



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 13 July 2006

Public Authority: Brayford Parish Council

**Address: The Meadows
Little Bray
Barnstaple
Devon
EX32 7QG**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act in that it has failed to respond to a request for information made to it.

The Commissioner accordingly requires the public authority either to issue a refusal notice to the complainant in conformity with the requirements of section 17 or to respond to the request as required by Section 1.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The complainant has advised that on 28 May 2006 information related to the Brayford Millennium Bridge project was requested from the public authority in accordance with section 1 of the Act. The request read:

“could you please copy me items from the PC solicitor file. This would specifically include copies of the ‘Millennium garden’ pre-registration title deeds and the legal advice provided by the PC solicitor for the PC purchase of land without formalized access arrangements.”

- 2.2 The complainant also asked for copies of the public authority’s deeds for an area of land known as the Land by the Bridge.
- 2.3 The public authority did not respond to this request itself but instead passed the request to its solicitors. The public authority’s solicitors responded by writing to the complainant’s solicitors and advising that the complainant must only deal with the public authority through solicitors and that “if this sort of behaviour continues consideration will have to be given to applying for an injunction or something similar”.

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1(1)** provides 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.”

- 3.2 **Section 17** provides that –

“A public authority which... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or

- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

4. Review of the case

- 4.1 The complainant's request of 28 May 2006 was the result of protracted negotiations between the complainant, the Commissioner, the public authority and its solicitors.
- 4.2 The complainant had originally requested the public authority's minutes and all correspondence relating to the Millennium Bridge Project on 23 July 2005 and arranged to inspect the information. However the complainant was unsatisfied with the amount of information that was made available to him and contacted the public authority, restating the information he required. In response the public authority said that the complainant's queries should be directed to the public authority's solicitors. This greatly complicated matters and had the effect that future correspondence and requests from the complainant were passed by the public authority to its solicitors. The public authority's solicitors later proved themselves unable to deal with the complainant's requests in accordance with the Act.
- 4.3 On several occasions the complainant contacted the public authority to clarify what information he still required. This was copies of the deeds for the Land by the Bridge and all correspondence held by the public authority regarding the millennium bridge project. When the complainant wrote to the public authority to clarify what information he still required the public authority's solicitors failed to respond in accordance with the Act.
- 4.4 The Commissioner contacted the public authority to confirm what information it held in relation to the Millennium Bridge Project and the Land by the Bridge. In response the public authority produced a log of all correspondence that it held in relation to these topics. Whilst the complainant found this useful it was essentially a reflection of the information that had been made available to the complainant when he originally arranged to inspect the public authority's minutes and correspondence. This log did not include details of any correspondence between the public authority and its solicitors.

- 4.5 The public authority informed the complainant that the deeds were held on behalf of the public authority by its solicitors. The complainant was advised to contact the public authority's solicitors to arrange an appointment to inspect the deeds. Upon doing so the complainant was informed by the solicitor that he did not hold the deeds. The complainant was confused because the public authority had informed him that the deeds he was seeking access to were in the possession of the solicitors. As a result the complainant made his new request to the public authority of 28 May 2006.
- 4.6 The complainant has not yet received an appropriate response to the request for information of 28 May 2006. At no point before or since has the public authority said that the deeds do not exist. The complainant has yet to be supplied with the deeds or with a refusal notice to say why they cannot be supplied. The public authority has yet to address the complainant's specific request for copies of correspondence (including legal advice) between the public authority and its solicitors.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1) – in that it failed to inform the Complainant in writing whether it held information of the description specified in the complainant's request and, if held, to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

6. Action Required

- 6.1 The Commissioner requires the public authority either to confirm or deny that the requested information is held by it and to communicate that information to the complainant, or, if the information is exempt information, to give the complainant a refusal notice in accordance with section 17 of the Act.
- 6.2 In the event that the public authority requires additional information from the complainant in order to be able to locate the requested information or is uncertain as to the scope or nature of the request it should contact the complainant in order to clarify the request or to offer assistance to the complainant in reframing the request in accordance with section 16 of the Act.

- 6.3 The Commissioner requires these steps to be carried out within 30 days of the date of this notice.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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

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

Dated the 13th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

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