Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 06 September 2010

Public Authority: Larne Borough Council
Address: Smiley Buildings
Victoria Road
Larne
County Antrim
BT40 1RU

Summary

The complainant requested information relating to funding granted by the Council. The Council was of the view that it had already provided the complainant with copies or access to inspect all of the information held by it in relation to her request. The complainant argued that the Council held more information than had already been provided.

The Commissioner's decision in this case is that no further recorded information is held in relation to the complainant's request. The Commissioner requires no further steps to be taken.

The Commissioner's Role

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.

Background

2. This request relates to information surrounding the refurbishment of Kilwaughter Village Hall that was part funded by Larne Borough Council (the Council) by way of a grant of £40,000 to the Kilwaughter Village Hall Committee.

3. The Commissioner notes that the complainant made a previous request to the Council in 2007. The Council provided information to the complainant, and she met with Council staff on a number of times between 2007 and 2008. A brief chronology of these events is set out at Annex 1 to this Notice. The complainant remained dissatisfied with the information provided by the Council, which led to the request which is the subject of this Decision Notice.

The Request

4. On 1 December 2008 the complainant wrote to the Council. Part of this letter contained a request for information as detailed below:

> *"[Named individual] put in for grants for the hall which was not needed, he received £40,000 from Larne Borough Council, and £50,000 from the Millennium [the Millennium Commission], £10,000 from the Village hall Committee and £1,000 from Enkalon and £500 from Asda. [Named individual] told the director of the Millennium he had a contract drawn up that we were not to be shown any documentations. The director told [Named individual] he was showing me these and I was entitled to see them. [Named individual] signed for the cheque he got for £50,000. The council will not show me any documentation. I want to see how and where all this over £100,000 was spent, the committee was to do the car park, I knew these jobs were not completed. I took photos of the car park inside two days. I can say about other jobs not done.*
>
> *I want to know whose holding the money. The public are asking me where all this money was spent?".*

5. The complainant did not receive a response to her request and she first complained to the Commissioner on 2 February 2009. In accordance with section 50 of the Act, the Commissioner expects complainants to have exhausted the public authority's internal complaints procedure before submitting a complaint. This is known as the 'internal review'. In this case an internal review was not conducted. However, given the lengthy correspondence that had already taken place between the complainant and the Council regarding this matter, the Commissioner accepted the complaint.

6. Following the Commissioner's intervention the Council responded to the complainant on 13 February 2009. The Council advised the complainant that it had provided access to all of the information it held which was relevant to her request.

The Investigation

Scope of the case

7. On 17 February 2009, the complainant contacted the Commissioner again to complain about the way her request for information had been handled. The complainant had previously received a number of documents from the Council concerning this matter however she did not believe that the Council had provided her with all the information it held in this case.

8. The Commissioner is aware that the complainant is involved in a long-standing dispute with the Council. However the Act provides a means for information to be disclosed into the public domain, and a requester's possible motives for requesting information ought not to be a consideration. The Commissioner is required to make a decision as to whether a public authority has dealt with a particular request in accordance with the Act. The Commissioner has not considered the voluminous correspondence between the complainant and the Council which does not concern access to recorded information held by the Council. Therefore the Commissioner's decision in this case relates solely to the Council's handling of the request of 1 December 2008 as detailed above.

Chronology

9. On 25 February 2009, the Commissioner wrote to the Council to advise it of the complaint. The Council responded on 10 March 2009 advising the Commissioner that all information requested by the complainant had either been disclosed previously or was not held by the Council.

10. The complaint was subsequently allocated to a case officer, and on 6 August 2009, the Commissioner wrote to the Council. The Commissioner asked a number of detailed questions about the management of the complainant's information request.

11. On 2 September 2009, the Council provided its response to the Commissioner. The Council provided the Commissioner with copies of all of the information previously disclosed to the complainant. The Council also provided a detailed explanation of the searches it had carried out in an effort to establish if there was any further information held regarding the matter.

12. The Commissioner obtained the Council's consent to provide the complainant with a full copy of this response (including copies of all

the information previously disclosed to the complainant). This was provided to the complainant on 22 September 2009.

13. On 29 September 2009 the complainant wrote to the Commissioner to advise that she remained dissatisfied. The complainant argued that the information she had been provided with appeared to indicate that further information within the scope of her request was held by the Council. In particular the complainant specified a set of audited accounts relating to Kilwaughter Village Hall Committee for 1997, and a file referred to in a letter dated 6 November 2007.

14. On 29 and 30 September 2009 the Commissioner asked the Council a number of specific questions regarding the issues raised by the complainant. The Council replied on 7 and 16 October 2009 advising the Commissioner it did not hold the information referred to.

15. On 19 October 2009 the Commissioner wrote to the complainant addressing the issues raised in her letter of 29 September 2009 in an attempt to informally resolve this matter.

16. On 27 October the complainant wrote to the Commissioner maintaining her belief that the Council had not provided her with all of the relevant information it held. The complainant requested that the Commissioner issue a formal Decision Notice in respect of her complaint.

Analysis

Substantive Procedural Matters

Section 1 – Information not held

17. Section 1(1) provides:

"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."

18. The complainant accepted that the Council had provided her with some information, but remained of the view that the Council held further information which it had not provided. Therefore the

complainant did not accept that the Council did not hold any further information relevant to her request.

19. The standard of proof that the Commissioner has applied in determining whether the Council does hold information relevant to the complainant's request is the civil standard of the balance of probabilities as outlined by what was then the Information Tribunal in the case of *Linda Bromley v Information Commissioner & the Environment Agency* (EA/2006/0072). In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as the reasons offered by the public authority to explain why the information is not held.

20. Where the public authority has stated correctly that it does not hold information falling within the scope of a request, the Commissioner will conclude that the public authority has complied with the requirement of section 1(1)(a).

21. The Council has advised that it does not hold any further information relating to the refurbishment of Kilwaughter Village Hall other than the information already provided to the complainant. When questioned further on this point, the Council provided the Commissioner with a detailed explanation of the extent of its search for the information.

Information Held

22. The Council advised the Commissioner that the information relevant to the complaint's request was held in four locations within the Council offices: Finance, Building Control, Democratic and Administrative Services and the Chief Executive's Office. The Council's Freedom of Information Office liaised with the Head of Services for these areas to gather all the relevant information. The searches involved both manual searches of the filing systems including ledgers, and electronic searches of data held on the Council's server and email system. The searches of electronic data were conducted by using key words on the search mechanisms available. The Council advised no information was withheld and no exemptions were applied.

23. The complainant remained of the view that information namely certain audited accounts relating to a 1997 audit and a file from the architect involved in the project was being withheld from her. The Commissioner wrote to the Council to establish if it held the specific information in question. The Council reconfirmed it did not hold any further files on Kilwaughter Village Hall and in particular, it did not

hold a file from the architect that had not already been disclosed to the complainant. In respect of the audit, the Council advised that it had not arranged the audit and it did not hold a copy of the accounts. The Council was unable to confirm that it had ever held a copy of the accounts.

24. The Commissioner notes that it can be difficult for a public authority to "prove" that it does not hold any further information on a particular subject. Having reviewed the evidence, the Commissioner is satisfied that the Council did conduct a thorough and extensive search for relevant information. In addition the Commissioner is mindful that the Council had previously provided the complainant with a significant amount of information in response to requests.

25. The Commissioner is satisfied that, on the balance of probabilities, no further records are held in relation to funding granted by the Council to Kilwaughter Village Hall. Therefore the Council complied with section 1(1)(a) in advising that it did not hold further information.

The Decision

26. The Commissioner's decision is that the Council dealt with the request in accordance with the requirements of the Act in that:

- It complied with the requirements of section 1(1)(a) by informing the complainant that no further information was held.

Steps Required

29. The Commissioner requires no steps to be taken.

Right of Appeal

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

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 06 day of September 2010

Signed ……

Rachael Cragg
Group Manager Complaints Resolution

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

Legal Annex

Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

Annex 1: previous correspondence between the complainant and the Council

1. On 19 February 2007 the complainant made the following information request to the Council:

"*I wish to make a request under the freedom of Information Act 2000, to inspect your files and where applicable receive copies of the papers, related to the application for and the funding granted by yourselves to Kilwaughter Village Hall, as referred to in your letter of 24 October 2002 to Messrs John Fahey & Co Solicitors. Your Ref MS/08/025.*

I would expect to be given access to:

(i) *The application for funding together with all the supporting documents submitted to yourselves.*
(ii) *All documents related to the assessment of the application.*
(iii) *All documents related to the use of the monies and the deliverance of the scheme*".

2. The Council responded to the complainant on 21 March 2007 providing the following information:

- Council Minutes 20/07/97
- Report of Promotions and Community Services – 28/07/97
- Tourism and Community minutes – 13/10/97
- Tourism and Community minutes – 10/11/97
- Letter to Chairman of Kilwaughter Village Hall
- Council Minutes – 30/08/98
- Council Minutes – 30/08/98
- Drawings of project
- Summary of Tender prices

- Letter from Chairman of Village Hall – 22/02/99
- Letter from Chairman of Village Hall – 27/02/99
- Certificate of Practical Completion dated 02/03/99 (and cover letter to LBC dated 05/03/99)
- Final Costs – 27/08/99 (from Quantity Surveyor)
- Interim Certificate – 17/12/98
- Letter from Chairman of Village Hall – 22/12/98
- Record of payment by LBC 23/12/98 - £20,000
- Record of payment by LBC 01/03/99 - £20,000
- LBC Building Control documents, inspection records and certificates
- Letter from LBC Director of Corporate Services declaring Council's satisfaction with scheme delivered.

3. The Council advised the complainant that the building control file was available for inspection upon request. The complainant viewed the file on 4 April 2007.

4. On 23 August 2007 the complainant wrote to the Council providing photographs of the area surrounding Kilwaughter Village Hall and raising questions regarding the building work. The Council replied by letter dated 24 October 2007 and advised that her concerns would be discussed with the project architect.

5. On 6 November 2007 the architect wrote to the Council and advised that their file and that of the Quantity Survey were in storage but that they would endeavour to make the necessary information available – but it would involve retrieving the file and conducting certain investigatory works. The architect advised he had already undertaken some preliminary investigations, having at the Council's request, met with the complainant at her home. The architect concluded by advising the Council to write to him should they require any further action.

6. On 12 December 2007 there was a meeting between the complainant, her husband, a family representative and the Council to further discuss her information request. At that meeting the complainant was advised that all documentation relating to her information request had been forwarded to her. The complainant had no recollection of receiving some of this information and was provided with an additional copy. Following this meeting, the complainant wrote a letter to the Council dated 12 December 2007 requesting an internal review into their handling of her information request.

7. On 20 December 2007 the Council wrote to the complainant and provided notes summarising their meeting of 12 December 2007 and addressing further questions raised by the complaint at that meeting.

8. The Council established an internal review panel which met on 22 January 2008. The panel found it had complied with the statutory obligations under the Act in that the complainant was sent the information requested within the 20 working day statutory limit and that no information in relation to her request had been withheld.

9. On 25 January 2008 the Council wrote to the complainant and provided her with a copy of the internal review panel's findings and outlined the complaints process should she be unhappy with the outcome of the review.

10. On 13 May 2008 the complainant and her husband met with the Council's Chief Executive Geraldine McGahey and Councillor John Mathews. Enquires with the Council have established no minutes of this meeting were recorded however it is believed the complainant raised concerns about the accounts produced by the Management Committee of Kilwaughter Village Hall. The Chief Executive later wrote to the complainant and advised the matter had since been raised with the Local Government Auditor on a recent visit to the Council. It was the Auditor's view that given the excessive period of time that had passed, and the fact that the annual accounts for both the Village Hall Committee and Larne Borough Council have been audited and closed that the matter was closed. The Chief Executive concluded there was therefore no grounds for Council to investigate any past issues the complainant may have had regarding the operations of the Kilwaughter Village Hall Committee.

11. On 10 November 2008 the complainant wrote to the Commissioner complaining about the Council's response to her information request.

12. On 24 November 2008 the Commissioner wrote to the complainant to advise that he considered there had been an undue delay in making the application for a decision. The Commissioner advised that he expected complaints to be submitted to him within two months of the refusal of a request for information. In this case the complaint was received some ten months after the last correspondence with the Council. It was because of this delay that the Commissioner advised he was unable to progress the case. The Commissioner suggested that the complainant resubmit her information request to the Council being specific about the information required and to follow the complaints procedure within the appropriate timeframes. The complaint was then closed.