

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2019

Public Authority: Nottingham City Council

Address: Loxley House
Station Street
Nottingham
NG2 3NG

Decision (including any steps ordered)

1. The complainant requested information held by Nottingham City Council (the council) relating to the proposals, consultation, costing and implementation of a parking scheme within a particular residential area.
2. The council originally dealt with the complainant's correspondence of 3 July 2018 as a continuum of a previous request that he had made which had already been subject to an internal review. However, following the Commissioner's intervention the council accepted that the complainant had made a new request for information and issued a response.
3. The Commissioner's decision is that as the council failed to respond to the complainant's request within 20 working days it has breached section 10(1) (time for compliance) of the FOIA.
4. As a response has now been issued, the Commissioner does not require any further steps to be taken by the council.

Background

5. It would appear that proposals for the possible implementation of a permit parking scheme within a particular area of Nottingham were first raised in 2015/2016.
6. A public consultation followed in 2017 and an experimental scheme of permit parking was then introduced in a number of residential streets.

7. The complainant, and other residents, have a number of concerns about the scheme. This has resulted in extensive communications being sent between the complainant and council officers about the proposals, consultation, and costing of such a scheme.

Request and response

8. On 9 November 2017 the complainant requested that the council provide him with information relating to the parking permit scheme proposals.
9. Whilst the council provided its response by email on 7 December 2017, due to what the complainant has described as a problem with the filter settings on his email account, he did not receive this information until the council sent a further copy via Royal Mail in March 2018.
10. The complainant's request of 9 November 2017 included eight separate points and is set out below. This has been edited for the purposes of this decision notice to include the council's response to each point for ease of reference:

Complainant:

'Thank you for bringing some very valid points of interpretation to my attention: in order to clarify some points of interpretation in this consultation process, I request under the freedom of information act 2000 (The act), the following items to be delivered up to me, before a final decision is made against consultation proposal described in letter TMP7202-version 3, Reference TMP7202C:

1. *A copy of the current Nottingham City Council policy, that describes the minimum legal content requirement of consultation information letters, distribution guidelines of information letters in multiple stages at the same consultation and guidelines for the advertising of public notices in consultation processes. If such a policy or policies do not exist, a copy of the methodology used to interpret responses for consultation TMP7202 covering all aspects of the consultation process including deployment of public notices.*

Council response:

The council advised that it did not have its own policy as described in point 1 but did explain that:

'The minimum requirements for 'consultation' and 'publication' of proposals for Traffic Orders can be found in the Local Authorities' Traffic

Orders (Procedure) (England and Wales) Regulations 1996, Part II, Sections 6&7'. This is freely available on-line.

<https://www.legislation.gov.uk/uksi/1996/2489/contents/made>

Complainant:

- 2. A copy of the current Nottingham City Council policy, that describes the interpretation of public responses in consultation processes. If such a policy does not exist, a copy of the methodology used to interpret responses for consultation TRM7202, utilised in your meeting on 10th February 2017.*

Council response:

The council advised that 'No written policy or methodology document has been issued by Nottingham City Council on the interpretation of residents' responses to consultations' and therefore the information requested is not held.

Complainant:

- 3. An example described in a policy, of a response that could be interpreted as support for and an example of a response that could be interpreted as an objection against a consultation topic. If such a policy does not exist, please provide the methodology used to interpret whether a response slip returned in the TMP7202 consultation was considered to support the proposal or object to the proposal. Please also provide an example that can be interpreted as Don't know/undecided.*

Council response:

'Traffic Management confirm that in this instance residents ticked boxes to indicate a 'Yes', 'No' or 'Don't know' response. Some residents submitted a more lengthy response by email or letter but in each case made it quite clear whether they were in support, opposition, or didn't know. An example of this is from one email that states 'I would like to be considered as a "Don't know"'. A few pieces of correspondence were requests for information not expressing an opinion, these would not have been recorded as a 'Yes', 'No' or 'Don't know' response.'

Complainant:

- 4. The total costs that were incurred to prepare and deploy consultation TMP7202, including all costs that TMP7202 consultation has incurred including the costs of officer time and all other costs allocated to*

TMP7202 up until 20th April 2017 when TMP7202B was issued to some residents.

Council response:

'Any Traffic Regulation Order (TRO) that Nottingham City Council proposes to regulate parking follows a statutory procedure as set down by the Road Traffic Regulation Act 1984 and The Local Authorities Traffic Orders (procedure)(England and Wales) Regulations 1996. Referring to each consultation letter with the prefix of a "letter" i.e. A, B or C is included for clarification of stages and may denote a change. All works costs are charged to the same project.

Questions 4, 5 and 6 relate to the same proposal TMP 7202 Rectory and Square RPA-Wollaton. It is not possible to separate costs for stage. The total cost to date to prepare and deploy all stages of consultation TMP7202 is £15,186.01.'

Complainant:

- 5. The total costs that were incurred to prepare and deploy consultation TMP7202B including all costs that TMP7202B consultation incurred including the costs of officer time and all other costs allocated to TMP7202B up until 6th October 2017 when TMP7202C was issued.*
- 6. The total costs that were incurred to prepare and deploy consultation TMP7202C including all costs that TMP7202C consultation has incurred including the costs of officer time and all other costs allocated to TMP7202C up until 3RD November 2017 when TMP7202C concluded.*

Council response:

For both point 5 and 6, the council referred to the response it had already provided to point 4 of the complainant's request.

Complainant:

- 7. The net remaining amount of funds from the £20,000 approved and allocated from the Wollaton West Capital Fund for use against consultations TMP7201, TMP7202 and TMP7203 taking account all costs allocated to each consultation stage described above (items 4,5,6), and the costs that have been incurred in consultations TMP7201 and TMP7203.*

Council response:

Of the total secured from the Wollaton West Capital Fund for residential parking schemes TMP7201, TMP7202 and TMP 7203. The remaining amount of Area Capital funds available for Wollaton Parking Schemes is £15,670.79.

Complainant:

8. The costs that will be incurred in the first year of operation IF proposal TMP7202C is implemented on all roads proposed in TMP7202C including the costs to prepare and install signs on the roads, the administration and issuing of permits and any other costs that will be required to set up, administer and operate the scheme, exclusive of the costs that will also be needed for enforcement. if these details are not know [sic] yet, please confirm the maximum calculated cost that this proposed scheme could incur to set up, administer with permits and operate in the first year of operation, To avoid misinterpretation of this question, I believe that the maximum number of permits that may need to be issued is 477 or thereabouts based on the calculation 3 permits x 159 properties or thereabouts.

Council response:

The council explained to the complainant that it did not hold information regarding the '*costs that will be incurred in the first year of operation.*'

11. On 17 March 2017 the complainant contacted the council about its response to his request of 7 December 2017. He firstly referred to the information provided in response to point 4, 5 and 6 of his request and asked the council to clarify whether the total figure of £15,186.01 included certain costings relating to the employment of a traffic officer.
12. With regards to the council's response to point 7, the complainant stated that the council had misinterpreted his question and had provided information he had not requested. He advised the council that it had not taken into account the consultation and set up costs of TMP7201, or the consultation costs of TMP7203. He asked that the council provide details that specifically answered the question he had set out in point 7 of his original request.
13. On 22 March 2018 the complainant contacted the council again stating that he required precise answers to the questions he had asked on 9 November 2017. He went on to say that he estimated that there had been an '*overspend of in excess of £25,000 from the approved budget of £20,000, taking account of the public funds you have not yet declared.*'

14. On 26 March 2018 the council confirmed that it was to consider the complainant's correspondence of the 17 March 2018 as a request for an internal review.
15. Despite various reminders, the complainant did not receive a response from the council. On 27 April 2018 he contacted the ICO to complain that information was being withheld and delayed without justification and that matters still remained outstanding some five months after he had first submitted his request to the council.
16. The ICO then contacted the council on 23 May 2018 to request that, in response to the complainant's correspondence of 17 March 2018, it conduct an internal review of how it dealt with his request of 9 November 2017.
17. On 19 June 2018, the council notified the complainant of the outcome of the internal review. Whilst upholding its original decision, the council said that, having had regard to section 16 of the FOA, it accepted that it could have provided additional relevant contextual information which would have helped with the interpretation of the information which had been supplied.
18. With regards to the complainant's request for clarification about whether the figure of £15,186.01 included costings of a traffic officer, the council confirmed it did include a proportion of the employment costs associated with the proposals to implement a Traffic Regulation Order, namely TMP 7202. It went on to confirm that this may not be for one officer but several *'associated with the implementation process.'*
19. In response to the complainant's concern that he had not received a full and proper response to point 7 of his original request, the council confirmed that the remaining budget was £2951.39 and that the relevant scheme had *'now been implemented as an experiment.'*
20. The council also provided the complainant with some additional information relating to the costing of certain other Area Capital approved schemes, stating that this may help to put the information provided previously into context. This information was as follows:

*'Bramcote Lane area £9,500
Torvill Drive Activate sign £10,250
Fernwood Schools Parking restrictions £7,250 TMP 7201 **COMPLETED ORDER**
St Leonard's Dv/Rectory Gdns/Parkside £20,000 **TMP 7202 & 7203.'***
21. The council went on to say that some of the above proposals were amended and not implemented after consultation, and that it was

important to note which funding had been allocated to which proposal when considering the £20,000 budget referred to by the complainant.

22. The Commissioner is aware that, both prior to, and following, the council's correspondence to the complainant dated 19 June 2018, further communications continued to be sent on various matters relating to the parking scheme proposals between the complainant and officers at the council.
23. On 4 July 2018 the complainant contacted the Commissioner again. He advised that the council's final response of 19 June 2018 had been inaccurate, unclear and the costing information provided was now 'out of date.' He went on to say that an answer had been provided to a question that he had not presented.
24. The complainant also confirmed that, on 3 July 2018, he had written to the council as follows:

"I therefore request that you remedy the inaccuracies presented in your review, the lack of clarity and the out of date information, by presenting the information that I would like to receive, accurate and current as of today 3rd July 2018 which is listed clearly for you below:

TMP7202

- *ALL and EVERY cost incurred on TRM7202 up to 3rd July 2018:*
 - *All versions of the TMP7202 consultation including TMP7202B and TMP7202C*
 - *Experimental scheme TME7262 and the court fees associated with TME7262 experimental scheme.*
 - *The costs incurred to issue and distribute letters announcing TPE7262, advertising of the experimental scheme etc*
 - *Costs incurred to prepare the roads in the area where the TME7262 scheme is now operating. The costs to mark the roads and erect signage on all roads in the TME7262 scheme area parking*
 - *All costs incurred on all roads in the TMP7202 area including the Square on Bramcote Lane (for clarity of the roads included in TMP7202, I have attached the TMP7202 map and consultation reply slip detailing the inclusion of Bramcote Lane in the TMP7202 proposal)*
 - *ALL and EVERY other cost incurred on TRM7202 and subsequent versions up to 3rd July 2018:*

TMP7203

- *ALL and EVERY cost incurred on TRM7203 consultations up to 3rd July 2018:*

TMP7202 & TMP7203 BUDGET

- *The amount remaining from the agreed £20,000 presented as a budget in the consultations, allocated for the TMP7202 and TMP7203 schemes as of today 3rd July 2018.'*

25. The council responded to the complainant on 3 July 2018 stating that it regarded the issues raised to be resolved and closed '*as the information provided does relate to your original questions which you the [sic] requested to get reviewed. The review has taken place and [name of officer redacted] has provided you with the results of her investigation.'*
26. Various communications followed on the same date between the two parties about the matters which the complainant believed still remained outstanding.
27. During the initial stages of the Commissioner's investigation she wrote to the complainant to advise that she regarded his correspondence to the council of 3 July 2018 to contain a new request for information. This was because he had now extended the time parameters to cover information held up to 3 July 2018. In addition, he now also asked for information relating to experimental scheme TME7262.
28. Given this, the Commissioner asked the complainant to clarify whether he still required her to consider how the council had dealt with his original request of 9 November 2018 or, given the passage of time, its failure to treat his correspondence of 3 July 2018 as a new request for information.
29. In the complainant's response to the Commissioner dated 2 November 2018 he made reference primarily to his dissatisfaction about the way that the council had handled his request of 3 July 2018.
30. The complainant went on to say that between 18 March 2018 and 3 April 2018, he had raised separate concerns to the council that the £20,000 communicated as a budget in a publically funded consultation had already been consumed or would be exceeded, if the consultation progressed to the next stage. The complainant advised that he was unclear why the council was withholding information and providing inaccurate and unclear information relating to that consultation when he had raised concerns that the expenditure may have exceeded the budget. He stated that he '*remained dissatisfied because the council have not responded to my request of 3rd July and it still appears to me,*

that the financial information that I requested relating to a publically funded consultation is being withheld from me by NCC.'

31. The Commissioner took the content of the complainant's response as confirmation that he wanted her investigation to focus on how the council had handled his request of 3 July 2018. She went on to contact both parties to confirm this.
32. The council then contacted the Commissioner to confirm that it had reviewed its handling of the complainant's correspondence of 3 July 2018. It advised that whilst it had originally regarded this to be a repeat request, upon review, it now accepted that it differed, at least in part, to the previous request that the complainant had made. The council went on to confirm that, on 17 December 2018, it had issued the complainant with a revised response.
33. With regards to the first bullet point of the complainant's request for '*ALL and EVERY cost incurred on TRM7202 up to 3rd July 2018*', the council confirmed to the complainant that the total costs up to this date were £17,047.61.
34. In response to the first five 'sub' bullet points listed in the complainant's request of 3 July 2018, the council advised that the specific costings information requested were not held separately and therefore it did not hold the information requested. However, it did go on to provide some further information in relation to these five sub bullet points.
35. With regards to sub bullet point 2 (experimental scheme TMP7202), the council confirmed that there were no court fees.
36. With regard to sub bullet point 3 (costs and advertising of TPE7262), the council confirmed that £401.49 had been charged for the advertisement itself.
37. With regard to sub bullet point 4, the council said it was uncertain what the complainant had meant by '*prepare the roads*' and had assumed this to mean the installation of the relevant lining and signing which he had made reference to in the same correspondence. Whilst the council had advised that it had not been possible to separate the costs from TME7262 from other such costs, it did confirm that the amount charged up to the 3 July 2018 was £3,606.21.
38. The council also provided the complainant with a response to the sixth and final sub bullet point (for every other cost for TRM7202), confirming that there were no other costs.
39. The council went on to confirm that, in response to the second main bullet point of the complainant's request for '*ALL and EVERY cost*

incurred on TRM7203 consultations up to 3rd July 2018', the costs were £7,468.59, with no additional costs.

40. In response to the final bullet point requesting the amount remaining of the '*agreed £20,000*' for the TMP7202 and TMP7203 schemes, the council advised that the '*£20,000 budget represents the fixed costs that will be charged to the Area Committee upon completion. As such, none remains.*'

Scope of the case

41. The complainant originally contacted the Commissioner on 27 April 2018 to complain about the way his request of 9 November 2017 had been handled by the council. However, he then raised concerns about the council's failure to provide information in response to his request of 3 July 2018.
42. After the Commissioner asked the complainant to clarify what matters of concern he still required her to investigate, she had then contacted both parties to confirm that the scope of the investigation was to determine whether the council had handled the complainant's request of 3 July 2018 in accordance with the FOIA.
43. However, the complainant subsequently contacted the Commissioner to advise of his ongoing concern that information that he had requested, both on 9 November 2017 and 17 March 2018, may have been deliberately withheld by the council.
44. The complainant went on to say that he '*assumed*' that the Commissioner would be taking into account all the communications that he had sent since his first contact with her on 27 April 2018, and not just the concerns that he had raised about how the council had handled his correspondence of 3 July 2018.
45. The complainant also maintained his argument that his correspondence of the 17 March 2018 was a new request for information, and should have been treated as such, rather than as a request for an internal review. He was also unhappy with the internal review response he had received from the council dated 19 June 2018.
46. Given the above, the Commissioner decided that, in this instance, she would give some consideration as to how the complainant's request of 9 November 2017 was handled, and will make comment in relation to this where she regards it be relevant and appropriate to do so.
47. However, as the complainant's request of 3 July 2018 is, in many respects, very similar to that part of the request submitted on 9 November 2017, she regards the most pragmatic approach to be to

focus primarily on the council's handling of the complainant's more recent request. This is because this request appears to cover both that information which the complainant believes to be outstanding in response to his request of 9 November 2018, and certain additional information.

48. As the council has now provided some information to the complainant in response to his request of 3 July 2018, the scope of the Commissioner's investigation is to determine whether there is any additional information held which has still not been disclosed to the complainant. She has also assessed the council's compliance with the procedural aspects of the FOIA in relation to the request of 3 July 2018.

Reasons for decision

Section 1-general right of access

49. Section 1 of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if that is the case, to have that information communicated to him.
50. The Commissioner has considered the information which the council provided to the complainant on 17 December 2018 in response to his request of 3 July 2018.
51. Having considered the information which is available at this point in time, the Commissioner is of the view that there is no evidence, or grounds, for believing that the information that has now been provided by the council is not sufficient to satisfy the terms of the complainant's request of 3 July 2018.
52. The Commissioner appreciates that the complainant's concerns about the parking scheme are extensive and go far beyond those matters which fall under the remit of the Commissioner. She is also mindful that the council's recent response of 17 December 2018 may not provide the complainant with all the answers that he requires. However, in terms of the response providing answers to the specific questions which the complainant has asked, the Commissioner is satisfied that the council has provided an appropriate response. In addition, there is no evidence to suggest that any further information has been withheld which would be relevant to the request of 3 July 2018.
53. Therefore, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any additional information that relates specifically to the request that has been made, other than that which has now been disclosed.

54. The Commissioner would also add that, given the similarities between the information requested by the complainant on 9 November 2017 and 3 July 2018, she does not regard it unreasonable to reach the same conclusion in respect of the original request i.e., that it is unlikely that there is now any further information of any substance that has been withheld that would be relevant to the request of 9 November 2018.
55. The Commissioner is aware that the complainant has recently contacted the council about its response of 17 December 2018. He has asked that the council rectify an incorrect reference to 'TMP72602' contained in its correspondence. In addition, he has asked for clarification over what he believes is a discrepancy between the information that the council provided to him on 17 December 2018, and that which was provided within its internal review response of 19 June 2018.
56. The complainant has made it clear in his correspondence to the council that he is not requesting an internal review with regards to the way in which it has handled his request of 3 July 2018.
57. The Commissioner regards the complainant's recent communications to the council, and any subsequent detail that the latter may provide in response, to be incongruous to those matters that have been subject to her consideration within this decision notice. Therefore, she has not taken into account these communications as part of this decision notice.

Section 10-time for compliance

58. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *'no later than the twentieth working day following receipt.'*
59. The Commissioner is satisfied that the complainant's correspondence of 3 July 2018 should, upon receipt, have been considered as a new request for information. The Commissioner wrote to the council on 13 November 2018 to confirm this and, on 17 December 2018, the council provided the complainant with some information in response to his request.
60. However, the Commissioner notes that the information was provided at a time which falls outside the 20 working days from the date that the request was received on 3 July 2018.
61. Given this, in this instance, the council has breached section 10(1) of the FOIA by failing to respond to the complainant's request of 3 July 2018 within 20 working days.

Other matters

62. The Commissioner does not intend to record a formal decision with regards to the timescales of the council's handling of the complainant's request of 9 November 2017. However, given the complainant's continued reference to the delays which have occurred since submitting that request, the Commissioner will make some comment in relation to this concern.
63. Whilst the complainant did not receive a response to his original request for some four months, it is the Commissioner's view that the council cannot be held at fault for this delay, having made a reasonable attempt to provide the information on 7 December 2017.
64. However, the Commissioner does note that there was a delay between the submission of the complainant's representations of 17 March 2018 and the council's internal review response of the 19 June 2018. She accepts that this delay is likely to have been the cause of some frustration to the complainant, particularly given his strong feelings about the matter and the fact that it was still a 'live' issue which was still under debate at this time.
65. The council has already acknowledged that there was a delay in providing its internal review response and the Commissioner would hope that the issues that led to this have been addressed and that the council has taken steps to improve its internal review response times in the future.
66. The Commissioner has also given some consideration to the concern raised by the complainant that both she (the Commissioner), and the council, had incorrectly interpreted his correspondence of 17 March 2018 to be a request for an internal review. He states that he did not request a review, but rather was submitting a new request for the information that he believed had not been supplied in response to his request of 9 November 2017.
67. Whilst the complainant did not explicitly state he required the council to carry out an internal review, having considered the content of the complainant's correspondence of 17 March 2018, and the fact that he had stated within this correspondence that he believed that certain information he had requested in November 2018 had not been provided to him, the Commissioner was, and still is, satisfied that the council was correct to have initiated its review process at the time that it did.

Right of appeal

68. 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

69. 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.
70. 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
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