



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2017/0168**

**Decided without a hearing**

**Before**

**JUDGE HUGHES**

**Between**

**NICHOLAS HOLDER**

**and**

**THE INFORMATION COMMISSIONER**

Appellant

Respondent

**DECISION AND REASONS**

1. The Appellant was concerned about a planning application dealt with by South Northamptonshire District Council (SNDC). Northamptonshire County Council (NCC) was a statutory consultee with respect to the traffic impacts of the proposed development. The Appellant felt that two employees of Northamptonshire Highways (a partnership between Northamptonshire County Council and a private company KierWSP which discharged routine highways functions on behalf of NCC) had provided false or inaccurate information during the process and had failed to correct the error. He raised a formal complaint about the individuals with Northamptonshire Highways on 16 August 2016.
2. NCC responded on 22 August stating that NCC had been provided with sufficient information by SNDC to come to a conclusion about the impact of the development:  
*“In this instance there was sufficient information and Northamptonshire Highways could not sustain an objection to this application. Neither [SNDC nor its officers]*

*were misled in anyway by Northamptonshire Highways and are satisfied with the decision and outcome. The Northamptonshire Highways team you refer to responded fully to enquiries and have worked closely with SNDC to address the issues and consider the application dealt with professionally and appropriately. In addition to this your objections were made clear to the Planning committee, with Northamptonshire Highways officers present, to answer any queries the members may have had, but were not called upon to clarify their position...."*

3. The Appellant was dissatisfied and replied on 24 August exploring the planning merits and further criticising staff. NCC - Complaints replied on 30 August:

*"I am part of the community liaison team on the Northamptonshire Highways contract and have spoken with the team involved from our organisation and the individuals you have mention.*

*We have undertaken a review of our works following our email to investigate whether sufficient measures have been undertaken with regards to this application. I would like to respond to each of your points....*

*I am informed that discussions did take place between you and the two employees you are complaining about and that this took place following the meeting. We take accusations of providing inaccurate information during conversations very seriously but, having spoken to them, am confident that they did not make such inappropriate comments."*

4. The Appellant remained dissatisfied. he responded on 30 August largely addressing planning merits but he also claimed that the response of 30 August "effectively just called me a liar". The Sector Lead for Northamptonshire Highways responded on 6 September: "...I have now spoken with the colleagues you have referred to in your correspondence and carried out a full investigation of your complaint and the points you raise. I feel that both the Development Management Team members [names redacted] and [name redacted] from our Community Liaison team have responded appropriately on each occasion to matters raised.... If however you are not satisfied with this further review and response of this matter you may, of course, refer the matter to NCC..."
5. The Appellant responded making derogatory and sarcastic comments and subsequently pursued the matter with NCC. A senior officer wrote to him on 6 October stating:- "I have now had the opportunity to review all the documentation on this matter but would like the opportunity to speak to the two officers mentioned before providing you with a full response." The substantive reply was sent on 14 October by the senior officer of NCC: "In response to your formal complaint and after having the opportunity to review the evidence and also to speak to the officers concerned..."
6. The Appellant replied on 15 October seeking information:-

*"I would also like to issue a formal Freedom of Information request for any information regarding communications between NCC, SNC and KierWSP regarding this matter..."*

7. On 11 November NCC replied stating that, subject to the redaction of third part personal data; *"All held and recorded information between NCC, KierWSP and SNC is attached."* The information provided related to the planning issue.

8. The Appellant was dissatisfied and on 16 November wrote:-

*"Before I take this matter up with the ICO, I need to give NCC the chance to provide all the information requested.*

*None of the information supplied relates to the formal complaint I raised against the employees of KIERWSP.*

*While they are employed by a separate company, when they act as contractors, working for a local council, they are still subject to FOI requests for information.*

*I was informed by [the senior officer of NCC] hat this complaint had been dealt with, so there must be some documentation relating to this, both between KIERWSP and NCC, as well as between myself and NCC/KierWSP.*

*Please can you or your colleagues complete my FOI request in full. "*

9. NCC replied on 6 December sending information – correspondence to and from the Appellant. The Appellant remained dissatisfied and sought a review. The review (dated 12 January 2017) confirmed *"that all held and recorded information matching the criteria and parameters of your request have been disclosed."*

10. The Appellant complained to the Information Commissioner (ICO) and explained the history of his complaint against individuals and that the information disclosed did not include any documentation relating to the consideration and outcome of this complaint. He considered that some such documentation must be held.

11. The ICO contacted NCC which explained the procedure it had followed with respect to the complaint. The ICO found:-

*"22. The Council has informed the Commissioner that, although discussions took place with the specific employees, no fault was identified that would require the complaint to proceed and an internal record to be made. It is for this reason that no information about the consideration and outcome of the complaint is held. The Council has further explained that should a fault have been identified, the discussions would have been stopped and a meeting then arranged so that that notes could be created before being turned into a formal report.*

*23. The Council has confirmed that all relevant correspondence would be held electronically, and searches were undertaken using the complainant's name, email address, and complaint title as keywords. The information that was identified was disclosed in response, and no further relevant information is known to be held...*

25 It is noted by the Commissioner that the information requests have been made following a course of correspondence between the complainant, Council, and contractor in relation to the subject of the complaint, and then the complaint itself.

26. Having considered the Council's submissions, the Commissioner recognises that the relevant information is held electronically and in a centralised manner. The Commissioner also notes that logical searches for information have been undertaken in respect of both requests, and that the retrieved information has been disclosed. Whilst it is recognised that the complainant made these requests in the expectation that documentation about the consideration and outcome of his complaint was held, the Council has provided a reasonable explanation for why no such information is held. "

12. In the light of these explanations the ICO concluded that on the balance of probabilities no further information was held.

13. In his notice of appeal the Appellant sought the information he had requested:-

*"Alternatively, I would expect a full explanation as to why this information could not be provided, or an explanation as to how a county council can process a formal complaint without full documentation in either written or electronic form, given that the complaint was rejected and processed."*

In responding to paragraph 26 of the decision notice he commented:-

*Is this meant to imply that the Council has no documentation regarding a formal complaint I raised? If this is the case, I would be staggered that a formal complaint that was processed, investigated and closed, was all done with absolutely no written documentation, either electronically or in hard copy format. As no such information was supplied, then this has to be assumed, given this scenario. Or alternatively, the ICO staff have chosen not to look further into the matter..."*

14. In responding to the appeal the ICO maintained the position set out in the decision notice. She highlighted the explanation given in the Council's response to her investigation and set out at paragraph 22 of the decision notice (above). She argued that there was no valid ground for over-turning the decision notice.

### Consideration

15. In response to the Appellants requests for information NCC provided him with material concerning the planning issue and in particular his correspondence with NCC and Northamptonshire Highways (redacting many names of individuals on the basis that to disclose the names would be to breach the Data Protection Act) and then copies of correspondence between NCC/Northamptonshire Highways and the Appellant concerning his complaint about members of staff. The issue I have to decide is whether, on

the facts, the ICO was correct to conclude that NCC held no further information relating to the Appellant's complaint against the two officers who had a role in providing NCC's response to a planning matter considered by SNDC. In so doing she has considered the arguments of the Appellant, and also the explanations given by NCC about how it conducted searches for the information and how the complaint was handled. She concluded that on the balance of probabilities that no further information was held. The basic argument of the Appellant was one of incredulity; in essence he has asked "how could it be possible?".

16. The answer is that it is very possible, and indeed probable. The position of NCC as explained to the ICO was that preliminary discussions took place with the employees and it was decided to take the matter no further, so there is no record. I am satisfied that that is correct so far as it goes.
17. However the written evidence of the history of the complaint (summarised at paragraphs 1-5 above) provides powerful support for that brief explanation. At the first stage of the complaint the officer dealing with it looked at the responded promptly with an account of the circumstances of the planning committee meeting. In the subsequent stages the officer responding considered the Appellant's complaint, the background material of the planning issue, had a discussion with the two officers and then wrote to the Appellant expressing satisfaction that there was no cause for complaint. The first letter of complaint was 16 August and the response was 22 August - six days over a weekend. A similar process was followed with each escalation of the complaint; from 24-30 August, from 30 August- 6 September and then, after some delay, the responses of 6 and 14 October give the same process.
18. The point which the Appellant has failed to grasp is that the record of the investigation (including information as to the processing of the complaint), is set out in the response at each level of the complaint. The officer looks at the papers, sees the two individuals and concludes that the complaint lacks substance. That record is there and has been disclosed to the Appellant.
19. The right of the individual citizen under FOIA and EIR is to receive the recorded information held which matches the request for information. It is not a right to an explanation of or a justification of the record-keeping practices or complaints-handling processes of the public body.
20. I am satisfied that the ICO's decision is correct in law and this appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal

Date: 27 February 2018