

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 August 2011

Public Authority: Leicester City Council
Address: B3, New Walk Centre
Welford Place
Leicester LE1 6ZG

Summary

The complainant requested information from Leicester City Council about the way in which a specific property had been allocated and to whom. The Council refused the request citing section 40(2) (personal information). During the course of the Commissioner's investigation, some relevant information was disclosed to the complaint. The Commissioner found procedural breaches in the Council's handling of the request but 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. The complainant wrote to the Council on 8 February 2011 requesting information about a particular council property:

"(i) who was allocated the 2 bedroom bungalow at [address redacted] ?;

(ii) the criterion under which the house has been allocated to this particular person; and

(iii) the shortfall of the criterion for the allotment of the house to me?"

3. The Council responded on 22 February 2011 confirming that it held the requested information.
4. With respect to part (ii) of the request, it explained to the complainant the basis on which the property was allocated. With respect to parts (i) and (iii) of the request, it withheld the requested information citing the exemption in section 40(2) (personal information) of the Act.
5. The complainant requested an internal review of this decision on 18 March 2011.
6. The Council upheld its decision to withhold the information in its internal review correspondence which was sent to the complainant on 21 March 2011.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 19 April 2011 to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following point:

"If you cannot give me the name of the allottee as per the rules please provide me the points given to the allottee and criterion considered for more transparency on the allotment of the house".
8. During the course of the Commissioner's investigation the Council provided the complainant with information about the scores awarded to applicants for the property concerned. It also explained the criteria the Council uses to determine the allocation of its properties.
9. The complainant responded to the Commissioner's invitation to withdraw her complaint on 15 July 2011. As a result of this correspondence, the Commissioner has proceeded to issue this Decision Notice. He considers the scope of his investigation to be the Council's handling of parts (ii) and (iii) of the request and its belated disclosure of information relating to these parts.
10. Although he has not formally considered the Council's citing of section 40 in this case, the Commissioner's view is that the Council's withholding of information under this exemption is likely to be in accordance with his guidance on the disclosure of personal information.

Chronology

11. The Commissioner wrote to the Council on 20 May 2011 advising that he had received the complaint in this case.
12. The Council responded on 7 June 2011. The Council provided the Commissioner with further explanation about the way it allocates properties and explained the basis on which it had reached its decision to withhold the requested information.
13. The Commissioner wrote to the complainant on 20 June 2011, saying that, as disclosure of information under the Act is considered disclosure to the public at large and not to the individual applicant, in the case of personal data there is no assumption of disclosure. He advised her accordingly with respect to her request for the name of the successful applicant for the bungalow. He also told her that he was in correspondence with the Council about the other aspects of her request.
14. Following advice from the Commissioner, the Council wrote to the complainant on 20 June 2011, providing her with information relevant to parts (ii) and (iii) of her request. It provided her with information about the scores awarded to applicants for the property concerned. It also explained the criteria the Council uses to determine the allocation of its properties.
15. The Commissioner wrote to the complainant on 8 July 2011. He invited her to withdraw her complaint on the basis that she had been provided with the information which she had specifically asked to be provided with when bringing her complaint.
16. The complainant responded on 15 July 2011 but was unable to give a definitive response to the invitation to withdraw.

Analysis

Procedural Requirements

Section 1 General right of access

Section 10 Time for compliance

17. Section 1(1) of the Act creates a general right of access to information held by public authorities. It provides for any person making a request for information 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. The

time limit for complying with section 1(1), set out in section 10(1), is twenty working days.

18. The Commissioner notes that in this case, during the course of his investigation, the Council accepted that some of the requested information was not exempt and accordingly released that information to the complainant. He believes that some credit should be given to the Council for having recognised, albeit belatedly, that its response to the request was incorrect.
19. However, the Commissioner takes the view that the Council breached section 1(1)(b) of the Act in failing to provide the information until after the complainant had approached the Commissioner. In addition, since the council failed to provide the information within the statutory time limit it also breached section 10(1) of the Act.

The Decision

20. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
 - the Council breached section 1(1)(b) by not providing the complainant with the requested information by the time of the completion of the internal review; and
 - it breached section 10(1) by not providing the complainant with the requested information within 20 working days of the request.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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

23. 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.
24. 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 15th day of August 2011

Signed

**Jon Manners
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 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"

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.”