

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 6 September 2011

**Public Authority:** Newcastle City Council  
**Address:** Civic Centre  
Barras Bridge  
Newcastle-upon-Tyne  
NE99 2BN

### Summary

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The complainant requested correspondence between Newcastle City Council (the Council) and other Tyne & Wear local authorities regarding personal searches in relation to land. The Council confirmed to the complainant in both its initial refusal notice and subsequent internal review that it does not hold the requested information. The Commissioner accepts that the correct and most relevant searches were performed by the Council and therefore, on the balance of probabilities, the Council was correct to state that it did not hold the requested information, following section 1(1) of the Act. In not responding to the initial request within the prescribed 20 working days, the Council breached section 10(1) of the Act.

### 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. The complainant requested the following information on 20 July 2010:

'I would be grateful if you could send copies of letters sent between Tyne and Wear councils, with particular reference to letters between 2004-2005 from Newcastle City Council Head of Legal Services, to discuss with other councils within the Tyne and Wear area so as to establish a common approach to deal with the loss of income to local

authorities, and to consider reducing the number of personal search appointments in an attempt to lessen the income.'

3. This request relates to personal searches of the Local Land Charges register. The Council replied to the complainant's request on 19 August 2010. It explained that it had performed searches of its Legal Services Department and could not find any relevant records. It therefore informed the complainant that it did not hold the requested information.
4. The complainant requested an internal review of this response on 14 September 2010. He stated that he did not agree with this decision as he already had related documents.
5. On 15 October 2010 the Council contacted the complainant to explain that further searches had been performed but no relevant information had been found. It requested that the complainant provide any details he may have to help it locate relevant information. On 19 October, the complainant advised the Council to review its 'Revenue Budget Monitor 2004-2005' in order to aid further searches (in particular paragraph 4.6). This paragraph states, in relation to personal searches:  
  
'The Head of Legal Services is of the view that the issue should be discussed with other councils within the Tyne & Wear area so as to establish a common approach to deal with the loss of income to local authorities. It may be possible to consider reducing the number of personal search appointments in an attempt to lessen the income.'
6. Following this, the Council responded to the complainant to provide on 24 November 2010. In this it stated that having performed further searches, and having utilised the complainant's further advice, it was still unable to locate any relevant information.

## **The Investigation**

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### **Scope of the case**

7. On 26 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He explained that he disagreed with the Council's decision and considered the Council to hold the requested information.

### **Chronology**

8. The Commissioner contacted the Council on 17 June 2011 explaining the scope of his investigation: whether or not the Council were correct to state that it does not hold the requested information. He also put

questions to the Council regarding the scope of the investigation. The Commissioner outlined the same scope to the complainant on the same day.

9. A response to the Commissioner's questions was provided by the Council on 21 January 2011. It is from this response and the previous submissions of the Council that the analysis below is based.

## Analysis

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### Substantive Procedural Matters

10. Section 1(1) of the Act 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.'

11. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions .
12. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, the information is or is not held on the balance of probabilities.
13. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant to his determination.
14. The Council explained that it performed searches of three departments within it, in order to determine if it holds relevant information. These searches included both paper and electronic records.
15. The Head of Corporate Law searched all files held within the Legal Services department relating to Local Land Charges Service. It has

provided the full list of files searched within this department to the Commissioner, all of these relate to Local Land Charges. The Council also performed searches of all correspondence held within the Local Land Charges department. Finally, it searched for records within the Finance department, following the complainant's prompt in correspondence of 19 October 2010. The Council has confirmed that these searches were, in its opinion, the most likely to return relevant information. It has also confirmed that none of these searches retrieved any relevant information.

16. The Council has acknowledged that conversations or meetings may have taken place (although it does not know that this is the case) but if so, these were either not recorded or were entirely verbal in nature. It has further confirmed that only call centre telephone calls are recorded (for training purposes) and it has searched all email correspondence surrounding the relevant time period (to the request).
17. The Commissioner accepts that the searches performed were those most likely to retrieve information relevant to the complainant's request. Both the Legal Services department and the Local Land Charges department are departments which are directly linked to the requested information. The Finance department can be seen as a relevant department to search following the complainant's previously mentioned prompt.
18. In accepting that the correct and most relevant searches were performed, the Commissioner considers that, on the balance of probabilities, the Council does not hold any information relevant to the complainant's request. The Council was therefore correct to state in its original refusal notice and subsequent internal review that it does not hold the requested information.
19. Section 10(1) of the Act 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."*
20. The complainant made his request on 20 July 2010 and a response was provided to him on 19 August 2010. The time taken by the Council to respond to the complainant's request exceeds the 20 working days provided by section 10(1) of the Act and therefore the Council breached this section.

## **The Decision**

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21. 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:

- It correctly stated that it does not hold the requested information on the balance of probabilities

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

- In not responding to the complainant's request within the prescribed 20 working days, the Council breached section 10(1) of the Act.

## **Steps Required**

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23. The Commissioner requires no steps to be taken.

## Right of Appeal

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24. 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 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 6<sup>th</sup> day of September 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
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