

Freedom of Information Act 2000

Decision notice

Date: 2 September 2013

Public Authority: North East Lincolnshire Council
Address: Town Hall Square
Grimsby
DN31 1HU

Decision (including any steps ordered)

1. The complainant requested information relating to a dispute he has with North East Lincolnshire Council (the Council) about the council tax banding for his property. The Commissioner's decision is that on the balance of probabilities the Council has provided the complainant with all the relevant information it holds. No further action is required.

Case background

2. The complainant is the owner of a property in North East Lincolnshire. The complainant has disputed the council tax valuation afforded to the property and has challenged the Council's decision at the Valuation Tribunal.

Request and response

3. On 8 July 2012, the complainant wrote to the Council and requested information in the following terms (numbers added by the Commissioner for reference):
 1. *Can you please clarify which specific acts and sub-sections of the national legislation you are referring to in the 3rd paragraph of your letter.*

2. *Can you also please provide all the information the Council has relating to the special considerations given to the properties on the [redacted] in respect of the Class G exemptions as referred to in the 4th paragraph of your letter.*
4. It was not clear from the complainant's request that it was being made under the Act. No mention was made of this right, and the request was included in ongoing correspondence between the complainant and the Council's tax department.
5. After further correspondence with the Council's tax department the complainant appealed to the Commissioner, who decided that whilst the request did meet the definition of a request provided in section 8 of the Act, it would be best to direct the request to the Council department which handles requests of this kind.
6. The Council issued its response under the terms of the Act to the request on 15 March 2013. It provided the relevant information for item 1 of the request, and for item 2 provided internal advice the tax department had received from the legal team.
7. Following an internal review the Council wrote to the complainant on 23 April 2013. The Council provided two training documents designed to assist officers in determining whether council tax exemption G should be applied. It stated that further information was held but this was part of the Council's presentation to the Valuation Tribunal and had already been provided to the complainant. Other than this, the Council stated no further relevant information was held.

Scope of the case

8. The complainant contacted the Commissioner on 11 May 2013 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of the request to be whether the Council has provided the complainant with all of the relevant information it holds for item 2 of the request. He considers that item 1 has been answered and the complainant has not included the response to this item as part of his appeal to the Commissioner.
10. The complainant has made it clear that he considers some of the information surrounding his stage 3 complaint to the Council – which he states should have been present in the documents presented to the Valuation Tribunal – to be relevant, but does not require to be sent copies of this information. Therefore the Commissioner has not included this in his investigation and it will not feature in the decision.

Reasons for decision

11. 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.

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. So in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

13. The following relevant information has already been provided to the complainant:

- Internal email from the Council's legal team
- Document designed to assist officers in determining whether council tax class G exemption should be applied
- Information from Council's Valuation Tribunal presentation –
 - Internal emails discussing application of class G exemption
 - External correspondence between Council and Chartered Institute of Public Finance and Accountancy (CIPFA) and the Institute of Revenues Rating and Valuation (IRRV).

14. The Commissioner has asked the Council about the searches it conducted to locate relevant information, to which the Council responded with details about the locations it searched to identify relevant information and the search terms it used for its electronic records.

15. The Council's response is sufficient to indicate that it has conducted the searches that are expected of a public authority in order to locate relevant information. The Commissioner is satisfied that the Council has undertaken the reasonable searches required, and notes that the

Council has confirmed that these searches did not locate any new information.

16. In his appeal to the Commissioner the complainant referenced several instances in the Council's presentation to the Valuation Tribunal which he considers inconsistent with the Council's position. The Commissioner will address each of these in turn.
17. First, the complainant highlighted a comment from a Council employee which states "when class G was introduced the authority had to decide on when it should be used, in what circumstances it should be applied, etc". The Commissioner has enquired with the Council what information is held from when the exemption was introduced by the Council Tax (Exempt Dwellings) Order 1992 and when it was amended by the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2006. The Council confirmed that no official policy or formal guidance is held from either period.
18. The Council further explained that the class G exemption is quite limited in its scope. It refers to unoccupied properties so it is largely concerned with holiday homes. It confirmed that the statement from its employee is correct in that the Council did decide where it should be used but stated there is no formal record of considerations for the properties in question.
19. The Commissioner's view is that this is reasonable. The Council made it clear that the properties were considered in turn, but there is not a long audit trail showing how each decision was reached and the factors that influenced said decision. The Council confirmed it searched the relevant records and that there is no recorded information within the scope of the complainant's request regarding the implementation of the changes to the council tax exemption brought in by either the 1992 or 2006 Order. Therefore the Commissioner considers on the balance of probabilities it is unlikely any further information relating to this aspect of the complainant's appeal is held by the Council.
20. Second, the complainant pointed out that the same employee further stated that "I was allocated [the complainant's stage 1 complaint against the Council], had various meetings and discussions over the whole class G and Fitties decision with both my immediate manager and the Training and Legislation Team".
21. In its submissions to the Commissioner the Council explained that whilst there were meetings held to discuss the issues raised by the complainant's stage 1 complaint, no formal minutes were held of this meeting. The Council stated that the only held information which resulted from these meetings was the resulting letter sent to the complainant with the result of his stage 1 complaint.

22. The Commissioner is again satisfied that this is a reasonable position. There is no requirement for all meetings to have minutes and considers it likely that there is no further information held other than the letter provided to the complainant.
23. Third, there is a statement from a Council officer that refers to "our policy" about class G council tax. However, the Commissioner notes that on the same day this statement was made a different officer wrote to a colleague that "We don't actually have a written policy or procedure around the class G exemption, or its application in relation to the [properties in question]".
24. The Commissioner has asked questions to confirm this is the case and the Council has confirmed that there is no recorded information that shows what the Council's "policy" is. The document designed to assist officers on whether the class G exemption should be applied is considered to be relevant, although this has already been provided to the complainant. Therefore the Commissioner is satisfied that the complainant has been provided with all the relevant information for this consideration.
25. Lastly, the complainant directed the Commissioner to the letter which prompted the request, which states that "[the Council] had to give special considerations" to the properties referred to in the request.
26. The Council stated in response to the complainant that "special considerations" was a turn of phrase used to show the work that it had undertaken to determine whether the relevant properties were subject to a class G exemption. Not all of the properties are applicable for the exemption, as it depends on the circumstances of the person who owns the property.
27. The Council stated to the Commissioner that the properties were the largest single group of residencies in the area that could potentially be awarded the exemption. As such, the Council did spend time considering the necessary details in determining whether the exemption would apply to all properties. This is further evidenced by the emails the Council sent to the external bodies and to its own legal staff asking for advice on the correct approach.
28. The Commissioner is satisfied that the information provided is likely to be all that is held and has received the necessary assurances from the Council that all the relevant areas of its records have been searched to ensure that all information held has been provided to the complainant.
29. Therefore, the Commissioner's decision is that on the balance of probabilities the Council has provided the complainant with all the relevant information it holds. No further action is required.

Right of appeal

30. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
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