

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 5th September 2005

Name of Public Authority: Luton Borough Council

Address of Public Authority: Corporate & Customer Service Department
Legal Services
Town Hall
Luton
LU1 2BQ

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on the 7th January 2005 the following information was requested from Luton Borough Council (the "Council") under section 1 of the Freedom of Information Act (the "Act");

"exactly what deal was done with the owners (who at the time would have been the BBC) regarding a "piece of land" when the second stage of Wolston Close was built in the late 1980s."

It is alleged by the complainant that:

The Council failed to provide him with the information he requested.

The Commissioner's Decision

Under section 50(1) of the Freedom of Information Act 2000, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The piece of land in question is part of a site that was originally leased to the BBC by the Council. The history of the site's management is quite complex. This has a bearing on how the complainant's request can be interpreted. The Council interpreted the request as referring to a lease that was eventually agreed between the BBC and the Council in 1990 and this was disclosed to the complainant. The complainant then tried to clarify his request. From that clarification it would seem that the request was broader than the council had initially thought and was more concerned with information that would provide

a fuller understanding of events that had occurred around the time a new housing development was built in the 1980s.

The terminology used by the complainant when he initially made his request is somewhat ambiguous but this is partly because he did not have full knowledge of the site's history and this limited the precision with which he could frame his request. The Council did not recognise the possibility for the request to be interpreted more broadly and so did not seek to clarify the request. However due to the complex nature of the site's history there is reasonable scope for the request to be interpreted more broadly and once the complainant had taken the opportunity to clarify the information he was seeking at the internal review stage, the Council should have realised that the request was wider than they had first thought and dealt with it accordingly.

During the investigation the Council provided the Commissioner with records of internal communications and correspondence between themselves and the BBC concerning the sequence of events that took place in relation to this land during the period from when the original lease was agreed in 1972, to the new lease being finalised in 1990. The records appear to provide a detailed account of the site's management over that period and the relations between the Council and the BBC in respect of the land in question. This information was not provided to the complainant in response to his request.

In view of the above, the Commissioner's decision in this case is that Luton Borough Council has not dealt with the complainant's request in accordance with the requirements of Part I of the Act in that has failed to comply with section 1.

Action Required

In view of the matters referred to above and more fully explained in the attached statement of reasons, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

Luton Borough Council shall, on or before 5th October 2005, provide the complainant with a copy of the information contained in the records of internal communications and correspondence between Luton Borough Council, the BBC and others as provided to the Commissioner starting with a letter from Luton Borough Council's Borough Valuer & Industrial Development Officer to a Chief Engineer of the BBC, dated 19th December 1983 and finishing with an Inter-Departmental Memorandum from the Borough Secretary, dated 20th September 1990.

Failure to comply

Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 5th day of September 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

The Commissioner recognises that since the request relates to land it could have been regarded as a request for environmental information and could have been considered under the Environmental Information Regulations 2004. However the outcome of this particular complaint would have been the same whether it was considered under the Freedom of Information Act or the Environmental Information Regulations. Furthermore neither party raised this as an issue. In light of this the Commissioner did not see any merit in pursuing the matter and has determined the complaint by reference to the Freedom of Information Act.

The main issue in deciding whether the Council has dealt with complainant's request in accordance with the Act is what the correct interpretation of that request is. Clearly without determining the scope of the request it is impossible to say whether the appropriate information has been disclosed. This highlights the value of clarifying the information requested for both the applicant and the public authority.

The recent history of the plot of land to which the request relates is quite complicated and its complexity has a bearing on how the complainant's request could be interpreted. The most relevant points are summarised here.

The Council originally leased land to the BBC in 1972. Although there seems to have been some uncertainty regarding the actual boundaries of the site very soon after the original lease was signed, no action was taken to resolve the matter. The BBC sited a TV relay on the land. Since then other telecommunication companies have been allowed to share the site. In the 1980s the Council decided to develop the adjacent land for housing. It seems that there was the potential for this development to encroach on the land leased to the BBC although it is not clear that this was in fact the case. The BBC also wished to take the opportunity presented by the planned development to obtain a new access road to its site. As a consequence a new lease was drawn up that redefined the boundaries of the site leased to the BBC. This lease was not finalised until 1990. It is understood that the complainant did not have full knowledge of all these events.

In his original request the complainant stated that he wanted to "know exactly what deal was done" between the BBC and the Council "regarding a piece of land" when the land adjacent to the BBC site was developed in the late 1980s. The Council interpreted this request as referring to the actual lease that was agreed between the Council and the BBC in 1990 and a copy of this document was provided to the complainant. In many respects this seems a reasonable response to the complainant's request.

However in light of the complex history of the site, an alternative interpretation of the complainant's request is possible. That is that the complainant was seeking information that would provide him with a clear understanding of certain events that occurred at the time the new housing was developed. It is

accepted that this is not clear from the way the request was originally phrased, but account must also be taken of the fact that applicants who do not have detailed knowledge of events may have problems in describing the information they seek with precision.

In many respects the complainant and public authority seem to have been at cross purposes in this case. This illustrates the value not only of a public authority clarifying requests but also of providing advice and assistance under section 16 of the Act.

After receiving a copy of the 1990 lease the complainant complained to the council that he had not been provided with the information he sought. He tried to clarify his request in a letter dated 3rd February 2005. He explained that the information he wanted related to a piece of land that originally formed part of the site leased to the BBC which he believed was later required by the Council in order to accommodate the residential development that took place in the 1980s. He also made reference to the new access road and asked for all correspondence relating to the deal that facilitated these changes. In response the council advised him that he had been supplied with a complete copy of all the documentation.

Since there is reasonable scope to interpret the original request more than one way, it seems reasonable to treat the complainant's letter of the 3rd February merely as clarification rather than as a new request and for the Council to have responded accordingly.