

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 December 2011

Public Authority: Nottingham City Council
Address: Loxley House
Station Street
Nottingham
NG2 3NG

Summary

The complainant made a request to One Nottingham for minutes that related to a grant that it made. One Nottingham explained that it was not a public authority and refused to provide the information. The complainant complained to the Commissioner and asked him to consider whether the request made to One Nottingham was actually a valid request to all of its partners and for him to focus on whether it was a valid request to Nottingham City Council (the 'Council'). The Commissioner's view is that the request addressed to One Nottingham was not a valid request for information and that the Council did not need to respond to it. However, he has found that the internal review request was made to Council and in the Commissioner's view this should have been treated as being a valid request for information under the Act in its own right. He has found breaches of sections 1, 10(1) and 16(1) when considering the handling of the internal review request. He requires that the Council now answers the request in accordance with its obligations under Part 1 of the Act in 35 calendar days.

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 addressed his original request to One Nottingham – a strategic local partnership that included Nottingham City Council.

The Request

3. On 7 November 2010 the complainant wrote to One Nottingham and asked for information in respect of a grant made by Nottingham City Council to Nottingham Equal:

'The issues I am interested in are why Nottingham Equal was funded as opposed to any other organisation.

As such it would be a copy of the tender decision that I wanted. In addition please could you send me a copy of the tender panel minutes, the guidance suggests that these should be available under the Freedom of Information Act. '

4. On 22 November 2010 One Nottingham replied:

'Apologies for the delay in replying to your email of the 7th November, we have been seeking advice from Information Governance

We have taken the decision not to supply the information you requested, in our considered opinion, release of this information would damage the commercial interests of Nottingham City Council, One Nottingham and the parties involved in the tendering process.'

5. On 23 November 2010 the complainant expressed his disappointment about not receiving the information and requested an internal review. He explained his reasons. He noted that perhaps the request should be passed to the information governance department of Nottingham City Council in order to receive a more satisfactory response and he copied Nottingham City Council into this email. He said:

'Just to be clear, I am acting on the basis that the information requested is owned by Nottingham City Council and that One Nottingham is effectively an advisory body to NCC.... Effectively this is a request for information from NCC and as such I have copied Information Governance into this email.'

6. He then received an internal review response. It stated:

'We have been advised that One Nottingham is not covered by the Freedom of Information Act.

We will not release to you the minutes from the tender panel that you requested.

As previously mentioned the decision to award Nottingham Equal the contract was following the approved tender process that One

Nottingham has followed for many years and this was explained in my email of the 2nd November.'

The Investigation

Scope of the case

7. On 3 December 2010 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 he wanted the information that he had requested;
 - that he did not believe it was credible to claim that One Nottingham was an autonomous organisation from Nottingham City Council; and
 - that he believes that One Nottingham acts merely as an advisory committee to undertake functions that are the responsibility of Nottingham City Council.
8. 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

9. On 8 December 2010 the Commissioner wrote to the complainant. Later that day, the complainant made further submissions. He clarified that his complaint was about Nottingham City Council failing to release information. On 13 December 2010 the Commissioner wrote to the complainant to explain that the matter would receive substantive consideration.
10. On 11 February 2011 the Commissioner wrote to the complainant to explain that the case was under investigation. He explained that the best result that could be achieved for the complainant in this case would be the same result as him making a new request to Nottingham City Council directly and asked whether he was willing now to do this.
11. On 22 February 2011 the complainant said that he did not want to make a request to Nottingham City Council directly and asked for a formal decision compelling Nottingham City Council to respond to the request.
12. On 21 March 2011 the Commissioner communicated his preliminary view to Nottingham City Council and asked it to now process the request or explained that he would move to issue a Decision Notice.

13. On 4 April 2011 Nottingham City Council said it disagreed with the Commissioner's preliminary view and told him it would not process the request. However, it did explain that it would be happy to process a request made by the complainant directly to it.

Findings of fact

14. One Nottingham is a local strategic partnership. It has seventeen local partners – including Nottingham City Council.
15. One Nottingham is an unincorporated body. It does not have power to employ people, conclude contracts or hold funds. Its governance structure explains :

'The Partnership will be an unincorporated body with no legal powers. It will operate as a voluntary collaboration of partners within the legal framework of individual members'¹

16. The Chief Executive of One Nottingham directly reports to the Chief Executive of Nottingham City Council:
<http://www.nottinghamcity.gov.uk/CHttpHandler.ashx?id=17419&p=0>
17. Nottingham City Council provides most of One Nottingham's funding and is also One Nottingham's accountable body for that funding.
18. Nottingham City Council is also tasked with ensuring the partnership's democratic and financial accountability.
19. Nottingham City Council provides management and administrative services to the Partnership.
20. The majority of those whose duties cover One Nottingham have employment contracts with Nottingham City Council.
21. One Nottingham is co-located within Nottingham City Council.

¹ <http://www.onenottingham.org.uk/CHttpHandler.ashx?id=17363&p=0>

Analysis

When is an organisation a public authority?

22. Section 1(1)(a)² explains that 'any person making a request for information to a public authority is entitled' for it to be answered in accordance with the Act.
23. Section 3 of the Act defines which organisations amount to a public authority for the purposes of the Act. They will be:
- included in Schedule One of the Act;
 - added to Schedule One through a Ministerial Order made under either section 4 or 5 of the Act; or
 - a publicly owned company as defined by section 6.
24. In this case, there is no dispute that One Nottingham is not directly designated as a public authority by Schedule One. It is also not covered by any Ministerial orders made under either section 4 or 5 of the Act. It is not covered as a publicly owned company by virtue of section 6 because it is not a company. There is also no dispute that Nottingham City Council is a public authority for the purposes of the Act.
25. In the Commissioner's view there are two distinct issues in this case that will be dealt with in turn. They are:
- A. Whether the request to One Nottingham dated 7 November 2010 should have been answered; and
- B. Whether the request for internal review dated 23 November 2010 was also a valid request for information to Nottingham City Council?
- A. Should the request to One Nottingham dated 7 November 2010 have been answered?**
26. There are two ways that the request to One Nottingham could have been a valid request:
- if One Nottingham was a public authority in its own right; or

² All sections of the Act quoted in this Notice are found in full in the Legal Annex attached to its bottom.

- if One Nottingham can be regarded as part of the Council for the purposes of the Act.
27. Public authorities covered by the Act are designated specifically or by class either by the Act itself or by subsequent legislation. A strategic local partnership is not so designated. One Nottingham is not therefore a public authority in its own right.
28. The Commissioner has considered the complainant's arguments that the strategic local partnership is so closely connected to the Council that in effect it is part of it and therefore it should answer requests for information in accordance with the Act.
29. As noted above, One Nottingham is a strategic local partnership. The Commissioner has considered the Government Guidance on LSPs that was issued in 2001³. It explained that a LSP *'is a single body that:*
- *brings together at a local level the different parts of the public sector as well as the private, business, community and voluntary sectors so that different initiatives, programmes and services support each other and work together;*
 - *is a non-statutory, non-executive organisation'*
30. This guidance confirms that strategic local partnerships have a separate organisational status to the partners that make it up. The Commissioner's view is that while there are close links between the Council and the strategic local partnership (see paragraphs 14 to 21 above), the complainant's view that One Nottingham is in fact part of the Council for the purposes of the Act does not accord with the law. The Commissioner considers that strategic local partnerships cannot be said to be covered by the Act even when their partners are public authorities.
31. It follows that the request for information dated 7 November 2010 did not need to be answered. This was because it was not addressed to a public authority. The Commissioner finds that neither One Nottingham nor the Council were obliged by the Act to answer it.
32. This view does not prevent the complainant from requesting the information held by any of the partners who are public authorities under the Act.

³The link can be found below:

<http://www.communities.gov.uk/documents/localgovernment/pdf/133634.pdf>

B. Was the request for internal review dated 23 November 2010 in fact a valid request for information to Nottingham City Council?

33. The Commissioner has noted that the request for an internal review dated 23 November 2010 was copied to Nottingham City Council. As noted above, the complainant explained:

'Just to be clear, I am acting on the basis that the information requested is owned by Nottingham City Council and that One Nottingham is effectively an advisory body to NCC.... Effectively this is a request for information from NCC and as such I have copied Information Governance into this email.'

34. The Commissioner has considered whether this communication could be said to be a valid request for information to Nottingham City Council in its own right.

35. Section 8 provides the definition of what constitutes a valid request for information. It provides three requirements that need to be satisfied for a request made under the Act to be valid:

- It must be in writing [8(1)(a)];
- It must state the name of the applicant and an address for correspondence [8(1)(b)]; and
- It must describe the information that has been requested [8(1)(c)].

36. Section 8(2) clarifies that a request accords with section 8(1)(a) when sent by email and capable of being used for subsequent reference. The Commissioner also believes that an email address is sufficient to constitute a name for correspondence under section 8(1)(b).

37. In this case, the request clearly satisfies the requirements for the request to be in writing and has a correspondence address. In the Commissioner's view it also clearly describes what is being sought. As the first paragraph was worded:

I am writing to formally request a review of your decision not to provide me with the specific tender decision and tender panel minutes for the decision to provide funding for Nottingham Equal.

38. As the email dated 23 November 2010 clearly satisfies the requirements for a valid request for information to Nottingham City Council, it follows that it should have been dealt with under the Act by the Council. The Council has failed to recognise it as such. The Council has not dealt with it under the Act up to the date of this Notice. It follows that the Council

has failed to comply with its obligations under section 1(1)(a) or section 1(1)(b) of the Act.

39. The Commissioner is particularly concerned that this public authority has failed to recognise that a valid freedom of information request had been made to it. The Council has previously been issued with a Practice Recommendation under section 48 of the Act in relation to its handling of requests for information. He further notes that One Nottingham had taken advice from the Council's Information Governance section, but this did not result in a legally compliant response. It appears to the Commissioner that there may be a need for further training to engender a better informed and more positive approach to handling freedom of information requests within the Council.

Procedural Requirements

Section 10(1)

40. Section 10(1) requires a public authority to comply with its obligations under section 1(1) of the Act within twenty working days. The Council failed to comply with its obligations under section 1(1) in relation to either the request dated 23 November 2010. It has therefore breached section 10(1).

The Decision

41. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In particular, it failed to process the request dated 23 November 2010 in accordance with section 1(1) and breached section 10(1) of the Act.

Steps Required

42. The Commissioner requires Nottingham City Council to take the following steps to ensure compliance with the Act:

For the request dated 23 November 2010, it must comply with sections 1(1)(a) and 1(1)(b) of the Act within 35 calendar days of the date of this Notice.

Failure to comply

43. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

44. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

45. 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.
46. 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 5th day of December 2011

Signed

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

Legal Annex

Section 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 3 - Public Authorities

Section 3(1) provides that –

'In this Act 'public authority' means –

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –*
 - (i) is listed in Schedule 1, or*
 - (ii) is designated by order under section 5, or*
- (b) a publicly-owned company as defined by section 6'*

Section 3(2) provides that –

'For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority.'*

Section 4 – Amendment of Schedule 1

'(1)The Secretary of State may by order amend Schedule 1 by adding to that Schedule a reference to any body or the holder of any office which (in either

case) is not for the time being listed in that Schedule but as respects which both the first and the second conditions below are satisfied.

(2)The first condition is that the body or office—

(a)is established by virtue of Her Majesty's prerogative or by an enactment or by subordinate legislation, or

(b)is established in any other way by a Minister of the Crown in his capacity as Minister, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(3)The second condition is—

(a)in the case of a body, that the body is wholly or partly constituted by appointment made by the Crown, by a Minister of the Crown, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or

(b)in the case of an office, that appointments to the office are made by the Crown, by a Minister of the Crown, by a government department or by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(4)If either the first or the second condition above ceases to be satisfied as respects any body or office which is listed in Part VI or VII of Schedule 1, that body or the holder of that office shall cease to be a public authority by virtue of the entry in question.

(5)The Secretary of State may by order amend Schedule 1 by removing from Part VI or VII of that Schedule an entry relating to any body or office—

(a)which has ceased to exist, or

(b)as respects which either the first or the second condition above has ceased to be satisfied.

(6)An order under subsection (1) may relate to a specified person or office or to persons or offices falling within a specified description.

(7)Before making an order under subsection (1), the Secretary of State shall—

(a)if the order adds to Part II, III, IV or VI of Schedule 1 a reference to—

(i) a body whose functions are exercisable only or mainly in or as regards Wales, or

(ii) the holder of an office whose functions are exercisable only or mainly in or as regards Wales,

consult the Welsh Ministers, and

(b) if the order relates to a body which, or the holder of any office who, if the order were made, would be a Northern Ireland public authority, consult the First Minister and deputy First Minister in Northern Ireland.

(8) This section has effect subject to section 80.

(9) In this section "Minister of the Crown" includes a Northern Ireland Minister.'

Section 5 – Further power to designate public authorities

(1) The Secretary of State may by order designate as a public authority for the purposes of this Act any person who is neither listed in Schedule 1 nor capable of being added to that Schedule by an order under section 4(1), but who—

(a) appears to the Secretary of State to exercise functions of a public nature, or

(b) is providing under a contract made with a public authority any service whose provision is a function of that authority.

(2) An order under this section may designate a specified person or office or persons or offices falling within a specified description.

(3) Before making an order under this section, the Secretary of State shall consult every person to whom the order relates, or persons appearing to him to represent such persons.

(4) This section has effect subject to section 80.

Section 6 – Publicly owned companies

(1) A company is a "publicly-owned company" for the purposes of section 3(1)(b) if—

(a) it is wholly owned by the Crown, or

(b) it is wholly owned by any public authority listed in Schedule 1 other than—

(i) a government department, or

(ii) any authority which is listed only in relation to particular information.

(2) For the purposes of this section—

(a) a company is wholly owned by the Crown if it has no members except—

(i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or

(ii) persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown, and

(b) a company is wholly owned by a public authority other than a government department if it has no members except—

(i) that public authority or companies wholly owned by that public authority, or

(ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.

(3) In this section—

- “company” includes any body corporate;
- “Minister of the Crown” includes a Northern Ireland Minister.

Section 8 – Request for information

(1) In this Act any reference to a “request for information” is a reference to such a request which—

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request—

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.

Section 10 - Time for Compliance

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.'

...

Section 10(6) provides that –

'In this section –

"the date of receipt" means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'

Section 16 – Duty to provide advice and assistance

Section 16 provides that:

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 43 - Commercial interests

Section 43(1) provides that –

'Information is exempt information if it constitutes a trade secret.'

Section 43(2) provides that –

‘Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).’

Section 43(3) provides that –

‘The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).’