

Freedom of Information Act 2000 (Section 50)
Environmental Information Regulations 2004

Decision Notice

Date: 21 September 2011

Public Authority: North Tyneside Council
Address: Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY

Summary

The complainant submitted a request to North Tyneside Council ('the Council') for information about Tynemouth Station. The public authority withheld this information under section 12 of the Act on the grounds that compliance would exceed the appropriate limit. During the course of the investigation, the Council accepted that some of the requests should have been considered under the EIR. It applied the exception at regulation 12(4)(b) to these requests. The Commissioner has investigated and found that the Council was not entitled to refuse the requests under section 12 of the Act or under regulation 12(4)(b) of the EIR. The Commissioner also finds that the Council has breached section 16(1) of the Act by failing to provide the complainant with sufficient advice and assistance. It has also breached regulation 14(3)(a) by failing to cite regulation 12(4)(b) in its refusal notice. The Commissioner requires the Council to reconsider the requests, and either disclose the requested information or issue a refusal notices compliant with section 17 of the Act or regulation 14 of the EIR.

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.

2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

3. Tynemouth Station is a grade II* listed building and is on English Heritage's "Buildings at Risk" register, as parts of the building have fallen into disrepair. The station is owned by Station Developments Ltd, which is a partnership of the Council and a development company. In 2009 a planning application was submitted by Station Developments Ltd to develop the site.

The Request

4. On 9 November 2010, the complainant submitted 32 requests to the Council for information concerning Tynemouth Station and Station Development Ltd. These requests are reproduced in Annex A.
5. On 2 December 2010, the Council issued a refusal notice to the complainant citing section 12 of the Act.
6. The complainant requested a review of this response on 3 December 2010, and the Council provided its internal review on 24 December 2010. This upheld the previous response.

The Investigation

Scope of the case

7. On 12 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the course of the investigation, the Commissioner informed the Council that it appeared that some of the requests should have been handled under the EIR. The Council accepted that this was the case and confirmed that it relied on the exception at regulation 12(4)(b) in relation to these requests.

9. During the course of the investigation, the Council informed the Commissioner that it had already responded to request 10 under a separate response. The complainant accepted that this is the case, and agreed that the request can be omitted from the scope of the investigation.

Chronology

10. The Commissioner and Council exchanged correspondence about the complaint during June and July 2011.

Analysis

Substantive Procedural Matters

Applicable legislation

11. The Commissioner has reviewed the complainant's request and considers that some of the requests are for environmental information as defined by the EIR. These are requests 17 and 20 -24. The Commissioner believes that the Council was correct to handle the remainder of the complainant's requests under the Act. The Council has confirmed that it relies on the exception at regulation 12(4)(b) to refuse these requests.
12. The Commissioner has first considered whether the Council has complied with the Act in relation to requests 1-9, 11-16, 18-20, and 24-32. He has then gone on to consider whether the Council has complied with the EIR in relation to requests 17 and 20-24.

Freedom of Information Act 2000

Section 12

Requests 1-9, 11-16, 18-20, and 24-32

13. The Council has refused these requests citing section 12 of the Act. Section 12 provides an exclusion from the duty to comply with section 1(1) where the cost of compliance would exceed the appropriate limit as set out in regulation 3 of the [Fees Regulations](#). For public authorities such as the Council, the appropriate limit is £450. Using a standard rate of £25 per hour, per staff member, this equates to 18 hours work.
14. Section 12(1) is not qualified, so it has no public interest component that can be considered. This means the cost limit can be relied upon

irrespective of whether the public interest would have favoured the disclosure of the information.

Can the requests be aggregated?

15. The Commissioner has first considered whether the requests should be aggregated or considered individually for the purposes of section 12(1). Section 12(4) provides that where two or more requests are made by one person, the estimated cost of complying with any of the requests can be taken to be the estimated total cost of complying with all of them. Regulation 5(2) of the Fees Regulations clarifies that this applies when the requests relate to any extent to the same or similar information, and are received by the public authority within a period of 60 consecutive working days.
16. In order to aggregate the requests for the purposes of section 12(1) the Commissioner must determine whether they relate to any extent, to the same or similar information. The Commissioner notes that in this case, the complainant's requests all relate to Tynemouth Station. He consequently believes that the Council is entitled to aggregate the cost of complying with the requests. However, the Council is not entitled to aggregate the costs of complying with the complainant's requests for environmental information - requests 17 and 20-24 - with the costs of complying with his requests for information under the Act.
17. The Commissioner also understands that the complainant has previously submitted requests for information about Tynemouth Station. The Council has stated that it has already exceeded the appropriate limit in complying with these requests. However, the Council has chosen not to aggregate the costs of complying with previous requests with the costs of complying with this request, despite being invited to do so by the Commissioner. The Commissioner has therefore investigated only whether the costs of complying with the requests of 9 November 2010 would exceed the appropriate limit.

Was section 12(1) applied correctly?

18. Regulation 4(3) of the Fees Regulations provides that the activities that a public authority can take into consideration in calculating an estimate of the time that it would take to comply with a request are:
 - o Determining whether it holds the information,
 - o Locating the information or a document containing it,
 - o Retrieving the information or a document containing it;
 - and
 - o Extracting the information from a document containing it

19. The Council explained that when it received the request “numerous relevant officers” took part in discussions and research about whether the requested information was held and where it might be held. The Council stated that one officer in the legal department had recorded a total of 15 hours on these activities. This was not an estimate, but a record of the time that the Council has already spent on dealing with the request. This total included time spent in an internal meeting. The Council later stated that an additional three officers attended this meeting, which lasted for one hour and 15 minutes. It therefore states that in total the Council has spent 18 hours and 45 minutes on ascertaining whether it holds the requested information, and on its location and retrieval.
20. The Commissioner notes that in several cases, the Council has in fact ascertained the answer to a query or located the requested information, although this has not been disclosed to the complainant. The Council has provided the Commissioner with a description of the activities that it has undertaken in relation to each request. For example, in relation to request one –

“What exactly is North Tyneside Council’s (NTC) legal relationship and arrangements with Station Developments Ltd (SDL)? – i.e. is there an existing NTC document outlining the Millhouse Developments / NTC legal set-up in SDL and if so please provide a copy?”

The Council’s submission to the Commissioner states that it has determined that the Council holds a 20% share in SDL and that a copy of the Shareholder Agreement is available. It explains that determining whether this information was held involved:

“ascertaining whether the Council held a copy of the Shareholder Agreement, and locating it, reading the agreement to establish whether the information requested was contained within the agreement”.

21. The Council has provided similar submissions in relation to each FOI request, although the Commissioner notes that in some cases the activities carried out are the same – for example, the Council carried out the same activities in response to request five as those set out for request one. The Commissioner assumes here that the Council has only recorded the time spent on these activities once. However, this is unclear as the Council has not provided any further breakdown of how the fifteen hours recorded was spent. So for example, whilst the Commissioner is aware that the Council was required to locate and

read through the shareholder agreement, no further information has been provided about how long these activities took or why this was the case. The Council has also failed to explain why it was necessary for four officers to attend a meeting to discuss the request.

22. As confirmed by the Tribunal in *Fitzsimmons v Information Commissioner*, any estimate that the cost limit is exceeded needs to be “sensible, realistic and supported by cogent evidence”. In this case the Council has failed to provide the Commissioner with evidence that it spent all of the time detailed on carrying out the activities detailed in regulation 4(3) of the Fees Regulations. In light of this the Commissioner is unable to conclude that the Council was entitled to rely on section 12 to refuse to respond to the complainant’s requests.

Section 16

23. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in a particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
24. Whenever the cost limit has been applied, the Commissioner considers whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code. If a public authority provides an indication of what, if any, information could be provided within the costs limit it will have complied with the requirements of the Code of Practice and therefore section 16(1) of the Act.
25. The Council explains that it held a meeting with the complainant and other concerned parties to discuss their concerns about Tynemouth Station generally. However, the Commissioner has seen no evidence that the Council has provided the complainant with any advice and assistance relating to the request itself, and how this might be refined so that it would not attract the cost limit.
26. The Commissioner considers the Council should have explained clearly to the complainant what information it felt it could provide, if any, within the cost limit prescribed by the Act. As it failed to do so, the Commissioner finds the Council in breach of section 16(1) of the Act.

Environmental Information Regulations 2004

Requests 17 and 20 – 24

Regulation 2

27. The Commissioner considers that the information requested within requests 17, and 20-24 falls within regulation 2(1)(c): “measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements”.
28. This is because these requests ask for information about the maintenance of the station building. Maintenance of this building would constitute a ‘measure’ that could affect the elements of the environment set out in regulation 2(1)(a). Information relating to this would constitute “any information on” the application or measure.

Regulation 12(4)(b)

29. Regulation 12(4)(b) provides an exception to disclose where a request for information is “manifestly unreasonable”. Like all of the exceptions set out in the EIR, it is subject to a public interest test. The EIR does not define the term “manifestly unreasonable” but the Commissioner’s view is that the word “manifestly” implies that a request should be obviously or clearly unreasonable.
30. The Council has made the following arguments in support of its contention that the request is manifestly unreasonable:
 - o that the request was, at 32 questions, “lengthy and repetitive”,
 - o that the Council had received similar requests from “associated residents”,
 - o that the Council had already spent considerable time dealing with questions from the applicants and other residents regarding the station,
 - o that many of the questions “were asking for explanation or opinion” rather than recorded information,
 - o that many of the requests had been submitted previously,

- that the applicant had already received a large amount of background information that might answer his request, and that other relevant information was available via the disclosure log,
 - that when information had been disclosed to the applicant previously, he had “raised further questions and “was not satisfied with the responses given”, and
 - that the applicant’s real complaint was with the planning process and “previous actions” of the Council, and that the correct arena for these concerns was the corporate complaints procedure rather than requests for information.
31. The Commissioner has considered these arguments. The Council has provided the Commissioner with an email chain which it claims demonstrates the association between the complainant and other individuals who have made similar requests for information about Tynemouth Station. This email chain is between the Council and three individuals, including the complainant, regarding a proposed meeting to discuss “various issues with regard to Tynemouth Station”. The Commissioner notes, however, that the initial email was sent by the Council to these three individuals who subsequently all attended the proposed meeting. The Commissioner does not accept that this is sufficient evidence that these individuals were acting together, as the Council’s own submission does not indicate that the three individuals had any connection before the Council initiated the meeting. The Commissioner also observes that the fact that three applicants have submitted requests about the same topic does not in itself mean that they are acting in concert. This is particularly the case where the issue is of wider public concern or has been publicised, as is the case with the development at Tynemouth Station. As the Council has provided insufficient evidence to demonstrate that requestor is acting with other applicants, the Commissioner has disregarded this part of its submission.
32. The Council argues that several of the complainant’s requests are for opinions or explanations rather than any recorded information. As an example it points to request 17, which asks why structural degeneration was allowed to take place within the station. Both the Act and the EIR only give a right of access to information that is already held. There is no obligation placed upon a public authority to create or obtain information in response to a request. However, the Commissioner’s view is that it is the Council’s responsibility to inform the complainant whether it holds any information within the scope of a request. So, for example in relation to the above request, it might be that the Council holds some information – for example a policy,

minutes of a meeting, or internal communications – that fall within the scope of the request for information about why the station's condition has been allowed to deteriorate. If the Council does not hold any relevant information then it is entitled to rely on the exception at regulation 12(4)(a), which applies in cases of this nature. However, the fact that the complainant submitted requests where the Council may not hold any relevant information does not in itself make the entire request manifestly unreasonable.

33. The Commissioner also considers that if the Council believes that information relevant to the complainant's requests is already available to him, it should identify this and direct the complainant towards it in response to his request. The Council has not specified which requests it believes could be addressed by information already available and so the Commissioner is unable to conclude that these requests are manifestly unreasonable.
34. The Commissioner notes that the complainant has previously submitted over forty questions about Tynemouth Station, although not all of these were for environmental information. These requests were contained in a total of five emails and submitted over a period of 12 months. The Council has however not provided the Commissioner with any indication of how long it spent on these requests, or how long it anticipates spending on complying with the complainant's new requests. The Commissioner also notes that the complainant resubmitted some of these requests as the Council failed to provide a response to the initial request.
35. Based on the submissions provided by the Council, the Commissioner is not persuaded that the exception is engaged.

Regulation 14(3)

36. Regulation 14(3)(a) provides that a public authority should specify the specific exception it relies upon in any refusal notice issued.
37. In its refusal notice 9 November 2010, the Council stated that the requested information was exempt under section 12 of the Act. During the course of the investigation, the Council has accepted that parts of request should have been dealt with under the EIR. The Council confirmed to the Commissioner that it relied upon the exception at regulation 12(4)(b).
38. In this case, the Commissioner acknowledges that the Council failed to cite the exceptions in its refusal notice because it had considered the information under the Act rather than the EIR. However, the Council

has breached regulation 14(3)(a) by failing to inform the complainant that it considered that the requested information was excepted under regulations 12(4)(b).

The Decision

39. The Commissioner's decision in relation to the complainant's requests under the Freedom of Information Act is that:
- The Council was not entitled to rely on section 12 to refuse to comply with section 1(1) of the Act
 - The Council breached section 16(1) by failing to provide appropriate advice and assistance to the complainant
40. The Commissioner's decision in relation to the complainant's requests under the Freedom of Information Act is that:
- The Council applied the exception at regulation 12(4)(b) incorrectly
 - The Council breached section 14(3)(a) by failing to cite the exception it relied upon in its refusal notice

Steps Required

41. The Commissioner requires the Council to reconsider the complainant's request. In respect of requests 1-9, 11-16, 18-20, and 24-32, the Council should comply with section 1(1) of the Act, or alternatively issue a refusal notice compliant with section 17. In respect of requests 17 and 20-24, the Council should comply with regulation 5(1) or issue a refusal notice compliant with regulation 14.
42. The Council must take the steps required within 35 calendar days of this notice.

Failure to comply

43. 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

44. 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 21st day of September 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A – complainant's requests of 9 November 2010

1. What exactly is North Tyneside Council's (NTC) legal relationship and arrangements with Station Developments Ltd (SDL)? i.e. is there an existing NTC Document outlining the Millhouse Developments / NTC legal set-up in SDL & if so please provide a copy?
2. Please advise details of the persons who have been and currently are NTC appointed directors on SDL Board?
3. Please advise details of the other persons who currently comprise the other directors on SDL Board and who else has served in this position since SDL was formed?
4. Please advise who appoints NTC directors to sit on SDL Board?
5. What are the NTC directors defined roles & responsibilities on this board?
6. Please advise details of any remunerations or expenses paid to NTC directors in performing SDL related duties.
7. Are SDL board meeting minutes produced & if so who in NTC receives copies and how can they be made accessible to the public?
8. Does NTC (& therefore the NT Public) have full access to SDL's audited accounts and commercial operations records? If so please advise how these may be made accessible to the public.
9. The buildings and land covered by "Tynemouth Station" are very significant and located in a prime, high value real estate area. Please advise exactly what constitutes the buildings, boundaries & the total land area, in square metres, covered in "Tynemouth Station"?
10. Is there a definitive scaled map showing exactly the "Tynemouth Station" boundaries and land area & if so please provide a copy or advise how this may be made accessible to the public?
11. Who owns "Tynemouth Station" now?
12. What are the costs and benefits of the Council's 20% stake?
13. What controls, if any, does the council have in regard to the day to day running of "Tynemouth Station" itself and its broader, longer term commercial operation?
14. How much revenue & profit does the station weekend markets, Nexus rentals and other permanent tenants generate?
15. What annual incomes have been realised by NTC from our 20% stake ownership of SDL?
16. Does NTC pay SDL for rental of the buildings on the west side of the station where the NTC Fostering / Adoption services offices are located and if so how much?

17. Since the station was originally leased from the public in July 1993 and then later sold off as freehold to the leaseholder in 2004 it seems that very little or no significant structural maintenance has taken place and the important canopies have been allowed to degenerate. As even SDL acknowledge that this Grade 2 listed building, of "national historical importance", Tynemouth Station is currently in the highest category on the English Heritage's "Heritage at Risk" register please advise why this structural degeneration was allowed?
18. How much money, excepting specific grants, has been spent by SDL on maintenance since 1993?
19. Please list any grants obtained by SDL and for how much, and what was done with the grants?
20. Of the total maintenance money spent by SDL since 1993 how much has been spent on structural maintenance & how much on "wear & tear" running maintenance (routine painting & running repairs etc)?
21. Please advise what are the estimated annual planned maintenance costs for the station and its canopies expected in the first 15 years refurbishment following the massive publicly & grant funded refurbishment that is currently starting?
22. Please advise what type of maintenance is expected within the first 15 years following the current refurbishment? It is expected that this would be negligible in overall terms, a coat or two of paint every few years & some minor "running repairs" perhaps?????. Please advise?
23. Please advise, under the current Supermarket Development proposals who would assume responsibility & costs for building maintenance after 15 years?
24. Please advise what are the estimated annual planned maintenance costs for the Station & its canopies following after 15 years from the current renovation completion?
25. Considerable local & national Public funds are now being spent repairing the station canopies which are presumably part of the overall Tynemouth Station property asset. These renovations will therefore greatly enhance the value of the asset. If the current Station "owner" sells off this property what provisions are there to recover these funds?
26. It is understood that "Tynemouth Station" was originally leased to SDL from the public of North Tyneside in July 1993 and it was then later sold off as freehold (under an option written into the lease agreement) to the leaseholder SDL in 2004. It is further understood that this original lease was drawn up on behalf of NTC by a then senior NTC Officer (a Mr Bob Lawrence???) who later left NTC employment & then apparently entered employment with the SDL Parent Co Millhouse

- Developments shortly thereafter. Can you please confirm whether this is correct?
27. Who in NTC in 1993 authorised the original lease agreement made with SDL with its option for them to be able to purchase the station for only £2,668?
 28. How was this sale figure of only £2,668 determined in relation to the existing buildings on the site and the total land area sold off?
 29. What is the current declared asset value of "Tynemouth Station" now as it appears in SDL's assets register in declarations to Companies house etc??
 30. Was the original lease offer in 1993 put out to public tender & if so who else submitted bids?
 31. Is there any clause in the original lease / freehold option to prevent subsequent excessive profiteering from re-sale to any other parties without the consent & agreement of the 20% NTC Partner?
 32. If not what provision is there to ensure that NTC (& the public of NT) would not lose significant capital sums for having "undersold" Tynemouth Station?