

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2014

Public Authority: North East Lincolnshire Council

Address: Municipal Offices
Town Hall Square
Grimsby
South Humberside
DN31 1HU

Decision (including any steps ordered)

1. The complainant has requested information relating to Ninth Avenue in the Humberston Fitties holiday chalet park. The council provided the complainant with a response to his questions however the complainant did not accept the information provided to him.
2. The Commissioner's decision is that the council has, on a balance of probabilities, provided all of the information which it holds to the complainant.
3. The Commissioner does not require the authority to take any steps.

Request and response

4. On 6 April 2014, the complainant wrote to the council and requested the following information:

"Would you please state:

- 1. how NELC classifies Ninth Avenue and/or Ninth Avenue track (if different), on the Humberston Fitties Chalet Park. What is its current legal status?*
- 2. the description of Ninth Avenue and/or Ninth Avenue track (if different) as recorded within the Definitive Statement.*

5. The council responded on 15 April 2014. It said in response that:

- 1. None of the roads, paths and tracks within the Humberston Fitties Chalet are public highways. All of them are privately owned by North East Lincolnshire Borough Council including Ninth Avenue.*
- 2. 'Ninth Avenue' is not recorded on the Definitive Map and Statement as a public right of way.*

6. The complainant wrote back to the council on 15 April 2014. He said:

"However, I am not satisfied with your response as it does not answer the two questions asked! Please read the FOI again.

I asked:-

"would you please state:

How NELC classifies Ninth Avenue and/or Ninth Avenue track (if different), on the Humberston Fitties Chalet Park. What is it's current legal status?"

NOTE: I am asking for you to state specifically the classification, and/or the legal status of Ninth Avenue.

"would you please state:

the description of Ninth Avenue and/or Ninth Avenue track (if different) as recorded within the Definitive Statement."

NOTE: I clearly DID NOT ask what Ninth Avenue is NOT recorded as on the Definitive Map and in the Definitive Statement, I asked what Ninth IS recorded as in the Definitive Statement.

I would be grateful if you would supply a copy of the Definitive Statement entry for Ninth Avenue in the form of a Postscript Document File (PDF) by email."

7. The council responded on 22 April 2012. It said that:
 1. *North East Lincolnshire Council is the legal freehold registered title owner of land referred to as the Humberston Fitties Chalet Park, of which Ninth Avenue is part thereof.*
 2. *I confirm Ninth Avenue is not recorded on the Definitive Map and Statement.*
8. On 27 April 2014 the complainant wrote back and stated that the council's response to point 1 did not answer his question with "*due specificity, particularity or clarity.*" As regards point 2 he said that he had seen that Ninth Avenue is recorded on the Definitive Map, and so "*the council's argument in this respect is untrue (a lie)*". He said therefore that "*That Ninth Avenue is not recorded on the Definitive Statement is therefore open to question.*" He also complained that the council had not informed him whether the information he had asked for was held by the council or not.
9. Following this the complainant made a complaint to the Commissioner.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way the request for information had been handled.
11. The Commissioner wrote to the council stating that he was aware that the Definitive Map is intended to be open to inspection by interested parties. He asked if the Definitive Statement was also able to be inspected. He also asked the council if it was able to provide small sections of both the Definitive Map and the Definitive Statement to him in order to confirm the designation of Ninth Avenue on these documents.
12. The council responded providing the relevant sections of the Definitive Map and the Statement. It also confirmed that the Commissioner could provide these copies to the complainant in order to assuage his doubts. It said that the documents were also available for the public to inspect, and provided details of where and how to do so. It added that whilst Ninth Avenue was currently not recorded as a right of way on the Map or

the Statement its view was that the Map and the Statement should be updated in the future to include Ninth Avenue as a public right of way.

13. The Commissioner therefore passed the information to the complainant and enquired if this now satisfied the request.
14. The complainant wrote back to the council. He confirmed that he accepted that Ninth Avenue was not recorded on the Definitive Statement. He said that however that the council had failed to keep this accurate and up to date as required by law. The Commissioner therefore considers that the complainant's complaint in this respect is that the information which he was provided was not accurate and up to date.
15. The complainant also said that the council had still not responded to question 1 appropriately. He said that the council's response "*tells me, from an infinite number of options, of what Ninth Avenue is not, but fails to answer the question 'What is its current legal status'.*"
16. The Commissioner considers therefore that the complaint is that further information must be held by the council and/or that it has not provided him with a response to part 1 of his request.

Reasons for decision

Regulation 5

17. Regulation 5(1) provides that

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

18. Regulation 5 therefore provides a duty to make available environmental information on request.
19. The complainant asked the council to confirm how it classifies Ninth Avenue. This is not specifically a request for recorded information but a question about how the council classifies the track. The Act and the EIR provided a right to request recorded information held by an authority rather than the right to ask any question and receive an answer. Nevertheless where recorded information is held which can answer a question the First-tier Tribunal has made clear that an authority is under a duty to respond to the request by providing the recorded information it holds. It is not however required to create new information to respond to a request.

20. The council responded to the request providing a statement of the legal status of the land. It answered the question directly by saying, effectively that Ninth Avenue was private land, that it held the registered title to the land, and that the land is not designated as a public right of way on the Definitive Map or Statement.
21. The complainant however considers that this response did not answer his question. When the Commissioner asked the complainant why he considered that the council's response was inadequate he said that the response stated what the land was not, not what it actually was. He provided an example to the Commissioner of the reason for his statement:

"If I was to ask 'what is the legal status of the large waterway which lies immediately to the north of us?', the question could be answered clearly with specificity and due particularity thus:

Answer (a) The legal status of the large waterway which lies immediately to the north of you, owned by Her Majesties Government, is that of a river currently known as the River Humber.

An ambiguous, unclear reply to the same question might be:

Answer (b) The government owns the waterway which lies immediately to the north of you, and the waters connected to it which surround the United Kingdom of which it is a part. The waterway to which you refer is not a sea.

3. NELC did not state that Ninth Avenue was nothing other than land. They stated that it was part of the land but not its definition. Like a car, the whole is made up of many distinctive entities."

22. The complainant also said that he had subsequently found that all ways, (roads, paths, tracks) are by default classified as private ways in the absence of any other legal definition or dedication as rights of way (highways). He said that under the Town and Country Planning (General Permitted Development) Order 1995:

"private way" - means a highway not maintainable at the public expense and any other way other than a highway.

23. He questioned therefore why the council had not responded by stating that Ninth Avenue had legal status as a 'private way'.
24. The complainant's clarified request was for "the classification, and/or the legal status of Ninth Avenue". The council responded to the

complainant's question by providing the legal status of Ninth Avenue as private land which it owns the registered title to.

25. If the complainant wished a further statement from the council reflecting his wish for Ninth Avenue to be clarified as a road, a path or a trackway (or a private way) he should have explained that this was the information he was seeking to obtain. His request was not clear in this respect. It is not for the council to try to guess the manner of response which the complainant is seeking to elicit from it. Whilst the complainant may not like the form in which the council responded to his question it has nevertheless responded to it and provided information on the legal status of Ninth Avenue. This complied with the request.
26. The Commissioner also considers that as his response establishes that the complainant's request was not a request for recorded information but simply a question which he was seeking to obtain a specific answer to.
27. As regards question 2 the council provided him with a copy of the definitive map and statement.
28. The Commissioner therefore considers that as regards both questions the council has complied with the requirements of the Regulation 5(1).

Regulation 5(4)

29. Regulation 5(4) provides that:

"For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes."

30. In response to the councils providing the complainant with a copy of the Definitive Statement he agreed that Ninth Avenue was not recorded on it. The complainant however said that the council had not kept these documents accurate or up to date as required by law.
31. The role of the Definitive Map and Statement is to legally recognise the status of a path as a public right of way. If the Definitive Map or Statement includes these pathways then they are legally identified as a public right of way. If they are not identified there may however still be rights of way which have not been recorded. Ninth Avenue has not legally been designated on the map or in the statement as a right of way however the council confirmed its intention to do this in the future.

32. Surveying Authorities are authorities which have been designated with the legal duty to retain and update Definitive Maps. They are under a duty to keep the definitive map under continual review and to update the map as required to provide an accurate record of recognised public rights of way. It is not however the Commissioner's role to require a surveying authority to update the map or recognise a public right of way on it. He cannot therefore be involved in this aspect of the complainant's argument.
33. The council has complied with the requirements of Regulation 5(4) in that it disclosed to the complainant the current version of the Definitive map and the Statement which it holds for the relevant area.
34. The complainant sought the description of Ninth Avenue on the Definitive Statement. The council's response was that that was not held. The council provided the relevant part of the statement which demonstrated that Ninth Avenue is not recorded on it. It was therefore correct to state that that information was not held. The Commissioner's decision is that it has therefore met its obligations under Regulation 5.

Right of appeal

35. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Andrew White
Group Manager
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