

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 3 January 2007

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Beverley  
East Riding of Yorkshire  
HU17 9BA

### Summary

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The complainant requested information concerning the Council's involvement with the development of a Tesco store. The Council responded that the information was not held and that it had been destroyed some years previously. The Commissioner has investigated and is satisfied that the information requested is not held by the Council. He does not, therefore, require the Council to take any further action.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 27 February 2005 the complainant wrote to the Council and requested the following:
  - (a) "the Director of Law, Planning, etc, Nigel Pearson's report to the three Members of the Urgency Committee Meeting held May 18<sup>th</sup> 1999";
  - (b) "the letter referred to in the minutes at 269 Reason for Urgency...";
  - (c) "the drawings and costing for the Manor Road extra traffic lane, including any associated papers that would identify the Officer responsible for the over evaluation, revealing exactly when the scheme was dropped";
  - (d) "the documentation, plans, estimates that constitute the redesign...I would like to see the breakdown of the accounts and how the reduction affected the various elements of the road widening scheme. That is the records of how the original estimate of £500,000 plus is reduced down to £200,000, which Officer or Officers conducted the remodel, and what date did it [take] place";

- (e) “the accounts, files, or whatever documents that define how the Head of Highways, Dave Rennie, calculated the Tesco contribution by revising the five transport items listed for the second application”;
  - (f) “the letter from Tesco’s Consultants detailing the works and costs, that were assessed and checked by the Council, and in consequence reduced their payment by £15,000 down to the final £185,000”.
3. The complainant did not receive a response to this letter and so he wrote back to the Council on 12 September 2005.
  4. The Council responded on 27 September 2005. It stated that it had not responded to the complainant’s letter of 27 February 2005, as the complainant had asked his councillor to raise an identical enquiry, which it had responded to. The Council did not provide information in response to the complainant’s letter of 27 February 2005, as it claimed the letter did not “raise any additional issues to address and the Council’s position is as explained to you in previous correspondence”.
  5. The complainant wrote back to the Council on 2 November 2005 and reiterated his request for information.
  6. The Council responded on 25 January 2006 and informed the complainant that it did not hold the information requested in recorded form. Further, it stated:

“the Council would normally offer you an opportunity to request that the Council review its response provided to you under the Freedom of Information Act. However as the Council has been consistent in its replies to your requests for this information a review would not change the Council’s response. Therefore if you remain dissatisfied you can ask the Information Commissioner... to review this decision”.
- The Council provided contact details for Tesco’s consultants, as the complainant had requested a copy of a letter that had been sent to the Council by the consultants.
7. Despite having been directed to Commissioner, the complainant wrote back to the Council on 7 February 2006 and reiterated his request for information.

## **The Investigation**

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### **Scope of the case**

8. On 20 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council’s alleged failure to provide information in response to his request.

9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

10. The Commissioner wrote to the complainant on 17 August 2006 and asked him to provide a copy of his original request for information, as he had not included this document when making his complaint to the Commissioner. The Commissioner did not receive a response to his letter and so he wrote to the complainant again on 26 September 2006 and repeated his request.
11. The complainant telephoned the Commissioner on 28 September 2006 and queried what he had meant by 'original request for information'. The complainant stated that he had requested this information from the Council on numerous occasions since 2002 and had enclosed copies of this correspondence upon submitting his complaint to the Commissioner. The Commissioner explained that, as the Act came into force on 1 January 2005, he could only investigate the handling of requests for information by public authorities which were made after this date. The Commissioner received a copy of the complainant's request for information dated, 27 February 2005, on 5 October 2006.
12. On 17 October 2006 the Commissioner wrote to the Council and asked whether it held any of the information described in the complainant's request. If the Council was certain that no such information was held, it was to answer the following questions:
  - i) Was the requested information ever held?
  - ii) If so, when was the information deleted or destroyed?
  - iii) Does the Council have a formal records management policy, and if so what does it specify about records of this sort?
  - iv) What steps were taken to locate the requested information?
  - v) For what purpose would the Council have held the requested information?
  - vi) Are there any statutory requirements to keep the information requested?

As the Council had referred the complainant to Tesco's consultants, the Commissioner asked the Council to confirm whether any information was held by the consultants on its behalf. The Council was also asked to explain its relationship with the consultants.

Finally, the Commissioner asked the Council to confirm whether there was any other third party which held information on behalf of the Council which may be relevant to Mr Robinson's request.

13. The Council responded to the Commissioner on 9 November 2006. It stated that the Council did not hold any recorded information as described in the complainant's requests. Further, it confirmed that neither the consultants nor any other third party held information on behalf of the Council to which the complainant may have been entitled.

The Council explained that it was likely that it had held some of the information requested by the complainant, however that any information held had been destroyed prior to 2002/2003. The Council enclosed a copy of its formal records management policy, however clarified that no such policy applied at the time the records were destroyed.

The Council confirmed that, following receipt of the complainant's requests for information in 2002 and 2003, searches were carried out in the Planning and Highways departments. In addition, a further search was carried out following receipt of the complainant's request for information in 2005.

The Council stated that it had not retained the information relevant to the complainant's request as it related to two highway schemes that were not carried out and were superseded by subsequent plans. Further, the Council has explained that there was no statutory requirement for the Council to retain such information.

Turning to the issue of the relationship between the Council and Tesco's consultants, the Council confirmed that there was no such relationship, and therefore that the consultants did not hold any information on behalf of the Council. The consultants were engaged by Tesco to advise on highway matters. Further, the Council confirmed that no information relevant to the complainant's request is held on behalf of the Council by any third party.

14. Having read all of the information submitted by the complainant, and following receipt of the Council's letter of 9 November 2006, the Commissioner is satisfied that his investigation can be drawn to a close.

## Analysis

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### Procedural matters

15. The Commissioner has considered whether the Council has complied with section 1(1) of the Act.

Section 1(1) states:

"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."

16. The Council has assured both the complainant and the Commissioner that it does not hold the information requested. This is because the information was destroyed before 2002/2003, and the Council has explained the reasons for this. The Council has asserted that no information of the sort described by the

complainant in his request is held on behalf of the Council by any third party as described in paragraph 13. Further, the Council has explained that there was no requirement for it to retain the information requested.

17. The complainant had submitted to the Commissioner a letter the Council had written to him on 9 July 2003, to assist the Commissioner in understanding the background to his complaint. This letter states:

“whatever existed in 1998 was swiftly superseded...there is no requirement for the Council to retain a superseded plan or associated correspondence”.

This statement corroborates the Council’s assertion to the Commissioner that the information is no longer held.

18. The Commissioner has considered whether the Council has complied with section 10(1) of the Act.

Section 10(1) states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

19. The complainant made his request for information on 27 February 2005. The Council responded on 25 January 2006.

## **The Decision**

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20. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

Section 1(1) in that it does not hold the information requested by the complainant.

21. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

Section 10(1) in that it failed to respond to the complainant’s request within twenty working days.

## **Steps Required**

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22. The Commissioner requires no steps to be taken.

## Other matters

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23. The Commissioner wishes to note that, in preparation for the Act coming into force, the Council developed a records management policy to assist it in handling requests for information.

## Right of Appeal

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24. Either party has the right to appeal against this Decision Notice to the Information 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](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 3 day of January 2007**

**Signed .....**

**Richard Thomas  
Commissioner**

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

## Legal Annex

**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 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”



**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”