

Freedom of Information Act 2000 (the Act) Decision notice

Date: 9 July 2012

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

Decision (including any steps ordered)

1. The complainant has requested

Correspondence between various individuals at Nottingham City Council and representatives of Nottinghamshire Police between October 1 2005 to December 31 2006, in relation to investigations undertaken by Nottinghamshire Police and/or by the District Auditor into the misallocation of council houses in the city between 2003 and 2005.

2. The Commissioner's decision is that Nottingham City Council does not hold any recorded information falling within the scope of the complainant's request based on a balance of probabilities test.
3. The Commissioner finds that Nottingham City Council has breached section 10(1) of the Act by failing to respond to the complainant's request promptly and in any event with twenty working days.
4. The Commissioner does not require Nottingham City Council to take any steps to ensure compliance with the legislation.

Request and response

5. On 3 December 2010 the complainant wrote to the council and requested information in the following terms:

'Request 1

*Please could you provide me with correspondence, emailed or written, with associated documents or attachments, between **Councillor Jon***

Collins¹ and representatives of Nottinghamshire Police during the period October 1 2005 to December 31 2006, in relation to investigations undertaken by Notts Police and/or the District Auditor into the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).

I would like the disclosure to include, but not be limited to, any correspondence relating to Notts Police intention to investigate, or not, the misallocation of council homes.

Request2

Please could you provide me with correspondence, emailed or written, with associated documents or attachments, between **council officer Toni Price²** and representatives of Nottinghamshire Police during the period October 1 2005 to December 31 2006 in relation to an investigation undertaken by the District Auditor into the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).

I would like the disclosure to include, but not be limited to, any correspondence relating to Notts Police intention to investigate, or not, the misallocation of council homes.

Request3

Please could you provide me with correspondence, emailed or written, with associated documents or attachments, between **council officer Adrienne Roberts³** and representatives of Nottinghamshire Police during the period October 1 2005 to December 31 2006 in relation to an investigation undertaken by the District Auditor into the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).

I would like the disclosure to include, but not be limited to, any correspondence relating to Notts Police investigating, or not, the misallocation of council homes.

¹ Leader of Nottingham City Council

² Executive Assistant to the Leader of the Council

³ Acting Chief Executive of Nottingham City Council in 2006 who left in 2008

Request4

*Please could you provide me with correspondence, emailed or written, with associated documents or attachments, between council **officer Glen O'Connell**⁴ and representatives of Nottinghamshire Police during the period October 1 2005 to December 31 2006 in relation to an investigation undertaken by the District Auditor into the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).*

I would like the disclosure to include, but not be limited to, any correspondence relating to Notts Police intention to investigate, or not, the misallocation of council homes.

Request5

*Please could you provide me with correspondence, emailed or written, with associated documents or attachments, between **Councillor David Trimble**⁵ and representatives of Nottinghamshire Police during the period October 1 2005 to December 31 2006 in relation to an investigation undertaken by the District Auditor into the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).*

I would like the disclosure to include, but not be limited to, any correspondence relating to Notts Police intention to investigate, or not, the misallocation of council homes'.

6. The council responded by email on 1 June 2011 (with a copy to the Commissioner) and stated that it did not hold any recorded information within the scope of the complainant's request.
7. On 8 June 2011 the complainant requested an internal review as he was unhappy with the council's response that it held no recorded information. He therefore asked the council to provide him with details of the searches it carried out including access to any private/personal email accounts that may have been used for council business.
8. Following an internal review the council wrote to the complainant on 5 July 2011 (and provided a copy to the Commissioner).

⁴ The Council's Director of Legal and Democratic Services

⁵ The Council's portfolio holder for housing in 2006

9. With regard to the searches carried out the council stated that a request was made to its Resources Department to conduct a search and additionally a further electronic was conducted by its ICT colleagues. In relation to the latter the council stated its understanding that the search consisted of a cross referencing exercise looking for emails from or to the individuals named in the complainant's request during the time periods specified sent to or from an email address with 'nottinghamshire.pnn' (the designated email for Nottinghamshire Police). The council clarified that this search would only have covered the named individuals' official council email accounts and not any private or personal ones. It said that if an individual made use of a personal or private email account it was not something it would be aware of or have authority to monitor. The council concluded by saying that no recorded information was held within the scope of the request.
10. The council has elaborated on the searches is carried out as described above in a written communication to the Commissioner. In this communication the council pointed out that on 25 March 2011 its Resources department sent out a 'memo' to its Single Point of contact in which it repeated the four information requests made by the complainant dated 3 December 2010 and requested any recorded information held relevant to them to be provided to its Information Governance department. The council has clarified that its Single Point would have disseminated the memo accordingly. It has also pointed out that the same memo was sent the same day directly to Carole Mills-Evans, Glen O'Connell, Graham Chapman⁶, Jamie O'Malley⁷, Jane Todd, Jon Collins, Peter Davies Bright⁸, Toni Price and Stephanie Pearson⁹. The council has also informed the Commissioner that on 21 April 2011 its information Governance department asked its acting Director of IT to conduct searches of the following individuals' email accounts; Jane Todd, Carol Mills Evans, Glen O'Connell, Stephen Barker, Stephen Richeux and Adrienne Robers. The results of this search were provided to the Information Governance department on 9 May 2011 and subsequently shared with the complainant and the Commissioner.

Scope of the case

⁶ Deputy Leader of the Nottingham City Council

⁷ Head of Communications for Nottingham City Council

⁸ Corporate Policy team for Nottingham City Council

⁹ Information Governance Manager at Nottingham City Council

11. On various occasions in 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, he complained about the delays in responding to his request and the apparent lack of recorded information held in relation to it.

Reasons for decision

Does the council hold any recorded information?

12. The main question for the Commissioner to consider in this case is whether the council holds any recorded information falling within the scope of the complainant's request based on a balance of probabilities. See the decision of the Information Tribunal in the case of Bromley v Information Commissioner and the Environment Agency EA/2006/0072.

Section 1(1) of the Act

13. Section 1(1) of the Act 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.
14. Section 3(2) of the Act provides that information is held by a public authority for the purposes of the Act 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.
15. The Commissioner's view is that information held in non-work personal email accounts (e.g. Hotmail, Yahoo and Gmail) may be subject to the Act if it amounts to the official business of the public authority. Clearly it is necessary for information to be held in recorded form at the date of the request for it to be subject to the Act.
16. In this situation it is very likely that the information would be held on behalf of the public authority in accordance with section 3(2)(b) of the Act¹⁰.

¹⁰ See the Commissioner's Guidance on 'Official information held in private email accounts'.
http://www.ico.gov.uk/news/latest_news/2011/ico-clarifies-law-on-information-held-in-private-email-accounts-15122011.aspx

17. In situations where a public authority believes that information falling within the scope of a request is held on its behalf in a private email account the Commissioner would expect that public authority to ask the individual concerned to search the account for any relevant information and make a record of it. This would allow the public authority to demonstrate that it had carried out appropriate searches.
18. Even if information is held on behalf of a public authority in a private email account it may still be subject to the exemptions under the Act and therefore not automatically disclosable.
19. It is important to note the standard of proof that the Commissioner uses to determine whether relevant recorded information is held. In *Linda Bromley & Others v Information Commissioner and Environment Agency* [EA/2006/0072] ('Bromley'), the Information Tribunal confirmed that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The standard of proof has been recently confirmed by the Tribunal decisions of *Innes v Information Commissioner* [EA/2009/0046], *Thompson v Information Commissioner* [EA/2011/0144] and *Oates v Information Commissioner* [EA/2011/0138].
20. The Commissioner has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the *Bromley* decision. To determine whether information is held requires a consideration of a number of factors, including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis, the rigour and efficiency with which the search was then conducted and any other relevant reasons offered by the public authority to explain why the information is not held.
21. In the decision of *Oates v Information Commissioner* [EA/2011/0138] the Tribunal stated that: 'As a general principle, the (Commissioner) was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in circumstances, where there was no evidence as to an inadequate search, any reluctance to carry out a proper search or as to a motive to withhold information actually in its possession. Were this to be otherwise the (Commissioner) with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by a requester'.
22. The Commissioner has applied the test in the *Bromley* and the principal referred to in the *Oates* to this case and has also considered the arguments of both sides.

23. The Commissioner notes that the searches carried out by the council, as described above, did not identify any recorded information in respect of communications between the individuals named in the request and Nottinghamshire Police.

Request 1 (correspondence between Councillor Jon Collins and Nottinghamshire Police)

24. The council has stated that as a result of the searches it carried out as described above no recorded information was identified within the scope of the complainant's request.
25. The Commissioner is aware from investigations he carried out into two other cases concerning the council which resulted in Decision Notices FS50371156 and FS50371164 that Councillor Jon Collins might have used a gmail account for council business in addition to his official council one.
26. The council has confirmed in a written communication to the Commissioner that Councillor Jon Collins' council and gmail accounts have both been searched but no recorded information was identified falling within the scope of the complainant's request.
27. The complainant has not produced any specific evidence to establish that the council does hold any recorded information falling within the scope of his request apart from a suspicion that it should.
28. The Commissioner is therefore satisfied on a balance of probabilities that the council does not hold any recorded information falling within the scope of the complainant's request number 1.

Request 2 (correspondence between Adrienne Roberts and Nottinghamshire Police)

29. The council has clarified in a written communication to the Commissioner that when Adrienne Roberts left its employ in 2008 her email account was decommissioned. Accordingly, at the time the complainant's request was received on 3 December 2010 there was no email account to search.
30. The council has stated to the Commissioner that any important information involving Adrienne Roberts would have been moved to a separate area and therefore would have been available under any searches carried out under the Act
31. The complainant has not produced any specific evidence to establish that the council does hold any recorded information falling within the scope of his request apart from a suspicion that it should.

32. The Commissioner is therefore satisfied on a balance of probabilities that the council does not hold any recorded information falling within the scope of the complainant's request number 2.

Request 3 (correspondence between Toni Price and Nottinghamshire Police)

33. The council has stated that as a result of the searches it carried out as described above no recorded information was identified within the scope of the complainant's request.
34. The complainant has not produced any specific evidence to establish that the council does hold any recorded information falling within the scope of his request apart from a suspicion that it should.
35. The Commissioner is aware from enquiries he has made that Toni Price might have used a gmail account for council business in addition to her official council one.
36. The council has confirmed in a written communication to the Commissioner that Toni Price's council and gmail accounts have both been searched but no recorded information was identified falling within the scope of the complainant's request.
37. The Commissioner is therefore satisfied on a balance of probabilities that the council does not hold any recorded information falling within the scope of the complainant's request number 3.

Request 4 (correspondence between Glen O'Connell and Nottinghamshire Police)

38. The council has stated that as a result of the searches it carried out as described above no recorded information was identified within the scope of the complainant's request.
39. The complainant has not provided the Commissioner with any specific evidence to suggest that the council holds or has held any recorded information concerning communications between Glen O'Connell and the Nottinghamshire Police between October 2005 and December 2006 (4 to 5 years before his request was received).
40. The Commissioner has therefore concluded on a balance of probabilities that the council does not hold any recorded information falling within the scope of the complainant's request number 4.

Request 5 (correspondence between Councillor David Trimble and Nottinghamshire Police)

41. The council has stated that as a result of the searches it carried out as described above no recorded information was identified within the scope of the complainant's request.
42. The complainant has not produced any specific evidence to establish that the council does hold any recorded information falling within the scope of his request apart from a suspicion that it should.
43. The council has stated in a written communication to the Commissioner that Councillor David Trimble has confirmed that he does not hold any recorded information falling within the scope of the complainant's request.
44. The Commissioner has therefore concluded on a balance of probabilities that the council does not hold any recorded information falling within the scope of the complainant's request number 5.

Other matters

45. The Commissioner finds that the council breached section 10(1) of the Act by failing to respond to the complainant's request promptly and in any event within twenty working days following the date of receipt.

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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