

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2013

Public Authority: Northern Ireland Housing Executive
Address: The Housing Centre
2 Adelaide Street
Belfast
BT2 8PB

Decision (including any steps ordered)

The complainant has requested information from the Northern Ireland Housing Executive (NIHE) relating to meetings and correspondence between the NIHE and the MUST hostel. The NIHE informed the Commissioner that it has disclosed all of the information it holds within the scope of his request other than some personal details which were redacted from the disclosed information. The Commissioner is satisfied that, on the balance of probabilities, the NIHE does not hold any further recorded information within the scope of the complainant's request other than that which has been a) redacted or b) already provided to him. The Commissioner requires no steps to be taken.

Request and response

1. On 20 June 2012 , the complainant wrote to the NIHE and requested information in the following terms:
 - "All documented correspondence between the MUST hostel, its staff, board of directors, the chairman and the Supporting People department/Northern Ireland Housing Executive between the following dates: October 2011 to May 2012.
 - All documentation, letters, copies of reports and e-mails between the MUST hostel staff, directors and Chairman and the Supporting People department/Housing Executive between the months of October 2011 to May 2012.
 - All documentation of reports, letters and e-mails between the Charity Commission and the Supporting People department/NIHE regarding the MUST hostel, its staff and its activities between the following dates: October 2011 to May 2012."

2. The NIHE responded on 19 July 2012 detailing the information it held which was within the scope of the complainant's request, which it detailed at points 1 to 10 of that letter. It provided the complainant with the information detailed in parts 1-4 and 7-10 of the letter and withheld the information in points 5-6. It cited the exemptions under sections 30(2)(a)(iii) and 40(2) of FOIA as a basis for non-disclosure.
3. The complainant sought an internal review of the NIHE's decision on 25 July 2012.
4. Following an internal review, the NIHE wrote to the complainant on 5 September 2012. It provided him with the information in points 5 and 6, previously withheld in its entirety, in a redacted format. The above exemptions were cited as a basis for the redactions.

Scope of the case

5. The complainant contacted the Commissioner on 26 July 2012 to complain about the way his request for information had been handled.
6. Following the Commissioner's intervention, on 12 February 2013 the NIHE wrote to the complainant disclosing some further information within the scope of the complainant's request. It stated that it was no longer seeking to apply the exemption under section 30(2)(a)(iii) of FOIA and that the remaining redactions in the information now disclosed to the complainant related to personal data of third parties contained in the information. Therefore, the NIHE was still applying section 40(2) of FOIA to the withheld information.
7. The Commissioner, having contacted the complainant, ascertained that he accepted the NIHE's use of section 40(2) to redact personal data, however he still maintained that the NIHE held more information within the scope of his request which had not been disclosed to him.
8. The Commissioner has considered whether or not the NIHE holds any further information within the scope of the complainant's request. He has not considered the NIHE's initial application of section 30(2)(a)(iii) of FOIA to the requested information as this is no longer relevant, the information subject to that exemption having now been provided to the complainant. He has also not considered the NIHE's application of section 40(2) of FOIA to the requested information as the complainant has accepted this.

Reasons for decision

Does the NIHE hold any further information relevant to the complainant's request other than that which has been redacted or already disclosed to the complainant?

Section 1

9. Section 1(1) of FOIA 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, and
 - (b) if that is the case, to have that information communicated to him.
10. The complainant alleges that the NIHE holds further information within the scope of his request which it has not disclosed to him. That information specifically consists of minutes of meetings which were held between the NIHE and the MUST hostel. The Commissioner has considered whether the NIHE has complied with section 1 of FOIA or whether it holds further information within the scope of the complainant's request, of the nature described above, which it has not disclosed to the complainant.
11. On 20 December 2012 the Commissioner asked the NIHE the following questions to determine what information it held that was relevant to the scope of the request:
 - Was any further recorded information ever held, relevant to the requested information, by the NIHE or anyone on behalf of the NIHE?
 - If so, what was this information? What was the date of its creation and deletion? Can the NIHE provide a record of its deletion/destruction and a copy of the NIHE's records management policy in relation to such deletion/destruction? If there is no relevant policy, can the NIHE describe the way in which it has handled comparable records of a similar age?
 - Is there a reason why such information (if held or ever held) may be concealed?
 - What steps were taken to determine what recorded information is held relevant to the scope of the request? Please provide a detailed account of the searches that you have conducted to determine this.

- If the information were held would it be held as manual or electronic records?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the NIHE to retain the requested information?
 - Is there information held that is similar to that requested and has the NIHE given appropriate advice and assistance to the applicant?
12. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency*¹ in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is the test the Commissioner will apply in this case.
13. In discussing the application of the balance of probabilities test, the Tribunal clarified that test required consideration of a number of factors:
- the quality of the public authority's initial analysis of the request;
 - the scope of the search that it decided to make on the basis of that analysis and the thoroughness of the search which was then conducted; and the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light.
14. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
15. The Commissioner is also mindful of *Ames v the Information Commissioner and the Cabinet Office*². In this case Mr Ames had requested information relating to the "Iraq's Weapons of Mass Destruction" dossier. The Tribunal stated that the dossier was "...on

¹ EA/2006/0072

² EA/2007/0110

any view an extremely important document and we would have expected, or hoped for, some audit trail revealing who had drafted what... However, the Tribunal stated that the evidence of the Cabinet Office was such that it could nonetheless conclude that it did not *"...think that it is so inherently unlikely that there is no such audit trail that we would be forced to conclude that there is one..."* Therefore the Commissioner is mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is held.

16. On 31 January 2013 the NIHE responded to the questions detailed at paragraph 8 above. It explained that the complainant had received all recorded information held by the NIHE within the scope of his request. No relevant recorded information was withheld by the NIHE.
17. The NIHE explained to the Commissioner that only 2 NIHE officials attended the meeting in question and neither of them made any record of the meeting, nor received a copy of the minutes from MUST. No similar information was held by the NIHE and the senior manager responsible for the relevant business area confirmed that he had checked and that there was no further recorded information held by NIHE in relation to any meetings held between it and the MUST hostel.
18. The Commissioner has considered NIHE's explanation and has concluded that the NIHE took all reasonable steps to ascertain what recorded information, if any, it held which was relevant to the complainant's request. The Commissioner is satisfied that there was no further information within the scope of the complainant's request held by the NIHE at any time.
19. In reaching a conclusion in this case, the Commissioner has taken into account the responses provided by the NIHE to the questions posed by him during the course of his investigation. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs 12 and 15 above. The Commissioner considers that on the balance of probabilities the NIHE holds no further recorded information relevant to the scope of the complainant's request other than that which has been redacted or already disclosed to him.

Right of appeal

20. 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

21. 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.
22. 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

Rachael Cragg
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