

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 January 2007

Public Authority: Northampton Borough Council
Address: The Guildhall
St. Giles Square
Northampton
NN1 1DE

Summary

The complainants requested information on the subject of alleged grants for particular properties in Northampton. The request was submitted further to an on-going complaint including, amongst a variety of other issues, concerns about building work at the properties. The complainant alleged that the work carried out had been grant-aided and that the Council would hold recorded information on this matter. The public authority stated that no such information is held. The Commissioner has found no evidence that would suggest that the information requested is held by the public authority and does not, therefore, find any breach of section 1 of the Act in this regard.

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 section 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. The correspondence provided by the public authority demonstrates that the complainants have been requesting information on the subject of alleged grants dating back to at least 2002. Once the Freedom of Information Act 2000 ('the Act') came into force in 2005, the complainants continued their enquiries with the following request on 15 January 2005:

"...we state three people informed us grants were used, in one letter you personally said they were not, we seek an answer through the Freedom of Information Act...once more was a grant taken through a housing association...in any name or form...the address 194 Kettering Road"
3. It is apparent that efforts on the part of the public authority to clarify the exact nature of the request continued for some time while, in the intervening period, an independent investigation was conducted by the Local Government Ombudsman.

This investigation made mention of, but was not limited to, the complainants' repeated requests on the subject of alleged grants. A final refusal notice was sent to the complainants on 2 March 2006. The refusal stated that the information was not held by the public authority and that various investigations on this matter had now been exhausted.

4. In response, the complainants asked for an internal review on 6 March 2006. The original request was extended to include 190A, 190, 192 as well as 194 Kettering Road. The complainants advised of their intention to complain to the Commissioner if the public authority did not write to state that a grant was not issued for work at the properties.
5. The public authority responded and provided the results of the internal review on 21 March 2006. It reiterated that the information was not held in relation to 194 Kettering Road and stated that it had conducted a further search including 190A, 190, and 192 Kettering Road and did not consider that it held information within the scope of the request.

The Investigation

Scope of the case

6. On 20 March 2006, the complainants contacted the Commissioner to complain about the way their request for information had been handled. The complainants specifically asked the Commissioner to consider the stance of the public authority that the information requested was not held.
7. The Commissioner has not investigated issues raised by the complainants concerning complaints to the public authority's planning department that 194 Kettering Road was being used for commercial activities and that work carried out at the property caused damage to their home as well as significant disturbance. These issues were considered to fall outside the scope of the request.

Chronology

8. The Commissioner contacted the public authority initially by telephone on 21 June 2006. During this conversation, the public authority was asked whether it stood by its statement that it does not hold any information within the scope of the request and to confirm whether it holds any records of housing association ownership for the properties.
9. The public authority responded that the information is not held. It stated that a search of council tax records revealed no record of housing association ownership for any of the properties. The public authority emailed to confirm this on 21 June 2006 and attached a bundle of documents in which it had been explained to the complainants that the information is not held.
10. The Commissioner contacted the complainants on 22 June 2006. The complainants were advised that the stance of the public authority remained unchanged. The Commissioner advised that the public authority appeared to

have complied with section 1 of the Act.

11. The complainants replied on 10 July 2006 and provided further clarification. They stated that their concerns about work at the properties had been on-going for a long period of time, however, they specifically believed that extensive work involving structural alterations to the property took place when Mr Civil, the landlord's son, was in residence and 194 Kettering Road was in the hands of a housing association.
12. The complainants highlighted a letter received from the Assistant Ombudsman on 30 November 2006 in which a suggestion had been made that as housing associations are grant-aided by the Housing Corporation, this may have been where a grant arose. The complainants also reported that, following complaint, the "agent" had referred to the involvement of a housing association. It has been assumed that "agent" refers to the complainants' letting agent. The complainants also stated that a builder working at the property had told them that he was completing grant work costing in the region of £30,000 for which he was being paid a weekly wage.
13. Following receipt of the complainants' letter expressing dissatisfaction, the Commissioner wrote to the public authority on 29 August 2006 for further clarification. The letter summarised the arguments proposed by the complainants and asked the public authority to consider and respond to the following questions:
 - What checks have been made to determine that the information is not held?
 - Was the information ever held?
 - If so, what was the date of creation of the record and its deletion, what is the Council's records management policy? Can the Council provide a record of deletion?
 - If there is no relevant records management policy (for instance there is no policy at all or the policy was introduced after the alleged date of destruction of the record), can the authority describe the way in which it has handled comparable records of a similar age?
 - Are there any legal requirements that would relate to the retention of the information requested?
 - What is the business purpose for which the information was or might have been held?
 - Is information similar to that requested held and, if so, has the public authority advised the applicant, giving appropriate advice and assistance?
14. The public authority responded on 18 September 2006 and stated that it did not believe it had ever held the information. It stated that its records for grants had been checked back to 1975 and that it had conducted a land registry search to determine ownership of the properties in addition to the search of council tax records. It supplied copies of internal emails to demonstrate due process to check that the information was not held. The public authority also supplied a list of the types of grants it administers or has administered and relevant paperwork detailing the history of planning and building control matters at the properties.

15. The Commissioner wrote to the complainant on 29 September 2006 clarifying the scope of the investigation. It was explained that reported conversations with third parties do not constitute, in the Commissioner's view, sufficiently strong evidence to suggest that the public authority does hold the information requested. The Commissioner also considered that it was clear from the Assistant Ombudsman's use of the word "may" in the letter dated 30 November 2005, that the comment was intended to be taken as no more than a helpful suggestion, not a statement of fact. The Commissioner also provided an account of the public authority's response.
16. The complainants responded on 1 October 2006 attempting to re-focus the ownership issues that had been raised, however, the Commissioner did not consider that the complainants had argued consistently or clearly throughout the correspondence that they had not meant to suggest that the property was owned by a housing association. It was not considered that this matter would have any bearing on the outcome of the investigation in any case. The complainants also continued to raise issues falling outside the scope of the request concerning their complaints to the Council's planning department.

Findings of fact

17. The public authority's position is that the information requested is not held. The public authority considers it unlikely that it previously held this information.
18. The complainants believe that the public authority would hold information on grants for the properties.

Analysis

19. The Commissioner appreciates the position of the complainants in that it is a reasonable belief that the public authority would hold information on the subject of grants for the properties for which it has responsibilities. However, the complainants request for information has been based on details gained from conversations with third parties and assumptions made about the public authority's involvement with either the ownership, or upkeep, of the properties in question.
20. There is no evidence available to the Commissioner that suggests that information within the scope of the request is held by the public authority. Further, the Commissioner considers that the public authority has carried out appropriate searches and has been able to provide evidence of its searches. The Commissioner is therefore satisfied with the explanation provided by the public authority that the information is not held.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it complied with the requirements of section 1(1) of the Act.
22. 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.”

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3 day of January 2007

Signed

**Richard Thomas
Commissioner**

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