

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2019

Public Authority: Nottinghamshire County Council

Address: County Hall
Loughborough Road
West Bridgford
Nottingham
NG2 7QP

Decision (including any steps ordered)

1. The complainant has requested information with regards to public houses. Nottinghamshire County Council (the council) initially responded that the information was not held, then later amended its position that information may be held but relied on section 12 of the FOIA to refuse the request – exceed the appropriate cost limit. During the Commissioner's investigations the council then reverted back to its initial response that the information is not held.
2. The Commissioner's decision is that the council does not hold the information falling within the scope of the request. The Commissioner has found that the council breached section 10(1) of the FOIA for the time it took to provide its final response
3. As the final response has been provided, the Commissioner does not require the council to take any steps.

Request and response

4. On 5 March 2018, the complainant made the following information request to the council:
 - 1) *"How many public house Freeholds the Council owns?"*
 - 2) *Please list these Freehold public houses owned by the Council and give their addresses.*
 - 3) *How many public house Leaseholds the Council owns?"*
 - 4) *Please list these Leasehold public houses held by the Council and give their addresses."*
5. The council responded on the same day explaining that it is not a housing authority and therefore does not hold the requested information. It listed the district and borough council and city council that would hold the information and provided their contact email addresses.
6. On the 5 March 2018, the complainant contacted the council further stating that the request may have been misunderstood as it was not a request concerning housing or housing authorities.
7. The complainant clarified that the council is a property-owning body and that the council may own the freehold or leasehold land for which some public houses sit on. He asked that the council review its response with its Property Team.
8. The council responded further on the 6 March 2018. It stated that it does not hold licencing information relating to public houses. It reiterated that if the information is available it would lie with the other council's it previously listed.
9. On the same day the complainant requested that the council conduct an internal review. He stated that he has not asked the council for licencing information or housing authority related information. The complainant asked that the council review this request with its property and or legal teams.
10. The council provided its internal review on the 11 April 2018 applying section 12 of the FOIA to refuse the request as it considered providing the information would exceed the appropriate limit of 18 hours of officer time to provide the information.

Scope of the case

11. The complainant contacted the Commissioner on 30 April 2018 as he was dissatisfied with the responses received and because he did not consider that the council has interpreted his request correctly and is using section 12 of the FOIA to avoid answering a question he has not asked.
12. During the Commissioner's investigations into the application of section 12 of the FOIA, the council amended its position stating that it does not actually hold the information requested. It advised the complainant of its revised position on the 13 November 2018.
13. It also confirmed to the Commissioner that it did initially misinterpret the complainant's request but following clarification from the complainant says it now understands the request to be the number of public houses (pubs) owned by the council as Freehold and Leasehold and the addresses.
14. The complainant has stated to the Commissioner that the council must hold some information falling within the scope of his request.
15. Due to the council revising its position to 'information not held', the Commissioner considers that the scope of the case is to determine whether or not any information is held falling within the scope of the request.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

16. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
17. Where there is some dispute between the amount of information identified 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 First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

18. The council has told the Commissioner that it contacted its Property Team in relation to this request. It initially determined that it would need to interrogate its electronic property database in order to establish if any properties it owned were freehold or leasehold public houses. However, after further consideration of the request it was determined by the council that the information held on its system would not provide the information requested because the term 'public house' is not recorded.
19. After further discussions with its property team, the council informed the Commissioner that its officers in the team are aware that the council does not actually own any public houses.
20. The council has also confirmed to the Commissioner that no relevant information would have been deleted or destroyed.
21. The complainant provided the Commissioner with a copy of a spreadsheet of a land registry search he had carried out at the Land Registry, in relation to land owned by the council. He highlighted five pieces of land that suggested that these were all public houses. They were listed by the following names and title reference numbers:
 - The Windmill Inn, Weekday Cross (NT26977)
 - The Bull's Head, Portland Street, Mansfield (NT89532)
 - The New England, Chesterfield Road North, Pleasley (NT234209)
 - The Midlands Arms, Belvedere Street, Mansfield (NT124017)
 - Belle Vue Inn, Stockwell Gate, Mansfield (NT124018)
22. He considers that if he can locate five properties from a simple land registry search, the council should be able to do the same with their own records.
23. The Commissioner feels it necessary to point out, that the council's response is based on the information it holds and that it would not be required to contact the Land Registry to try to establish any relevant information.
24. The complainant stated that although these five pieces of land appear to be public houses, based on their names, there would be possibly others on the Land Registry list that he would be unable to determine. Such as land that is only recorded with an address and not a 'name' as the above five have been.

25. The Commissioner provided this land registry spreadsheet to the council and asked for its response on what appear to be public houses registered with the council.
26. The council's response to the Commissioner was that these five properties are clearly registered in the council's name at the Land Registry, but after checking the title references it found that they had been purchased to make way for what are now road schemes or shopping centres. And so they are no longer public houses and therefore not recorded as such.
27. The council also provided the Commissioner with maps of the areas with the land on showing the roadways that the land is now being used for.
28. The complainant on this has told the Commissioner that even if the land for these properties is now being used for a completely different purpose, the council is required to update the land use with the Land Registry to show its new use.
29. As the land use is still showing to be public houses, on the land registry, the complainant states that the council has not taken this step and so he considers that the council would hold relevant records.
30. In response to this, the council has advised the Commissioner that it is not the practice of the council to amend descriptions at the Land Registry each time it changes the lands appearance or use. The council says that when dealing with land, its main priority is to ensure that the plan accurately shows the location and area.
31. Coming back to the council's ability to search for the information on its system, the council has told the Commissioner that as the land was purchased for highway purposes and now forms part of the highway, it is identified as highway land in a particular area, not as a public house.
32. The council has told the Commissioner that the reason for this is because the council's land holding in relation to highways is so large that it is not practical to hold separate records for each parcel of land that makes up the highway.
33. The council has provided examples to the Commissioner, saying that the land which is described as 'The New England' on the Land Registry is recorded in the council's records as UPRN62208 Mansfield. Ashfield Regeneration Route. 'The Midland Arms' is recorded as UPRN70162: Highway land in Mansfield.
34. The land on which these public houses would have stood are not recorded on its system, as being Freehold or Leasehold Public Houses.

35. The complainant however, believes that the council would hold the title deeds after it purchased the land, and he states that these deeds along with the transfer documents would still have these pieces of land, and potentially other land, recorded as Freehold or Leasehold public houses.
36. With regards to the title deeds of the land, the Commissioner has asked the council whether they hold them and if so, would they identify the land as being public house.
37. The council has advised the Commissioner that it holds title deeds for the land it owns, and says that the transfer documents could be reviewed to determine whether what the land use was. It has advised that these are all held off site and would need to be reviewed manually.
38. However, the council has told the Commissioner that it is of the view that where a public house has been demolished and is now being used for a different purpose (in this case, demolished to make way for roads), this would fall outside the scope of the complainant's request, as they are no longer public houses and his request was for how many Public House Leasehold and Freeholds it owns and has not requested details of land that is no longer a public house Leasehold or Freehold.
39. The complainant considers that land that is no longer being used as a public house (e.g demolished, other use etc) would fall within the scope of his request.
40. He also considers that any other property that is being used to sell alcohol, but not necessarily records as a public house, such as restaurants, would also fall within the scope of his request.
41. There is obviously a clear difference of view as to how the request should be interpreted between the council and the complainant.
42. The Commissioner therefore needs to review the wording of the request, which asks how many public house Freehold or Leaseholds the council holds along with their addresses.
43. Also, the Commissioner has considered the complainant's clarification of his request to the council on the 5 March stating:

"Nottinghamshire County Council is a property-owning body and County Councils such as Nottinghamshire may own the freehold or the leasehold for the land on which some public houses sit"
44. *The clarification 'on which some public houses sit', it is fair to see why the council considers the complainant is after information about public houses that are still standing.*

45. The Commissioner therefore accepts the council's view that where a public house has been demolished and is now used for another purpose, this would fall outside the scope of the request and so the council would not be required to locate information (such as the title deeds/ transfer documents) that may show whether a piece of land's previous use was a public house in relation to this request.
46. Even though the complainant has since clarified, to the Commissioner during her investigations, that his request was to encompass pre and existing public houses, the Commissioner has to consider the request made at the time and what would fall within the scope of it.
47. On the complainant's explanation that his request would also capture any other premises selling alcohol, the council explained to the Commissioner that even if the term 'public house' was taken to relate to any premises that are licenced to serve alcohol. Such as restaurants, sports venues, clubs, community spaces etc, it is the District authorities that issue these licences, not the council, and so the council does not have access to this information and would not be able to make that determination.
48. The fact that the council does not issue the licences for serving alcohol, the Commissioner considers it reasonable to accept that the council would not hold this information and the complainant may need to contact the district authorities for this information.
49. After considering all of the above, the Commissioner finds that the council does not hold the requested information falling within the scope of the request.
50. Now the actual scope of what the complainant is seeking has been established, he would need to consider submitting a revised request to the council, or indeed the other named councils to widen the parameters of the request should he wish to.
51. However, the Commissioner would point out that the council has indicated to the Commissioner that this information (deeds and transfer documents – which may show previous use) are stored off site and a manual sift would be required to review the deeds to determine if any other properties hold a recording of Freehold/ Leasehold Public Houses and the council has suggested that this could invoke section 12 of the FOIA.

Section 10 of the FOIA – Time for compliance

52. Section 10 of the FOIA requires a public authority to respond to an information, in accordance with section 1 of the FOIA, within 20 working days.
53. The complainant's request was made on the 5 March 2018, and the council did not finalise its position, that the information is not held, until 13 November 2018.
54. This is clearly outside the required 20 working days and therefore the Commissioner finds that the council has breached section 10 of the FOIA in the time it took to provide its final response.

Other matters

55. The complainant has expressed dissatisfaction to the Commissioner about how the council has handled his request, such as the council's initial interpretation of his request to be for housing association information and then licencing information (when he was clearly enquiring about public houses owned).
56. He was also dissatisfied with the council's changing position from 'information not held', to it then applying section 12 of the FOIA and then reverting back to 'information not held'.
57. The Commissioner can see how this would have caused frustration to the complainant as it was only from the Commissioner's follow up queries, during her investigations, on the council's reasoning for applying section 12 of the FOIA that the council eventually established the information requested was not held.
58. The Commissioner understands why this would cause the complainant to question the council's response and agrees that it was handled poorly.
59. Had the council better understood the request from the outset then its final response may have been established sooner, with less confusion as to whether or not information was held.
60. Even though the council did finally establish its position, the Commissioner would suggest that the council reflect on the way it has handled this request in order to try and avoid similar scenarios happening in the future.

Right of appeal

61. 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

62. 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.
63. 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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