

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 26 April 2011

**Public Authority:** Nottingham City Council  
**Address:** Loxley House  
Station Street  
Nottingham  
NG2 3NG

### Summary

---

The complainant requested information from Nottingham City Council for all its portfolio decisions made after 1 April 2007 and prior to decision number 727 which had not previously been published. Nottingham City Council has not provided a clear response to this request, despite the intervention of the Commissioner. The Commissioner therefore reminds Nottingham City Council of its obligations under the FOIA and requires that it either respond to the request in accordance with the Act or issue a valid refusal notice under section 17(1).

### 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. On 2 September 2010 the complainant made the following request for information:

*"A copy of ALL portfolio holder decisions made after 1/4/07 and prior to decision number 727 which had not previously been published due to being exempt information under sch 12A of the*

*Local Govt Act 1972.*

*Please note the following decision by the Information Commissioner which clearly states that sch 12A does not constitute a prohibition on publication which would trigger an exemption under s.44 of the FoIA."*

3. Nottingham City Council responded on 28 September 2010 explaining that, as it was considering the "possible application" of section 44 of the FOIA, it intended to extend the deadline for its response in order to carry out the public interest tests required by the application of Schedule 12A of the Local Government Act 1972.
4. On 29 September 2010 the complainant wrote to Nottingham City Council stating that he did not accept the extension of the deadline to consider public interest tests around Schedule 12A of the Local Government Act.
5. On the same day Nottingham City Council responded asserting that it was required to assess the public interest and that it was allowed this extension of time under the FOIA.
6. The complainant requested an internal review on 28 October 2010 concerning the handling of his request for information. The reasons he gave for his request for an internal review were that he had received no response and that he believed the reasons for the delay to be "fundamentally misconceived".
7. On 1 November 2010 Nottingham City Council acknowledged the request for an internal review.
8. The complainant reminded Nottingham City Council on 26 November 2010 that it had neither responded to his request nor conducted an internal review.

## **The Investigation**

---

### **Scope of the case**

9. On 2 December 2010 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 using enforcement powers due to the lack of response and internal review.

## **Chronology**

10. On 31 January 2011 the Commissioner wrote to Nottingham City Council stating that the complainant had alleged that it had taken an unreasonable length of time to respond.
11. Despite telephone calls on 21 March 2011 from the Commissioner and replies from Nottingham City Council apologising and promising a response by 25 March 2011, Nottingham City Council has failed to respond to the complainant or the Commissioner.

## **Analysis**

---

### **Procedural Requirements**

12. Nottingham City Council has not handled the information request in accordance with the Act, in that it has not issued a clear response to the complainant confirming whether or not it is relying on section 44.

### **The Decision**

---

13. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it did not provide a clear response in order to permit the Commissioner to identify which exemption it was relying on.

### **Steps Required**

---

14. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
  - Disclose the requested information to the complainant or
  - Issue a valid refusal notice under section 17(1)
15. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

---

16. 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.

## Other matters

---

17. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
18. The Commissioner notes that Nottingham City Council informed the complainant that it was required to assess the public interest and therefore it was allowed this extension of time under the FOIA. The Commissioner wishes to clarify that the extension of time permitted under the Act to consider the public interest is only applicable in relation to a qualified exemption a public authority has confirmed it is relying on in accordance with section 17(2). The full text of this section is provided in the legal annex attached.
19. As Nottingham City Council has not specifically confirmed to the complainant that it is relying on a qualified exemption it is not entitled to rely on an extension of time in this case to assess the public interest.
20. The Commissioner is monitoring Nottingham City Council's compliance with section 10 of the Act.

## Right of Appeal

---

21. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

22. 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.
23. 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 26<sup>th</sup> day of April 2011**

**Signed .....**

**Pamela Clements  
Group Manager, Complaints Resolution  
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 17(2) states –

"Where–

- (c) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

- 1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

- 1. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

- (d) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."