

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2015

Public Authority: Newcastle Under Lyme Borough Council
Address: Civic Offices
Merrial Street
Newcastle Under Lyme
ST5 2AG

Decision (including any steps ordered)

1. The complainant has requested building and planning and registration information from Newcastle under Lyme Borough Council (the council) relating to a specified business premises. The council has responded to the request providing some information but stating that other information was not held.
2. The Commissioner's decision is that on the balance of probabilities, the council does not hold the outstanding information. The Commissioner is therefore satisfied that the council has met its obligations under section 1 of the FOIA in this case. As such, he does not require the council to take any steps.

Request and response

3. On 2 December 2013 the complainant requested the following information from the council:

"Please urgently provide me (via e mail) with copies of the applications for planning and/or building regulations for the building work currently being undertaken at the business premises at [specified address] which is being used as [specified business type] premises; I understand that the work may well require such applications and if it does then I wish to know whether such applications have been made and granted.

Please also provide me (via e mail) with copies of all planning and/or building regulations relating to the current use of [specified address]

(including all applications that are necessary to ensure it complies with all relevant hygiene, health and safety regulations

Please confirm that the business premises at [specified address] are currently registered as [specified business type premises]"

4. The council responded on the 19 December 2013. It provided an unsigned copy of the certificate for registration. It also provided a link to view details of the application.
5. On the 23 December 2013 the complainant requested an internal review. He advised that he was unable to open the attachment and the information requested had not been provided.
6. On 3 January 2014, the council and the complainant exchanged emails regarding the attachment. Once the complainant was able to open the attachment, he informed the council that he was concerned that the registration certificate was not signed. He asked where the application was and where the signed copy of the registration was as the website link only provided a summary.
7. On 6 January 2014 the council responded advising how to look at all the documents from the summary screen. However the complainant advised there were still documents missing.
8. The council provided an internal review response on 23 January 2014. It maintained that the complainant had now had access to all the information it held that it considered relevant to the request.

Scope of the case

9. The complainant initially contacted the Commissioner to complain about the time it took the council to respond to this request. The Commissioner therefore served a decision notice on the council on 17 February 2015 (FS50525911) which recorded a breach of regulation 5(2) of the EIR as a full response had not been provided within the prescribed 20 working day time frame.
10. After the decision notice had been served, the complainant contacted the Commissioner to raise concerns that the council had not provided him with a copy of the original registration certificate issued to [named individual]. The Complainant alleged that the document had been destroyed without a disposal schedule when it had been requested. He requested that the Commissioner investigate what happened to the document. He also raised concerns that the council had not retained a copy of the application form for registration.

11. The Commissioner has therefore determined that the scope of this case is to investigate the extent to which the original registration certificate and application form were held by the council at the time of the request.

Reasons for decision

12. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled be informed whether the public authority holds the information, and if so, to have that information communicated to them.
13. In the decision notice FS50525911 the Commissioner recorded the council's internal review stance in relation to what information was held within the scope of the request. It stated that the unsigned certificate of registration is not relevant to this request as it was not asked for. The request asked for copies of all relevant applications necessary to ensure the business complies with all relevant hygiene, health and safety regulations. It also said that its response should have referred to the application form which had not been retained.
14. It appears therefore that the council's position is that the application form would fall within the scope of the request, but the certificate of registration, signed or not, would not. The complainant appears to be of the view that the both the original and copy of the certificate of registration are caught by his request. In any case, there is no dispute that he has been provided with the copy of the certificate of registration. The Commissioner notes that the request is fairly wide ranging and he is of the view that the application form could reasonably be said to fall within the part of the request "*all applications necessary to ensure it complies with all relevant hygiene, health and safety regulations.*"
15. The Commissioner has reconsidered the full request and notes that the third part states "*please confirm that the business premises at [specified address] are currently registered as [specified business type premises]*". The Commissioner finds that the registration certificate is a document which provides this information. As to whether the original certificate for registration is required for this purpose over and above the unsigned copy which has been provided, the Commissioner notes that the complainant has now made it clear that he would like to see this information. Therefore, in the interests of completeness, the Commissioner has considered the extent to which it was held at the time of the request.
16. The complainant is concerned that the previous decision notice, FS50525911, inferred that the application form and original registration certificate for [named individual] were not held. He has referred the

Commissioner to his own guidance on the retention and disposal of documents¹ in relation to this matter. The Commissioner's guidance states that:

"Requests made under FOIA or the EIR apply to information held at the time that the request is received. So, if a public authority receives a request for information that it held in the past, but has since been destroyed, it no longer holds that information. In order to comply with FOIA or the EIR, the public authority can reply to the request stating that it does not hold the information."

17. The Commissioner is also mindful that the when he receives a complaint that a public authority has not provided all of the requested information, it is seldom possible to prove with absolute certainty that either there is or there isn't any information or anything further to add. In cases like this, the Commissioner will apply the normal civil standard of proof in determining the case. He will decide on the balance of probabilities whether the information is held².
18. Therefore, the Commissioner has sought to determine whether on the balance of probabilities the council held the original registration certificate and associated application form at the time of the request.
19. The Commissioner asked the council to explain what its normal procedures are for the retention of registration certificates and application forms. It explained that the application for the registration certificate in question was made in 2010. Prior to 2012 it operated a paper system to hold records for the specified premises type. This file would have contained both the application form and an unsigned copy of the registration certificate. The signed registration certificate will be held by the certificate holder.
20. In 2012, the council introduced an electronic document management system (EDMS). Environmental Health was the pilot service for implementing the new system. The EDMS is linked to the pre-existing electronic environmental health IT system, Civica APP. The council

¹ <https://ico.org.uk/media/for-organisations/documents/1160/retention-and-destruction-of-requested-information.pdf>

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i64/Bromley.pdf>

explained that application forms and registration certificates for the specified business type are usually held on this system. It also stated that all documents created and received since 2012 in relation to the specified business type are scanned and saved to the system.

21. However, in respect of the application form and registration certificate in question, the council has stated that it no longer holds this information. It has confirmed that it has searched all the locations where it would be held; the EDMS Civica APP file on the specified premises, the pre 2012 electronic files, and the paper files on the specified premises.
22. By way of explanation as to why the documents are no longer held, the council has advised that it underwent a period of reviewing and reducing the amount of paper files held, and it is possible that the documents were destroyed during such an initiative. Further to this Environmental Health has gone through two office moves since the application was submitted in 2010. The council has advised that it believes that the application form may have been destroyed on one of these occasions. However, it does not hold a formal record of the documents' destruction.
23. The council has confirmed that there is no statutory requirement to retain the information. However, there is a business purpose to retain copies of registration certificates for the business whilst the person/premises is operating. The Commissioner notes that a copy of the registration certificate is held for this purpose and has been provided to the complainant. The information in question here is the original signed registration certificate and the application form.
24. With regard to the council's formal retention and records management policies, it has stated that neither of these make specific reference to the information in question, or to similar documents. The council has therefore advised that works are in progress to include specific mention to specified business registration and certificates in the EDMS Records Management Policy.
25. Based on the information provided by the council regarding the searches undertaken and the records management information, the Commissioner is satisfied that on the balance of probabilities, a copy of the application form and the original signed registration certificate are no longer held, and were not held at the time of the request. He is therefore satisfied that the council has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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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