in the City Council 2009 budget. Please provide these figures for years as far back as you have records and break them down into main categories of expenditure.
 - ii) Please also provide details of the amounts paid in total to outside lift maintenance and repair contractors for each year. Please provide basic details and amounts of what was spent on what e.g., repairs or routine maintenance. I don't want to know names of companies so there should be no issues of commercial sensitivity.
 - iii) Following the disbanding of the lift maintenance team, please provide me with details of expenditure on such items to replace the work of the internal team. e.g., this may be other staff seconded or acting up, or the employment of a consultant to carry out equivalent work.
 - iv) Again for the timeframe following the dismantling of the lift maintenance team, please will you provide me with comparable figures to those requested in ii) i.e. details of expenditure on lift repairs and maintenance by outside maintenance and repair contractors.
 - v) Please will you provide the numbers of accidents involving lifts for each year to date and going back as far as the records referred to in parts i - iv.
3. On the same date he emailed again with a further request for:
- vi) "a copy of any decision to employ any consultants to undertake any work previously carried out by the lift maintenance team, or advice as to where to find it if it is already publicly available".
4. The council acknowledged its receipt of the request on the same day. On 12 August 2010 the complainant wrote to the council asking it when it was going to respond. The council responded on 13 August 2010, stating that unfortunately its response was delayed. It stated that it hoped it would be able to respond within a week. On the same day the complainant asked the council to explain why there was a delay as the request was fairly simple and, in his view, the information should have been published in any event.
5. On 20 August 2010 he wrote again asking it why it still hadn't responded. The council responded on 23 August 2010 stating it was chasing a response from the relevant department, but in the meantime would consider providing a partial response of some of the information

- which it held. The complainant responded asking if that was only an interim, rather than a final response.
6. On 23 August 2010 the council provided its partial response to the complainant. In respect of the requests the response did the following
 - i) It provided the information.
 - ii) It provided some information but stated that it was still awaiting further information from the relevant department which it would provide as soon as it could
 - iii) It provided the information.
 - iv) It provided the information.
 - v) It confirmed that no accidents had occurred within the relevant period.
 - vi) It stated no decision had been taken to employ any consultants to undertake any work which had previously carried out by the lift maintenance team. It therefore stated that no information was held in respect of this.
 7. On 24 August 2010 the complainant wrote to the council stating that as regards point vi) he had been informed that Dunbar & Boardman had been hired. He also pointed out that there had been a lift accident reported in the local news and so its response to point v) appeared incorrect.
 8. On 7 September 2010 he sent a further chaser to the council. The council responded on the same day stating that it was still trying to obtain the information.
 9. On 10 September 2010 the council responded. It admitted that it had breached section 10(1) of the Act in responding outside of the appropriate time limit.
 10. In respect of point ii) it provided a spreadsheet detailing individual payments it had made in respect of lift maintenance since 2004, together with a breakdown of costs for the relevant period. However it stated that it had estimated that providing more detailed information in response to the request would take approximately 173 hours.
 11. It added that as that was the case, section 13 of the Act would allow it to charge a fee for responding. It then provided the complainant with a set of charges which it would require if the complainant wished the more detailed response.

12. It confirmed that following the incident which the complainant raised, Dunbar & Boardman had been appointed as lift consultants.
13. On the same date the complainant wrote back to the council reminding it that he had requested a copy of the decision to hire Dunbar & Boardman. He also asked it to confirm whether the request was its first response or a review.
14. On the same day the council responded. It stated that its response was a review and so the complainant could now complain to the Commissioner. It also confirmed that it held no information in respect of part vi) of the request.

The Investigation

Scope of the case

15. On 15 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically stated that the aspect of the request which he wished the Commissioner to consider was his request for a copy of the decision to hire Dunbar & Boardman. The Commissioner has not therefore considered the council's response to part ii) of the request further within this notice.

Chronology

16. The Commissioner wrote to the council on 20 October 2010 indicating that an eligible complaint had been received.
17. On 25 October 2010 the council acknowledged the letter and provided a contact for the Commissioner to write to regarding the case.
18. On 1 November 2010 the council wrote again, providing information in respect of the case to the Commissioner. This response however referred to other parts of the complainant's request rather than part vi).
19. On 31 January 2011 the Commissioner wrote to the council asking it for further details as to how it had confirmed that no information was held in respect of part vi) of the request. The council did not respond to that letter.
20. On 25 February 2011 the Commissioner wrote again requesting an answer to his earlier email.

21. On 8 March 2010 the Commissioner telephoned the council and informed it that he was considering issuing an Information Notice as he had not received a response to his questions and could not proceed with the case with the information which he held already. The council responded the following day providing the information which had initially been sent on 1 November 2010. The Commissioner then telephoned the council clarified that he needed a response to the questions he had asked rather than copies of the information which it had originally sent to him.
22. The council then responded to the questions on 18 March 2010.

Analysis

Procedural Requirements

The delay in response

23. Section 1 of the FOIA provides:

"Any person making a request for information to a public authority is entitled –

to be informed in writing by the public authority whether it holds the information of the description specified in the request, and

if that is the case, to have that information communicated to him."

24. Section 10(1) of the FOIA provides:

"...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."

In other words, if the authority does not hold the information requested the authority must confirm in writing that it does not hold the information requested within 20 working days.

25. In this case, the request for information was made on 13 July 2010 and the response provided on 23 August 2010. This falls outside of the period for response of 20 days which is provided by section 10(1) of the Act. That response indicated that no information was held because no decision had been made. The council's subsequent review of that decision, where it clarified that Dunbar & Boardman had been hired but

that no information was held about this was issued on 10 September 2010.

26. The Commissioner therefore finds that the council breached section 10(1) in failing to clarify to the complainant whether it held relevant information within the 20 day time deadline set by that section.

Is any information held?

27. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) of the Act states:

‘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.’

28. The test which the Commissioner applies in determining whether a public authority holds any requested information is the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

“...we must consider whether the IC’s decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities...” (paragraph 10) because

“...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records” (paragraph 13).

29. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority’s response with regard to whether or not the requested information is held, the Commissioner will look at both:

- the scope, quality, thoroughness and results of the searches; and
 - other explanations offered as to why the information is not held.
30. In response to the Commissioner's questions regarding the searches it had carried out the council stated that it can categorically state that no relevant information is held. It stated that the senior facilities manager who made the decision to appoint Dunbar & Boardman had confirmed that no record was made of her decision due because there had been a need for a quick decision to be taken. The appointment had been an emergency measure, taken when the previous contractor terminated the contract at short notice, and the council had an urgent health and safety matter which it was forced to address.
31. It stated that it had nevertheless searched its electronic database and confirmed that it had not found any relevant information relating to Dunbar & Boardman.
32. The council confirmed that normally it would hold information on the award of contracts of this nature, but due to the reasons outlined above, it held no information in relation to this decision in this case.
33. It confirmed that no information has been held by it previously but had subsequently been destroyed or deleted.
34. The council confirmed that there are no statutory requirements to retain information relating to the procurement/appointment process in this instance.
35. Given the explanation of the searches which had been carried out, and the wider explanation as to why it was sure that no information is held the Commissioner accepts that on a balance of probabilities the council does not hold relevant information in this instance.

The Decision

36. 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:
- The Commissioner finds that on a balance of probabilities the council was correct to state that it holds no relevant information.

37. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The council breached section 10(1) of the Act in failing to respond to the complainant's request within 20 working days.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

40. 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.
41. 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 28th day of March 2011

Signed

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

Legal Annex

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 10(1) provides that –

"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."