



FREEDOM OF INFORMATION ACT 2000 (SECTION 50)
DECISION NOTICE

Dated 3 April 2006

Name of Public Authority: Farndon Green Medical Centre

Address of Public Authority: 1 Farndon Green
Wollaton Park
Nottingham
NG8 1DU

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 16 January 2005 the following information was requested from Farndon Green Medical Centre (the "Medical Practice") under section 1 of the Freedom of Information Act 2000 (the "Act"):

"Any documents, letters, minutes of meetings and other information otherwise regarding any proposed relocation of Farndon Green medical practice

- to Harrow Road
- to any other location

or to any proposed expansion in the present site."

Initially the Medical Practice took a very narrow view of the range of recorded information to which the Act applied. For example it did not appreciate that the Act applied to informal notes, emails and letters. Therefore when it responded to the request on the 3 February 2005 it only provided a very limited amount of information. This prompted the complainant to make a complaint to the Commissioner on the 25 February 2005. In response a Complaints Resolution Officer from the Information Commissioner's Office contacted the Medical Practice on the 24 March 2005 and explained the scope of the legislation and the role the internal review played in the process. The Medical Centre was also advised that some of the information requested may need to be considered under the Environmental Information Regulations 2004 (the "Regulations").

The Medical Practice subsequently held an internal review of its handling of the request which was concluded on or about 6 April 2005. The internal review considered the request under the Regulations. At the end of the review the Complainant was sent further information including emails between the Medical Practice and the private developer, some minutes of meetings,

copies of miscellaneous letters, a report on alternative sites, drawings and plans. The Medical Practice also offered to meet with the Complainant if this would help resolve matters.

However the Complainant still believed that he had not been provided with all the information to which he was entitled. In particular he was concerned that:

- information he believed was held in minutes of meetings between the Medical Practice and the private developer at the time he made his request had not been disclosed.
- information in the Heads of Terms between the Medical Practice and the private developer had been withheld,
- information concerning requests for financial assistance from the local Primary Care Trust was withheld on the grounds that the information was held by the private developer.

During the investigation the Medical Practice advised the Commissioner that the information in the Heads of Terms had been withheld because some of it was considered to be commercially sensitive by the private developer. The Medical Practice had also consulted with the District Valuer who, as is explained later, was responsible for negotiating terms with the developer. In a letter to the Complainant dated 8 April 2005, in which the Medical Practice, advised the Complainant of the internal review's outcome, the Medical Practice cited exception 5(a) as providing grounds for withholding this information. However it is believed the Medical Practice intended to cite the exception provided by regulation 12(5)(e) which relates to the confidentiality of commercial or industrial information which protects the economic interests of a third party.

During the investigation the Commissioner took the view that the request related to a proposed new land development and that therefore some information may well constitute environmental information as defined by the Environmental Information Regulations 2004. However the primary focus of the information still in dispute i.e. the minutes of meetings, the Heads of Terms and the requests for financial assistance, was not the state of the elements of the environment or factors or actions affecting those elements. The primary focus was the provision and funding of new facilities for medical care. In relation to the minutes of meetings between the Medical Practice and the contractor it is not possible to comment on the subject of such minutes since they no longer exist.

In this particular case, the access regime under which the request was considered will not affect what information the Complainant is entitled to. In light of this the Commissioner has considered the Complainant's right of access to the information in question under the Freedom of Information Act 2000.

It is alleged that:

The Medical Practice had failed to comply with section 1(1) of the Act in that it did not communicate the information in minutes of meetings between itself and the private developer.

The Medical Practice did not comply with section 1(1) of the Act because it failed provide information contained within the Heads of Terms and that this information was not exempt information under the exemption provided by section 43(2) of the Act (prejudice to commercial interests).

In respect of information relating to requests for financial assistance from the Primary Care Trust, it is alleged that the Medical Centre failed to comply with section 1(1) of the Act because it failed to disclose information which was held on its behalf by another person.

The Commissioner's Decision

Under section 50(1) of the Act, 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 Commissioner's decision is as follows:

Regarding the information in minutes of meetings between the Medical Practice and the private developer, the Medical Practice was asked to clarify what minutes were held at the time the request was received. The Medical Practice explained that it did not take formal minutes of the meetings it held with the private developer. Occasionally, notes were made of issues that needed to be actioned but these were destroyed once the matter had been dealt with and that at the time the request was made no such notes were held.

In light of this and for reasons explained in more detail in the Statement of Reasons, the Commissioner found there was no evidence that the Medical Practice held this information at the time the request was made. In this respect the Commissioner's decision is that the public authority did not fail to comply with section 1(1) of the Act.

In respect to the Heads of Terms, the Medical Practice provided the Commissioner with a copy of the Heads of Terms dated 15 November 2004. The Commissioner found that certain information relating to the annual rent, rent reviews, repairing terms and costs incurred to date, would be likely to prejudice the commercial interests of the private developer if disclosed. Therefore the information was exempt under section 43(2) of the Act. This exemption is subject to the public interest test. The Medical Practice made no reference to the public interest test in either its original refusal notice or its

letter advising the complainant of the outcome of the internal review. The Commissioner found that in this particular case, the public interest in favour of maintaining the exemption outweighed the public interest in disclosing the information.

However, other information within the Heads of Terms would not be likely to prejudice anyone's commercial interests and should have been released. In respect of this non exempt information the public authority failed to comply with section 1(1) of Part 1 of the Act.

Regarding information relating to requests for financial assistance from the Primary Care Trust, the Commissioner takes the view that information held by the private developer on this subject was held by the developer for its own purposes and was not held on behalf of the Medical Practice. In respect of this information, the Commissioner's decision is that the public authority did deal with the request in accordance with the requirements of section 1(1) of the Act.

Action Required

In view of the matters referred to above and explained in more detail 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:

The Medical Practice shall, within 30 days of the date of this Decision Notice, disclose the information in the "Heads of Terms" except the information relating to the annual rent, rent reviews, repairing terms and costs incurred to date.

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 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
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Reference: FS50065663

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 3rd day of April 2006

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

The statement of reasons will consider each of the outstanding issues raised by the Complainant in turn and explain how the Commissioner arrived at the decision given above.

Information in Minutes of Meetings

In its original refusal notice the Medical Practice had explained that only informal minutes were taken during meetings and expressed the view that such notes did not have to be disclosed under the Act. This matter was raised with the Medical Practice by one of the Commissioner's Complaints Resolution Officer on the 24th March 2005. The Medical Practice was advised that the Act provided a right of access to information in any recorded form. In response the Medical Practice explained that although informal minutes in the form of reminders had been taken at some meetings it was their practice to destroy such notes once any issues arising from the meeting had been actioned. The same explanation was later provided to the complainant following the conclusion of the internal review.

There is an apparent discrepancy between the initial explanation contained in the refusal notice, which suggested that informal minutes were held, and the later explanations. The Medical Practice was challenged on this point during the investigation. In response the Medical Practice stated that in most cases no minutes of meetings were made but, when necessary, handwritten reminders were made. However such reminders were destroyed once the matter had been actioned. This usually happened shortly after the meetings and at the time the request was received no minutes or reminders were held.

The explanations provided by the Medical Practice are consistent in respect of the fact that no formal minutes were ever taken. There seems never to have been any intention for the Medical Practice to create a permanent, detailed record of the meetings it held with the contractors. During the investigation it also became apparent that the Medical Practice considered it to be the role of the contractor to coordinate the development process and therefore did not feel the need to fully document the process itself. The contractor was based locally and the Medical Practice considered the opportunity for informal meetings that this proximity allowed to be advantageous as this minimised the amount of bureaucracy involved. This lends credence to the Medical Practice's explanation that only informal reminders of action points from meetings were ever made and that these were not retained once the matter had been dealt with.

In light of this there is no evidence that any minutes of meetings were held at the time of the request.

Information contained in the Heads of Terms

The planned relocation of the Medical Centre is to be achieved through a form of private finance initiative. It is proposed that the private developer will fund the building of the new premises which will then be leased to the Medical Practice. The local Primary Care Trust will provide money to the Medical Practice to cover the annual rent. The lease agreement would be between the Medical Practice and the private developer.

At the time the request was made the rent had been negotiated between the private developer and the Primary Care Trust. The Medical Practice had signed Heads of Terms with the private developer which committed it to entering into a lease with the developer, based on the agreed rent, once the new premises had been built. It also committed the Medical Practice to pay some of the costs already incurred by the private developer should it withdraw from the project. However planning permission for the new premises had not been granted. Indeed since the request was made, problems in obtaining planning permission were encountered.

Section 43(2) provides that information is exempt if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The Commissioner has identified that some of the information contained in the Heads of Term would not, if disclosed, be likely to prejudice the commercial interest of any person. However this Statement of Reasons concerns the information which could prejudice commercial interests namely, that information relating to the annual rent, rent reviews, repairing terms and costs incurred to date.

At the time the request was made there was still the potential for the Medical Centre to withdraw from the project and to explore alternative solutions with firms competing with the private developer. Therefore at the time the request was made, information relating to rent, rent reviews and repairing terms etc. were commercially sensitive as it could still be of value to the private developer's competitors to the disadvantage of the private developer in competing for, and the public authorities involved in negotiating, any revised scheme. The Commissioner is therefore satisfied that the exemption provided by section 43(2) of the Act was engaged.

The exemption is subject to the public interest test. Whilst there is a general public interest in allowing fair competition there are also very strong public interest arguments in favour of disclosing information that shows how public funds are being used in terms of the amount of money spent, what that money is actually buying and whether public authorities are obtaining value for money. There is also a public interest in disclosing information that demonstrates the diligence and integrity with which the procurement process has been managed.

However in this particular case the information only relates to proposed terms based on the project going ahead in its current form and there was still a real potential for circumstances to change that would necessitate the need to resume negotiations. Concern over the disclosure of commercially sensitive information before negotiations have been concluded could hinder the successful completion of such negotiations. This would work against the public interest.

It should be recognised that this does not preclude the disclosure of further information that would allow scrutiny of how public money is spent once the negotiations have been concluded.

In this particular case the Commissioner finds that there are no overriding arguments for allowing such scrutiny whilst there is still the potential for negotiations to resume. Therefore the Commissioner is satisfied that the public interest in maintaining the exemption provided by section 43(2) of the Act outweighs the public interest in disclosing the information.

Information relating to requests for financial assistance.

Section 3(2)(b) of the Act provides that information is held by a public authority where it is held by another person on behalf of the public authority.

During its correspondence with the Complainant the Medical Practice made reference to information held by the private developer in relation to requests for financial assistance from the local Primary Care Trust. This led the Complainant to believe that the private developer held this information on behalf of the Medical Practice.

It is understood that the Primary Care Trust will provide financial assistance to meet the cost of the rent and any repairs that the Medical Centre is liable for. The Medical Practice explained that the private developer was involved in negotiating the level of rent with the District Valuer who was acting on behalf of the Primary Care Trust.

In the light of this the Commissioner is satisfied that information held by the private developer in relation to the level of financial assistance to be provided by the Primary Care Trust is information it holds for its own purposes. The information is not held on behalf of the Medical Practice and so is not held by the public authority under section 3(2)(b). Therefore questions of disclosure do not arise.