



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 8 June 2006

Public Authority: Plymouth City Council

**Address: Civic Centre
Plymouth
PL1 2AA**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1 of the Act. This Notice requires the public authority to provide to the complainant a response to his information request that is compliant with section 1 of the Act. This action is to be taken within 35 days of the date of this Notice.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

The Commissioner shall either notify the complainant that he has not made a

decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

The complainant has advised that on 24 June 2005 the following information was requested from the public authority in accordance with section 1 of the Act.

“The reasons for the decision to [grant] an extension of licenses 84/92 into [information redacted]. Extension awarded on 26th January 2004.”

The public authority responded to this information request on 20 July 2005. This response stated that the information requested had been passed to the Local Government Ombudsman without copies of this having been retained and, for this reason, the information requested could not be provided to the complainant at that time.

The complainant contacted the public authority on 24 July 2005 to complain about this response. The public authority responded to this complaint on 27 July 2005 and again stated that the information requested had been provided to the Local Government Ombudsman.

It appears that the complainant has made other requests for information to the public authority in connection with the same overall issue. The information requested in the other requests differs from that requested by the complainant on 24 June 2005. The complainant has not complained to the Information Commissioner about his other requests to the public authority and this Notice is concerned solely with the information request of 24 June 2005.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

4. Review of the case

The complainant contacted the Commissioner by letter dated 20 September 2005. In response to this complaint, the Commissioner first contacted the public authority by letter dated 27 February 2006. The public authority was informed that the complaint had been made and was advised that, according to the information available to the Commissioner at that stage, it did not appear that the public authority had responded to the information request in accordance with requirements of section 1 of the Act. The public authority was given advice as to how it should respond in accordance with the requirements of section 1 of the Act. The public authority was asked to respond giving its stance in this matter as to whether section 1 of the Act had been complied with.

The public authority responded to the Commissioner by letter dated 6th March 2006. The public authority accepted that its response to the information request of 24th June 2005 was not appropriate for the purposes of the Act, but stated that a valid response had since been provided to the complainant, dated 6th December 2005, a copy of which was provided to the Commissioner.

The letter from the public authority to the complainant of 6th December 2005 appeared to be a response to a different information request than the request of 24th June 2005. The Commissioner contacted the public authority again by letter dated 27th March 2006 and clarified that the complaint and the Commissioner's investigation related solely to the information request of 24th June 2005. The Commissioner also stated that it appeared that it would be appropriate for the public authority to write directly to the complainant with a response to the information request of 24th June 2005.

After a letter dated 19th April 2006 chasing a response was sent by the Commissioner, the public authority responded on 25th April 2006. With its response, the public authority provided a copy of a letter sent to the complainant and intended to be an appropriate response to the information request of 24th June 2005. This letter from the Council refused the request, citing section 14 of the Act, stating that the request was repeated as all relevant information had been provided to the complainant previously via the public authority's solicitors.

The Commissioner contacted the complainant to ascertain his stance in light of the public authority providing a new response to his information request of 24th June 2005. The complainant responded by stating that he did not believe that all relevant information had been provided to him by the public authority.

5. The Commissioner's Decision

The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with the requirements of Part I of the Act in that it has failed to comply with section 1. The decision of the Commissioner is that the breach of section 1 of the Act in this instance is threefold.

Firstly, the public authority did not comply with the procedural requirements of the Act when first responding to the information request. The initial response stated

that the information requested had been passed to the Local Government Ombudsman. To state that a Local Government Ombudsman review is taking place is not a valid reason under the Act for refusing to provide information.

Secondly, the public authority failed to comply with the requirement of section 1 to communicate the information to the requester. It appears unlikely to the Commissioner that the original version of documents would have been given to the Local Government Ombudsman without a copy of these having been retained. If it is the case, however, that original documents had been provided to the Local Government Ombudsman without a copy of these having been retained, a more appropriate response to this clerical error after having received a request for this information would have been to retrieve these documents and provide the information requested to the complainant.

Thirdly, the public authority have also stated that they consider the request to have been a repeated request as defined in section 14(2) of the Act and thus they were not obliged to comply with the requirement to communicate the information requested. The Commissioner does not accept that the information request was repeated. It does not appear that the complainant had made an information request under the Act previously, or that the request of 24th June 2005 was identical or substantially similar to any request made previously. It is also notable that the complainant did not believe that all information relevant to the information request of 24th June 2005 had been included in the report provided previously via the public authority's solicitors.

Of particular concern to the Commissioner was that the Council appeared to have dealt with the information request in the context of an ongoing dispute between it and the complainant. It is important that the public authority consider the information request in isolation, both from the ongoing dispute with the complainant and from any additional information requests made by the complainant. The focus when responding to this information request should be on the wording of the request, rather than on what the public authority believes the complainant wishes to access given the context of the dispute. In making this decision, the Commissioner noted particularly that the responses of the public authority did not appear to address the precise wording of the request.

6. Action Required

The Commissioner requires that the public authority shall provide to the requester a response to the information request that is valid for the purposes of section 1 of the Act. This request should be considered in isolation from any other information requests made by the complainant and from the context of any dispute between the complainant and the public authority. The response will confirm or deny whether the information requested is held and will communicate such of that information that is held.

This action shall be taken within 35 days of the date of this Notice.

7. Right of Appeal

Reference: FS50089367

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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 8th day of June 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**