

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 July 2011

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

Summary

The complainant made an information request to Nottingham City Council. Despite the intervention of the Commissioner, Nottingham City Council has not provided a response to this request in accordance with the Freedom of Information Act 2000 (the 'Act'). The Commissioner therefore reminds Nottingham City Council of its obligations and requires that it either complies with 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 8 November 2010 the complainant made the following request to Nottingham City Council:

'Please will you send me a copy of all communications between Artreach and Nottm City Council concerning the unsuccessful attempt to sell Radford Unity Complex to Nottingham Studios'

3. An acknowledgement was sent by Nottingham City Council the same day.

4. On 8 December 2010 the complainant requested an internal review on the basis that he had not received a response to his request from Nottingham City Council.
5. On 9 December 2010 Nottingham City Council acknowledged the complainant's request for an internal review confirming it was to be passed on to the relevant officer for a response. However, no further response was provided to the complainant.

The Investigation

Scope of the case

6. On 9 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled by Nottingham City Council.

Chronology

7. On 9 March 2011, the Commissioner wrote to Nottingham City Council to remind it of its obligations under the Act to respond to a request within 20 working days of receipt. The Commissioner asked Nottingham City Council to state to the complainant whether the information is held in a recorded form and, if it is held, to either provide the information or issue a refusal notice in accordance with the requirements of section 17 of the Act within 10 working days.
8. On 14 March 2011 the Commissioner received an acknowledgement from Nottingham City Council.
9. On 27 May 2011 the Commissioner reminded Nottingham City Council of its obligations under the Act and requested that it respond to the request within 14 days.
10. Despite the letters detailed above, Nottingham City Council has failed to respond to the complainant or the Commissioner.

Analysis

Procedural Requirements

11. The Commissioner had considered whether Nottingham City Council has responded to the request of 8 November 2010 in line with the provisions of the Act.

12. Despite the intervention of the Commissioner, Nottingham City Council has not responded to the complainants' request for information or conducted an internal review.

Section 10-Time for Response

13. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
14. From the information provided to the Commissioner in this case it is evident that Nottingham City Council did not respond to the complainant within the statutory time frame.

The Decision

15. 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 breached section 10(1) of the Act by failing to provide a response to the request within the statutory time frame of 20 working days.

Steps Required

16. The Commissioner requires the Council to take the following steps to ensure compliance with the Act:
 - confirm or deny whether the requested information is held to comply with section 1(1)(a) of the Act;
 - if information is held, in accordance with its obligations under section 1(1)(b) either provide it, or withhold it by issuing a valid refusal notice under section 17(1) of the Act.
17. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

18. 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

19. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Internal Review

20. Paragraph 39 of the Code of Practice issued under section 45 of the Act (the 'Code') recommends that complaints procedures should:

"...provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

21. Paragraph 40 of the Code states that in carrying out reviews:

"The public authority should in any event undertake a full re-evaluation of the case, taking into account the matters raised by the investigation of the complaint."

22. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that the public authority failed to provide an internal review. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

23. 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.

Website: www.informationtribunal.gov.uk

24. 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.
25. 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 26th day of July 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."

Time for Compliance

Section 10(1) 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."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (c) states that fact,
- (d) specifies the exemption in question, and
- (e) states (if that would not otherwise be apparent) why the exemption applies."

Section 17(2) states –

"Where–

- (a) 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

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

(b) 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."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that -

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

Section 17(6) provides that -

"Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request."

Section 17(7) provides that –

"A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50."