

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 November 2021

**Public Authority:** North East Lincolnshire Council

**Address:** Municipal Offices  
Town Hall Square  
Grimsby  
North East Lincolnshire  
DN31 1HU

#### **Decision (including any steps ordered)**

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1. The complainant requested information with regards to a property owned by North East Lincolnshire Council (the council). The council provided the information it held.
2. The Commissioner's decision is that the council has, on the balance of probabilities, provided all the information it holds falling within the scope of the request.
3. She also found that the council breached section 10(1) of the FOIA as the information was provided outside the required 20 working days following receipt of the request.
4. As the information has been provided, the Commissioner does not require the council to take any steps.

## Request and response

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5. On 15 October 2020 the complainant made the following information request to the council:

*"Would you please provide me with all the recorded information held by the Council, and by its partner Engie on its behalf, relating to:*

- 1. NELC's use and enjoyment of 257 Humberston Fitties from 4th October 2017 onwards as agreed with Tingdene, including the continued siting of the chalet owned by NELC.*
- 2. Validation of NELC's lawful obligation to make the following payments to Tingdene:*

*Descriptions are taken directly from the invoices and all sums quoted are inclusive of VAT.*

- i. £652.50 ground rent 01/04/18 - 31/12/18 paid on 6th November 2018*
- ii. £870 lease fee 01/01/19 - 31/12/19 paid on 12th February 2019*
- iii. £2280 lease fee 01/01/20 - 31/12/20 paid on 28th January 2020*

*I appreciate that where a formal licence, licence extension, lease agreement and/or a concession agreement has not been entered into, validation may only exist in the form of a side letter and/or correspondence between the parties that formalises matters agreed and dates/amount of payments in respect of same.*

- 3. Authorisation to make the payments listed above.*

*Please do not include:*

- Initial six month licence agreement between Tingdene and NELC for 257 Humberston Fitties (as this has expired)*
- New Era brochure (as this does not constitute validation of Tingdene's entitlement to issue above invoices to NELC)*
- The invoices for £652.50, £870 and £2280"*

6. Following a reminder from the complainant that no response to his request had been provided, the council responded on 30 November 2020. The council advised that on 14 October 2020 it received

correspondence from Tingdene asking the council to advise Tingdene of the council's intentions of how it wished to proceed with the new lease agreement.

7. The council concluded that no further information was held.
8. On 4 December 2020 the complainant requested an internal review as he considered more information would be held and stated that the council had not provided the 14 October 2020 correspondence referred to in its response to his request.
9. On 6 January 2021 the council provided its internal review, it found it did not specifically answer the third part of the request and so advised that payments are authorised by its Service Manager for its Short Breaks Service. It concluded that no further information was held within the scope of any part of the request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 12 May 2021 as he considers that there must be more information held with regards to his request.
11. During the Commissioner's investigations, the council located some further information that fell within the scope of the request. This further information being:
  - 14 October 2020 correspondence that the council referenced in its initial response to the request.
  - Correspondence with Tingdene dated 4 October 2017, 4 October 2018 and 14 October 2020.
  - Authorised Orders.
12. This further information was provided to the complainant on 21 September 2021.
13. The scope of this case is for the Commissioner to determine whether any further information is held by the council that falls within the scope of the request.

## **Background information**

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14. The council has explained to the Commissioner that 257 Humberston Fitties is a chalet owned by the Council on Humberston Fitties Chalet Park. The chalet was purchased for the Short Break Service and is primarily hired out to families with a family member that has a disability. When it is not hired out, the staff from the Short Break Service use it to carry out activities and sessions with young people, and deliver services.
15. The day to day management of Humberston Fitties Chalet Park is overseen by Tingdene Holiday Parks. Prior to this lease the council, being the freeholder of the land, managed the site.
16. When the council owned the land, there was no ground rent to pay. Since the land has been leased, the council are now subject to rent and service charges payable to Tingdene.

## **Reasons for decision**

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### **Section 1 of the FOIA – Information held / not held**

17. 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,
18. 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).
19. The council has told the Commissioner that no further information is held falling within the scope of the request and it has contacted the following departments in order to determine what was held:
  - Estates – responsible for property management
  - Legal Services – provide management legal services for the council
  - Children Services – Short Break Services, who manage the use / hiring out of the chalet.

- Accountancy – who provide financial services for the council.
20. The council has told the Commissioner that all information that would be held is held in electronic form and it searched the systems and network folders, shared folders and individual emails and drives of the above four services which support and manage the chalet activities. Using Plot 257 (the plot number for the chalet in question), Humberston Fitties and Tingdene as the basis for the searches carried out.
  21. These searches were carried out by the council's Commercial Estates Manager, Corporate Estates Manager, Service Manager Short Break Service, a Specialist Property Lawyer and a Specialist Lead in Accountancy.
  22. It also says it consulted with wider Children's Services staff, which included the Director of Children's Services due to employees with responsibilities to the management of the Short Break Service leaving the employment of the council.
  23. The council has confirmed to the Commissioner that no information has been deleted or destroyed nor is there any business purpose or statutory requirements for any further information to be held, other than what has already been identified.
  24. With regards to supporting documentation relating to authorising the three ground rent payments, the council's position is that these three payments were made via three invoices, which the complainant stated in part three of his request he did not want copies of.
  25. The authorised orders relating to the authorising of the three ground rent payments were disclosed to the complainant during the Commissioner's investigation.
  26. The council has confirmed this is all it holds with regards to authorising these ground rent payments.
  27. Lastly, the council has advised the Commissioner that it does not currently have any formal agreement in place with Tingdene. The initial six month letting period it took out in 2017 ended and it is currently continuing to pay the amounts of rent on what it calls an 'implied lease' – continuing to operate on the expired lease.
  28. The council maintains that no further information is held.
  29. Having considered the above, the Commissioner notes that the council did not identify all the information it held initially, and only disclosed the additional information it identified well after 20 working days had expired following the date of the request.

30. Having considered the council's submissions on the departments and officers it has contacted to establish if anything further is held, the Commissioner is satisfied that appropriate searches were undertaken.
31. The council is also continuing to operate on an expired lease, which may help to explain why the council does not hold some of the information the complainant anticipated would exist.
32. On review of the above, the Commissioner is satisfied that, on the balance of probabilities, no further information is held by the council falling within the scope of the request.

**Section 10(1) of the FOIA – Time for compliance**

33. Section 10(1) of the FOIA requires a public authority to respond in accordance with section 1(1) of the FOIA within 20 working days. That is, to provide the information it holds, within the scope of the request, to the person who has made the request.
34. In this case, the council did not provide the complainant with all of the information it held within the required 20 working days. Therefore the Commissioner finds that the council has breached section 10(1) of the FOIA.
35. As the information has now been provided. The Commissioner does not require the council to take any further steps. However, the council should ensure that it carries out all the necessary searches and responds accurately to the requester within 20 working days in relation to future information requests.

## Right of appeal

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36. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**