

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 1 September 2011

**Public Authority:** English Heritage  
**Address:** The Historic Buildings and Monuments  
Commission for England  
Kemble Drive  
Swindon  
SW2 2GZ

#### Summary

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The complainant made a request under the Freedom of Information Act 2000 ("the Act") to English Heritage for information relating to a statement in the Bath List. English Heritage stated that no information relevant to the scope of the request was held. The complainant was not satisfied that no information was held. The Commissioner has considered the arguments put forward by English Heritage and his decision is that English Heritage holds no information relevant to the request.

#### Background

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1. The request concerns information relating to the Bath List. The Bath List is a project that has been ongoing for over 10 years with the aim of updating the statutory list of protected historic buildings in Bath. Part of this project involved updating the descriptions of all listed buildings in Bath and the request relates to a line inserted into the revised listing for Bath Guildhall Market.

#### The Request

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2. The complainant made a request to English Heritage on 26 January 2011. The request related to a line in the revised listing for Guildhall Market which stated "*council presently trying to restore uniformity to design of stalls*". The request was for the following information:

*"copies of all documentation relating to this statement including the names and positions of the officials who proposed and approved the*

*statement, dates of submission and approval, and any evidence provided that this statement was an authorised policy statement on behalf of Bath and North East Somerset Council, or other justification for including this statement in the listing"*

3. On 23 February 2011 English Heritage responded to the request for information. English Heritage stated no information could be found in relation to this line in the revised listing and English Heritage could not identify the individuals who had been involved in drafting the entry for Guildhall Market.
4. The complainant was dissatisfied with the response he received and on 25 February 2011 wrote to English Heritage setting out his view that the line in the listing would not have been inserted without some record of the origin of the statement.
5. English Heritage wrote to the complainant on 9 March 2011 reiterating that no record of the individual who wrote the list description was held and no reference to the reasons behind the change to the description could be found.
6. On 10 March 2011 English Heritage wrote to the complainant with the result of the internal review it had carried out. In this response, English Heritage refer to the email of 9 March 2011 and state there is nothing further that can be added.

## **The Investigation**

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### **Scope of the case**

7. On 8 April 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his investigation in this case to be whether the requested information about the specific statement in the listing is held by English Heritage.
9. The complainant has also requested information from Bath and North East Somerset Council about the origin of a specific statement within the listing. The Commissioner has addressed the handling of that request in his Decision Notice reference FS50390764.

### **Chronology**

10. On 8 August 2011 the Commissioner wrote to the complainant. He confirmed with the complainant that he would consider whether or not

English Heritage held any information about the origins of the revised entry on the Bath List.

11. On 8 August 2011 the Commissioner began making enquiries with English Heritage. The Commissioner asked English Heritage for further submissions in relation to how it had come to the conclusion that the information requested was not held.
12. On 17 August 2011 English Heritage responded to the Commissioner providing full submissions to explain why this information was not held.

## Analysis

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### Section 1(1)(a) – General right of access

13. Section 1(1)(a) states 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,”*

14. The Commissioner has considered whether English Heritage has complied with this section of the Act in stating that it did not hold any information in relation to the request.
15. In determining whether a public authority does hold any requested information, the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities.
16. 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 may look at:
  - explanations offered as to why the information is not held; and
  - the scope, quality, thoroughness and results of any searches undertaken by the public authority.
17. In response to the Commissioner's questions English Heritage explained that as the Bath List project has been on going for over 10 years there have been numerous people involved in writing and revising list descriptions.
18. English Heritage are not under any statutory requirement to keep the requested information and, at the time the list entry for Guildhall market

was updated, English Heritage did not consider there was a business need to keep this information. English Heritage do now have a protocol for amending list entries and maintain case files each time the statutory list is amended. However, this protocol did not exist at the time the list entry in question was amended.

19. English Heritage state they have conducted searches of the background notes they hold for the Bath List but cannot find any information relating to the line inserted in the Guildhall Market entry. English Heritage has not conducted any searches of electronic data because all information at this time was held in hard copy form.
20. Having taken into account the submissions provided by English Heritage as well as the submissions put forward by the complainant, the Commissioner considers that on the balance of probabilities English Heritage does not hold information relating to the origin of the statement inserted into the revised entry for Bath Guildhall Market.
21. Therefore the Commissioner considers that English Heritage complied with section 1(1)(1) of the Act.

## **The Decision**

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22. The Commissioner's decision is that English Heritage dealt with the request for information in accordance with the Act.

## **Steps Required**

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23. The Commissioner requires no steps to be taken.

## Right of Appeal

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24. 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@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 1<sup>st</sup> day of September 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"