Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 September 2014

Public Authority: St Edmundsbury Borough Council
Address: West Suffolk House
Western Way
Bury St Edmunds
Suffolk
IP33 3YU

Decision (including any steps ordered)

1. The complainant has made a multi-part request for recorded information in which she seeks information concerning complaints received by St Edmundsbury Borough Council relating noise from wheelie bins and information about the refusal of applications for dropped kerb parking.

2. The Commissioner's decision is that St Edmundsbury Borough Council ("the Council") is entitled to rely on section 12 of the FOIA to refuse to provide information in respect of parts 1 and 2 of the complainant's request. The Commissioner has also decided that the Council has provided all the recorded information it holds in respect of parts 3, 4 and 5 of the complainant's request and has therefore complied with section 1 of the FOIA.

3. The Commissioner does not require the Council to take any further action in this matter.

Request and response

4. On 10 April 2014, the complainant wrote to St Edmundsbury Borough Council and requested information in the following terms:

    1. "How many warning letters have been sent to residents about the disturbance they cause to other neighbours when they shut their wheelie bin since 2000?

2. How many warning letters about wheelie bin lid noise was posted to e zone / IP33 residents in August 2009?
3. When residents in e zone applied for a curb drop for parking outside their house, how many were refused in 2007, in 2008, in 2009, in 2010, in 2011, in 2012 and 2013?
4. In reference to the dates 2007, 2008, 2009, 2010, 2011, 2012 and 2013, how many curb drop for parking applications was turned down to residents who applied on Castle Road, IP33?

   I understand that three different reasons for refusal were provided in the above time frame.

5. Please could an example of the different type of written refusal letters (provided by Steve Bloor and the team at West Suffolk House) be attached to this request too? It is understood that dates, addresses and confidential information is not sought, just a copy of the formal letter that were sent out.
6. On what date did this council formally inform residents of Castle Road, IP33 that the council would no longer block alterations to the curb in order to facilitate off street parking?

5. The Council responded to the complainant's request on 15 May 2014. It advised her that:

   1. no warning letters about wheelie bin disturbance had been sent out since 2000;
   2. no warning letters were sent out in August 2009 to E zone residents about wheelie bin lid noise;
   3. it held no refusals for residents in E zone who had applied for drop kerb parking from 2007 – 2010, and since April 2011 Suffolk County Council had taken back responsibility for highway issues;
   4. it held no refusals for kerb drop parking for residents of Castle Road from 2007 – 2010 and that since April 2011 Suffolk County Council had taken back responsibility for highway issues;
   5. information is not held by the Council in respect of written refusal letters, as it is Suffolk County Council which has responsibility for that matter; and,
   6. it held no information regarding the date residents of Castle Road were formally informed that the Council would no longer block alterations to the kerb as this was a matter for Suffolk County Council.

6. On 15 May the complainant wrote to the Council again. In her email she stated that St Edmundsbury's response was factually wrong and therefore she asked the Council to review its response to points 1 – 5 of her request. The complainant pointed out that she had made an

application for a drop kerb at a meeting with [a named individual] and that her application had been turned down. The complainant also stated that you knew that [the residents of an identified address in] Castle Road were provided with a different set of reasons why their application was turned down a year later.

7. Having concluded its review, the Council wrote to the complainant on 12 June to explain its outcome. The Council confirmed that no information was held in respect of any letters being sent to residents about disturbances caused when they shut their wheelie bin. The Council explained that noise caused by closing a wheelie bin would unlikely be considered as being a statutory nuisance. It further stated that letters may have been sent to residents about noise from their premises without specifying the source of that noise. Consequently the Council would need to look at every complaint it received in order to determine whether the source of that noise was included within the complaint. In view of this, the Council determined that section 12(1) should be applied to the first two parts of the complainant's request.

8. The review also confirmed that the Council had located a file in its Property Services Department which was found to hold information relevant to the complainant's request about kerb drop parking applications. The Council was therefore able to confirm that it had received two formal requests for kerb drop parking in respect of Zone E in 2007 and one formal and one informal, telephone request made in 2008. All four of the requests had been refused.

9. The Council also confirmed that it had received two formal requests for kerb drop parking in respect of Castle Road in 2007 and one formal and one informal, telephone request in 2008. Again, all of the requests had been refused. The Council went on to advise you that its agreement with the Highway Authority and Suffolk Council had ended in March 2011 and therefore no further records were held after that time.

10. In addition to providing the complainant with the information above, the Council was able to provide the response it had sent to the residents who had made requests for dropped kerb parking in 2007 and the response made to the formal request received in 2008. It also advised the complainant that the Council had not formally informed residents of Castle Road that it will no longer block alterations to the kerb in order to facilitate off-street parking.

11. In concluding its review the Council informed the complainant that it is satisfied that it has answered her request about wheelie bin noise correctly and that it is likely that the Council would not have been required to provide that information in reliance with section 12(1) of the FOIA.

Scope of the case

12. The complainant contacted the Commissioner 12 June 2014 to complain about the way her request for information had been handled.

13. This notice concerns whether the Council is entitled to rely on the provisions of section 12(1) of the FOIA to refuse to comply with parts 1 and 2 of the complainant's request. It also concerns whether the Council has disclosed all of the information it holds in respect of parts 3, 4 and 5 of her request.

Reasons for decision

Parts 1 and 2 of the request

14. The Council has relied on the provisions of section 12 of the FOIA to refuse to provide information in respect of parts 1 and 2 of the complainant's request.

15. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit. The cost limit is set out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations) and is currently set at £450.

16. The £450 limit must be calculated at the rate of £25 per hour. This effectively provides a time limit of 18 work hours. Additionally regulation 4(3) the Fees Regulations only allow for four activities which can be considered in relation to complying with the requests. These activities are:

- Determining whether the public authority holds the information requested;
- Locating the information or documents containing the information;
- Retrieving such information or documents; and
- Extracting the information from a document or other information source.

17. The cost of redacting relevant but exempt information may not be taken into consideration for the purpose of calculating the appropriate limit.]

18. The Council estimates that the time needed to comply with parts 1 and 2 of the complainant's request would be in excess of 180 hours.

19. The Council has advised the Commissioner that its public health team uses a computerised system for recording new cases. Each case is ascribed a code relating to the nature of the case and there are 13 codes which relate to noise complaints. The system has no code which is specific to complaints about noise from wheelie bins and any complaints received about wheelie bin noise may have been recorded under any of the 13 noise complaint codes.

20. Since 1 January 2000 the Council received 3922 complaints about noise. These complaints were recorded under the 13 noise complaint codes. The Council undertook a search of these cases in order to ascertain the number of complaints made specifically about wheelie bins. This search failed to reveal any complaints specifically about wheelie bins.

21. The Council advised the Commissioner that to determine whether a noise complaint related to wheelie bin noise it would need to conduct a manual search of its files.

22. An officer of the Council searched through an average sized complaint file to determine whether it contained any reference to noise from wheelie bins. That search took 2 minutes and 48 seconds.

23. The Commissioner has considered the information provided by the Council in respect of how it records complaints. He accepts that the information sought by the complainant is not readily available from its computerised system. He also accepts that it would be necessary for the Council to search its complaint files manually in order to satisfy parts 1 and 2 of the request.

24. Allowing for only 2 minutes to search each file the Council would need to spend 130 hours to search for the information the complainant seeks.

25. The Commissioner considers that this estimate is reasonable and would result in the appropriate limit being exceeded by a considerable degree. Consequently the Commissioner has determined that the Council has appropriately relied on section 12 of the FOIA to refuse to provide the information it holds relevant to parts 1 and 2 of the request.

Parts 3, 4 and 5 of the request

Section 1 – Is the information held?

26. Section 1 of FOIA 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."

27. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information sought by the complainant and has provided it to her.

28. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

29. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.

30. The Council has given the Commissioner an assurance that it has provided the complainant with all the information it holds relevant to parts 3, 4 and 5 of her request. The Council has also provided the Commissioner with copies of its letters sent to applicants for dropped kerb parking in 2007 and 2008 and confirmed that these letters are accurate and verbatim copies of the information provided to the complainant.

31. The Council advised the Commissioner that its property services team has conducted searches of its records relating to dropped kerb parking. The searches involved the Councils 'Mayrise' database and also all internal computer drives as no information is held in hard copy format. The Council used search terms relating to 'dropped kerb', specific road names, year, surname and resident parking zones.

32. The Council informed the Commissioner that it has no records of any information relating to dropped kerbs having been destroyed or deleted and that the Council's Document Retention Policy requires information relating to kerbs to be retained for 12 years.

33. Notwithstanding the assurance given to the Commissioner at paragraph 30, and clear statements made to the complainant in respect of Castle Road, the Council has informed the Commissioner that it holds information to determine whether a dropped kerb was requested and

granted or not for a particular property however there is no statutory requirement to retain this information.

34. The Council also provided the Commissioner with copies of three documents which concern the transfer of its highways functions to Suffolk County Council in March 2011.

35. In view of the Council's submissions, the Commissioner is satisfied that appropriate searches have been made for information falling within the terms of the complainant's request and that, on the balance of probabilities, the Council has provided the complainant with all the recorded information it holds relevant to parts 3, 4 and 5. On the balance of probabilities it is likely that the Council it does not hold any further recorded information and therefore the Commissioner's decision is therefore that the Council has complied with the requirements of section 1 of the FOIA.

Right of appeal

36. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.

38. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF