

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 01 June 2011

Public Authority: North Yorkshire County Council
Address: County Hall
Northallerton
North Yorkshire
DL7 8AL

Summary

The complainant made a request under the Freedom of Information Act 2000 to North Yorkshire County Council ('the Council') for information about the dates on which particular road signs and road markings were installed on the A6136 Rimington Avenue in Richmond. The Council responded providing some of the requested information but stating that it did not hold other information in respect of the request.

The Commissioner investigated and has concluded that, on the balance of probabilities, the remaining information is not held by the Council and it therefore complied with section 1(1)(a) in denying that it held the requested information.

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.

The Request

2. The complainant made a request to the Council on 2 September 2010 asking for the following information:

"I attach a DVD dated 12th, 23rd, 31st January 2007.

This DVD can be played on a computer. We request that you watch the footage dated 12th January 2007, it is approximately 5 Minutes of footage.

- 1. 12th January 2007, at 12:33.10 on this road, only a few yards away from this building is a sign of [picture of a bend to right warning sign above an uneven surface road warning sign on a yellow background]. Can you please confirm when this sign was erected? If it was erected before this date, then it should clearly be on this footage. If it was erected after this date, then it is impossible to be the date shown.*
- 2. 12th January 2001, at 15:08 to 15:10.21 pm, can you confirm that all these road marking on road surface [sic], and all the road signs were erected in 2003 as you stated to CID?*

At 15:09.11 to 15:09.14 pm, can you confirm when the 3 triangle signs, one above the other, were erected? We have been informed twice, that these were moved from being separate signs, into the positions described, in April 2007?

- 3. Can you please look at all the road signs and markings shown on this 5 minute footage to see if any of these road markings and road signs in all the places shown, to see if any of these were installed after 12th January 2007."*

3. The Council provided a response to the complainant on 22 September 2010 in which it confirmed that the signs referred to in question 1 were installed after 12 January 2007. It also advised that the road markings referred to in question 2 were installed in 2003, but there was no information in relation to the three triangle warning signs. In relation to question 3, the Council advised that none of the signs and road markings shown were installed after 12 January 2007.
4. The complainant requested an internal review of the Council's response to the second element of question 2 on 27 September 2010.
5. The Council provided a response to the complainant on 19 October 2010 in which it explained that when work is proposed to install or amend a sign, a work order is raised which is passed to the contractor for action. It advised that in line with its current retention standards for such documents, all work orders issued since 1 April 2004 are retained by the Council. The Council went on to explain that having reviewed the retained orders, it could not find any record of any work to the three warning signs in question between 1 April 2004 and 31 March 2008. The Council therefore concluded that the road signs had been located as shown on the DVD since a time prior to 1 April 2004.

The Investigation

Scope of the case

6. On 26 September 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The focus of the Commissioner's investigation was to consider whether, on the balance of probabilities, the Council held any information which fell within the scope of question 2 of the complainant's request.

Chronology

8. The Commissioner wrote to the Council on 10 December 2010 seeking further information about its response to the Complainant's request.
9. The Council responded on 12 January 2011 to explain how it handled the request and why it concluded that the information requested in question 2 was not held.

Analysis

Substantive Procedural Matters

Section 1 – Is the requested information held?

10. Section 1(1) of the Act states 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."*

The full text of section 1 can be found in the Legal Annex at the end of this Notice.

11. In this case, the Commissioner has considered whether the Council has complied with section 1(1)(a) of the Act in stating that it did not hold any information as per the request. In order to do this the Commissioner has considered whether any information is held by the Council.

12. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that *"there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"*. It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. Therefore, this is the test the Commissioner will apply in this case.
13. In discussing the application of the balance of probabilities test in the above case, the Tribunal stated that:

"We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed."

The Commissioner has therefore taken this into account in determining whether or not the requested information is held on the balance of probabilities.

14. The Council advised the Commissioner that its analysis of the complainant's request was that he was seeking the date on which three triangle signs had been moved to their current location.
15. The Council informed the Commissioner that the only records it holds which would contain information about the date upon which the three triangle warning signs were installed to their current location are the works orders which the Council provides to the contractor to request such works to be carried out. The Council informed the Commissioner that the retention schedule in place for works orders requires the retention of such records from 1 April 2004 to present.
16. In response to the complainant's request of 2 September 2010, the Council searched the work orders from 1 April 2004 to 31 March 2008. It advised that it was not necessary to search beyond 31 March 2008 as the Council understood from correspondence between the

complainant and the Council that the issue which led to the complainant's request occurred before this date.

17. The Council's search of the records returned no record for a work order in relation to the three signs around the dates the complainant had specified in his request. To assist the complainant, the Council also explained that there was no record of such a work order going back to the beginning of the records on 1 April 2004. The Council therefore concluded that it was likely that the road signs had been installed prior to this date, although it did not hold any information about a specific date on which this occurred.
18. In response to the Commissioner's letter of 10 December 2010, the Council conducted additional searches of the work orders from 1 April 2004 to 31 March 2008, and for completeness, it also undertook further searches of work orders from 1 April 2008 to 31 March 2010. The Council again found no record that identified the date on which the three triangle signs had been moved to their current position. The Council therefore advised that it was not withholding the information, but rather it did not hold the information the complainant had requested.

Conclusion

19. In coming to a conclusion on this case the Commissioner has taken into account the explanations provided by the Council as well as the Tribunal decision highlighted above. The Commissioner considers that on the balance of probabilities the requested information is not held by the Council.

The Decision

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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: 0300 123 4504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

23. 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.
24. 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 1st day of June 2011

Signed

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

Legal Annex

General Right of Access

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”.”