

Freedom of Information Act 2000

Decision notice

Date: 9 January 2013

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant has requested information regarding an alleged guarantee made by Northumberland County Council's (the Council) predecessors to run a bus service between the towns of Alton and Haltwhistle.
2. The Commissioner's decision is that the Council incorrectly refused the complainant's request relying on sections 12 and 14. However, the Council subsequently disclosed the relevant information and the Commissioner decided that, on the balance of probabilities, no further information is held.

Request and response

3. On 12 April 2011, the complainant wrote to the Council and requested information in the following terms:

"Does the Council acknowledge that at the enquiry into the closure of the Alton to Haltwhistle railway a guarantee was given that a bus-service between the two communities would be permanently available?"

4. The Council responded on 5 May 2011. It stated that it "held no record of any such action".
5. On 18 July 2011, the complainant wrote to the Council and requested information in the following terms:

"Does the Council hold any record in any form which relates to the guarantee referred to in this letter? That includes anything which relates to, refers to or mentions the aforementioned guarantee in any way. That includes any form of record such as e-mails, letters, memos, agendas, minutes or any other record. The period referred to is 1 January 2007 to date."

6. The Council responded on 28 July 2011. It stated that it had checked the relevant records and that no "guarantee of continued bus services has been found". However, the Council did state that there was reference to "an undertaking" in an email previously disclosed to the complainant. The Council also disclosed a copy of minutes from a Council meeting in November 2010 where the guarantee is mentioned after a question that arose from the floor.

7. On 22 July 2011, the complainant wrote to the Council and requested information in the following terms (N.B – questions 1 and 2 are not pertinent to the Commissioner's decision):

"3/ Does the Council hold any records of any kind in any form relating to the Haltwhistle to Alston railway line and its closure in 1976?"

4/ If the answer to Question 3 is "Yes", please provide copies of all the material held on paper."

8. The Council responded on 24 August 2011. It refused to comply with the request as it said it would exceed the cost limit under section 12 of the Freedom of Information Act (the Act).

9. Following an internal review the Council wrote to the complainant on 21 October 2011. It upheld its original decision.

10. On 21 September 2011, the complainant wrote to the Council and requested information in the following terms:

"Does the Council hold any records in any form relating in any way to the Haltwhistle to Alston railway line and its closure during the period of the calendar month of April 1976? Please provide paper copies."

11. The Council responded on 9 November 2011. It neither confirmed nor denied whether it held any relevant information and relied upon section 14(2)¹ as the basis of its refusal notice.

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/14> - Vexatious or repeated requests

12. Following an internal review the Council wrote to the complainant on 28 November 2011. It stated that the use of section 14(2) was "fully justified" as the complainant had submitted four requests of a similar nature.

Scope of the case

13. The complainant contacted the Commissioner on 21 December 2011 to complain about the way his request for information had been handled. He did not agree that the search for relevant information would exceed the appropriate limit, or that he had made repeated requests.
14. The Commissioner considers the scope of the case to be whether the Council is entitled to rely upon sections 12 and 14 of the Act as the basis for its refusal notices.

Reasons for Decision

Section 14

15. Section 14 of the Act states that:

"14 Vexatious or repeated requests

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

16. The Commissioner does not consider the request of 21 September 2011 to be a repeat request. The requests of 12 April 2011 and 18 July 2011 specifically refer to a guarantee for a future bus service, whereas the request of 21 September 2011 refers to the closure of the Haltwhistle to Alston railway line.
17. Further, the request of 21 September 2011 is not a repeat request as it is clearly an attempt by the complainant to reduce the scope of his previous request so that it can be handled within the appropriate limit. This is in accordance with the Commissioner guidance on for requests refused using section 12. The Commissioner considers that this or similar advice should have been offered to the complainant by the Council in their refusal notice of 24 August 2011.

18. In the Council's internal review of 28 November 2011 it also relied upon the case between the two parties that was with the Information Tribunal. However this case concerned the withdrawal of a bus service, which does have a small connection to the requests in this decision, but is not sufficient to allow the Council to employ section 14(2).

Section 12

19. Section 12 of the Act states that:

"12 Exemption where cost of compliance exceeds appropriate limit

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

20. The appropriate limit is outlined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. For the Council the limit is £450, which equates to 18 hours of work by a single individual.
21. In the internal review for the third request, the Council stated that there were two boxes of records containing six files. During the course of the Commissioner's investigation this was revised to one box containing five files. These files relate to the Haltwhistle to Alston railway line, although the Council stated there was no indication that any of the records related to the closure of the line in 1976. The Council also stated that there were 430 boxes that had no indication as to their contents but "which could potentially hold information on this subject." It was estimated that it would take three days to search all the boxes and so exceeded the 18 hour limit.
22. The Commissioner stated to the Council that section 12 required a reasonable estimate. Whilst this is decided on a case by case basis, the Commissioner considers that useful guidance for reasonable estimates was provided in the Information Tribunal case *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency*². Here, the Tribunal stated that a reasonable estimate should be "sensible, realistic and supported by cogent evidence."
23. The Council's internal review clearly states that they "do not have an indication" of the contents of the 430 boxes included in their estimate.

² (EA/2006/0004)

The Commissioner does not consider it sensible to include these boxes in an estimate, as the possibility that their contents will be relevant is far too remote.

24. The Council accepted the Commissioner's view. It searched the five files and disclosed information which related to the complainant's request.
25. The complainant stated to the Commissioner that he believes the Council holds more information, particularly as none of the disclosed information refers to the aforementioned guarantee of a bus service to replace the Haltwhistle to Alston railway line.

Section 1

26. Section 1 of the Act states that:

"General right of access to information held by public authorities

(1) 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.

27. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

Woodhorn Museum

28. The Council's refusal notice of 24 August 2011 states that information relevant to the request is held in the Woodhorn Museum.
29. Woodhorn Museum serves two roles: firstly, it is the site for the Northumberland Archives; secondly, it provides a document storage system.
30. The Northumberland Archives is a public record office and the official repository for Northumberland's historic records. These records can either be searched by a member of the public or can be searched by employees of the Museum on an individual's behalf for a fee.
31. The Commissioner considers that this information held by the Woodhorn Museum is not held on behalf of the Council. Woodhorn Museum is

managed by the Woodhorn Museum Charitable Trust and so does not belong to the Council.³

32. The Museum also serves as the Council's record management system, holding "closed or semi-current records" which are held until they reach their disposal date. These records are held on retention by the Council and are not open to the public. The Council explained that when the retention period ends the documents are examined by archivists to determine whether they should be transferred to the Northumberland Archives and thus be available to the public.

Arguments for why information might be held

33. The disclosed information consisted of one document: a brief for Council staff about a meeting with the South Tyneside Railway Preservation Society with seven appendices. The appendices show letters from the Society's lawyers about proposals to take over the running of the railway line, a map of the line, a few newspaper articles, a note from a previous meeting, and an extract from a report by the Highways Committee.

34. The Council wrote to the complainant after it agreed to search the box of information mentioned in its internal review. In this letter it stated that the two boxes contained an "estimated" 1,300 pages of documents and that:

"No exemptions apply to these particular documents, or the parts of them that relate to the closure, and I am prepared to send them to you. Some of these documents also refer to other subjects and will need to be redacted."

In the letter later sent with the disclosed information the Council stated that it had "not proved necessary" to redact any of the documents. The complainant stated that this suggests the possibility that other relevant information was originally selected to be released but then later withheld, as it was clear from the disclosed documents that they did not refer to anything sensitive which would need to be redacted.

35. The Commissioner considers that there would be a reasonable expectation that given the amount of work needed to close a railway line, there would be more information held amongst the estimated 1,300 pages of documents.

³ <http://www.experiencewoodhorn.com/woodhorn-charitable-trust/>

36. The complainant has stated that there have been previous incidents where the Council has been incorrect about the volume of information it holds. The Commissioner has taken this into account when making his decision.

Arguments for why information might not be held

37. Whilst the complainant is adamant that the Council holds information relating to the aforementioned guarantee, the Commissioner has not been provided with sufficient evidence that such a guarantee exists and that it was a notable consideration for the Council. The complainant has submitted to the Commissioner a copy of minutes from a Council meeting (see paragraph 6). Whilst a Council Officer does mention a "40 year guarantee", an employee of the Council who was present at this meeting explained that this came about due to a direct question from the floor.
38. The Council made clear in its internal review that the records referred to contained information about the railway, not specifically just its closure. This information covers a period from 1973 – 1996. Whilst the Council has estimated there being 1,300 pages of documents there is a reasonable doubt as to what proportion would be within the scope of the complainant's requests.
39. Other potentially relevant information is stored in the Northumberland Archives held at the Woodhorn Museum. As previously stated, these records are no longer the responsibility of the Council and are open to members of the public. At the behest of the Commissioner, Woodhorn Museum produced a list of archived collections which could contain relevant information to the complainant's request.
40. Whilst he has not checked the information held in the Northumberland Archives, the Commissioner does not consider it reasonable that the Council would have withheld significant amounts of information from being stored there. The line was closed well over 30 years ago and the information is unlikely to be of a sensitive nature that it needs to be withheld from the public.
41. The Woodhorn Archives stated that one document regarding the Haltwhistle to Alston railway line had been deleted in December 2000. However there is no indication to its contents.

Balance of probabilities

42. The Commissioner notes that it is reasonable to consider that more relevant information would be held within the estimated 1,300 pages of documents contained in the box referred to. The closure of the railway

line would have involved a substantial amount of work and would have been a significant event in the history of the line.

43. However, there is a reasonable doubt that this information would still be retained by the Council. The Woodhorn Museum has shown that a great deal of potentially relevant information has been transferred from the Council's records to the Northumberland Archives.
44. The Commissioner notes that the Council has made it clear that the information in the box of records was not exclusively about the railway line's closure. Further, the date range of the information goes both before and well beyond the line's closure.
45. Whilst the Commissioner is aware that the Council has had failings in the past to provide all relevant information at the first instance⁴ (as was also initially the case here), he is satisfied that during the course of his investigation the Council performed all the reasonable checks and searches. The Commissioner notes that as the information is in a single box it is easily located and would be straightforward to search through.
46. Based on these considerations, the Commissioner's decision is that on the balance of probabilities it is likely that the Council has disclosed all of the information it holds that is relevant to the complainant's requests.

Summary

47. The Commissioner's decision is that the Council incorrectly applied both section 12 and section 14 to the complainant's requests. However, the Commissioner considers that the Council has now disclosed all of the relevant information to the complainant and requires no further action to be taken.

Other matters

48. The Council's responses to the complainant's requests of 22 July 2011 and 21 September 2011 were both after the stipulated 20 working day period. In this the Council has breached section 10.
 49. Whilst the Commissioner is satisfied that the Council has disclosed all the relevant information from the five files, the complainant considers that there should be more held. The Commissioner would like to state
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⁴ E.g. Commissioner's decision FS50384764

he has informed the complainant of his rights to make a further request on this matter to either obtain or inspect the entire five files of information.

Right of appeal

50. 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

51. 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.
52. 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

Alexander Ganotis
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