

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2014

Public Authority: Bath and North East Somerset Council

Address: The Guildhall
High Street
Bath
Somerset
BA1 5AW

Decision (including any steps ordered)

1. The complainant has requested information from Bath and North East Somerset Council ("the council") in the form of a lease for a specified area of land. The council refused the request citing section 21(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that section 21(1) of the FOIA is engaged, and that the council was therefore correct to withhold the information.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 5 July 2013, the complainant wrote to the council and requested the following information:
"Could you provide me with a copy of the lease or any other agreement under which [redacted business] occupies the Green Park station site?"
5. The council responded on 2 August 2013. It refused the request citing the exemption provided by section 21(1).
6. The complainant requested an internal review on 2 August 2013, in which he asked for additional copies of deeds and conveyances relating to the same site.

7. Following an internal review, the council wrote to the complainant on 9 September 2013. It advised that all the requested information was accessible through the Land Registry and that the exemption provided by section 21(1) was therefore engaged.

Scope of the case

8. The complainant contacted the Commissioner on 20 October 2013 to complain about the way his request for information had been handled. Specifically, he contested the council's application of section 21(1).
9. The Commissioner considers the scope of this case to be the determination whether the council was correct to rely on section 21(1) to withhold the requested information.

Reasons for decision

Section 21 – Information accessible to the applicant by other means

10. Section 21(1) provides an exemption for information that is already reasonably accessible to the applicant. It is an absolute exemption and as such no public interest test needs to be applied.
11. The council has confirmed that the requested information is publically available from the Land Registry in exchange for a fee, and that the information held by the council is identical.
12. The complainant has confirmed that he has contacted the Land Registry, which has advised that the information is publically available for a fee. The complainant contests that this fee means that the information is not reasonably accessible.
13. The Commissioner has considered the extent to which fees affect the accessibility of information as part of his public guidance on section 21. In his guidance the Commissioner has outlined the two main occasions when information will be considered reasonably accessible despite the application of a fee. These two occasions are when there is a statutory process under which information is provided for a fee, or where the information is provided under a public authority's publication scheme, and that scheme indicates a fee may be payable. The Commissioner's guidance on section 21 is available at:
http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf

14. In the circumstances of this matter, the Commissioner understands that there is a statutory process through which the Land Registry makes information publically available for a fee. That process is defined by the Land Registration Act 2002 and the Land Registration Rules 2003, and is described by the Land Registry at:
<http://www.landregistry.gov.uk/public/guides/public-guide-15>
15. The Commissioner has concluded that the requested information is therefore reasonably accessible to the complainant by other means, and that the council was correct to rely upon the exemption provided by section 21(1).

Right of appeal

16. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

Andrew White
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Water Lane
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