

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 20 December 2006

Public Authority: City and County of Swansea
Address: County Hall
Oystermouth Rad
Swansea
SA1 3SN

Summary

The complainant requested information about the original estimates, tenders and costings for the building of an educational classroom in the Botanical Gardens, Singleton Park, Swansea. The public authority provided some information, but the complainant has alleged that he has not received all of the information requested. The public authority has not been able to demonstrate to the Commissioner that it has responded to all parts of the request, and therefore the Commissioner finds that the public authority has breached its duties under sections 1(1) and 10(1) of the Act. Accordingly, the Commissioner requires the public authority to provide the outstanding information or issue a valid refusal notice.

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

The Request

2. On 4 July 2005 the complainant requested the following from the public authority:

"Under the Freedom of Information Act 2000, would you kindly supply us with details of all original estimates and/or tenders for both locations mentioned...Further, would you please provide us with any costings that were made for any other potential sites (e.g. in the nursery or in a wing of the Veranda) that were considered for this building."
3. The public authority responded to this request on 18 July 2005 providing a list of five tender values submitted to it. The public authority also informed the complainant that 'no feasibility studies were undertaken' therefore it did not hold any information on costs for any other potential sites.

4. The complainant wrote to the public authority on 27 July 2005 making it aware that it had not provided a complete response and requested an internal review. The complainant stated

“...The little information given does not enable us to distinguish the sites for which the tenders were given...we wish to take this matter up through the Councils FOI Review Procedure....”

5. There is no evidence to suggest the public authority responded to the complainant's request for a review, therefore on 23 August 2005 he wrote again to the public authority outlining exactly what information he still required. He asked for:

“...details of the original estimates and tenders for the building in the Botanic Gardens at both sites. The original request for this information was made on 4 July...”

6. On 30 August 2005 the public authority sent the complainant an acknowledgement letter.

The Investigation

Scope of the case

7. The complainant wrote to the Commissioner on 14 September 2005 to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider the failure of the public authority to respond substantively to his information request and whether the outstanding information was held by the public authority.
8. The complainant also raised other issues that are not addressed in this Notice because they relate to other requests that have been resolved informally with the Commissioner's involvement.

Chronology

9. The Commissioner wrote to the complainant on 7 April 2006 to establish whether or not he had received any response from the public authority to his letter of 23 August 2005. The complainant responded on 22 April 2006 informing the Commissioner that despite numerous letters being sent to the public authority clarifying what information he still required the public authority had not issued a full response to his request.
10. The Commissioner wrote to the public authority on 5 May 2006 outlining the information that was still outstanding from the complainant's request. The Commissioner sought confirmation from the public authority that it had disclosed the information in question and to provide evidence of this, or if it had not released the information to provide the Commissioner with a copy of its refusal notice setting out its reasons for withholding the information.
11. On 25 May 2006 the Commissioner contacted the public authority to establish why it had not responded to the letter of 5 May 2006. The public authority stated it had contacted the complainant to arrange a meeting to discuss various information requests

which the complainant had submitted over a period of time. The public authority confirmed that a meeting had been scheduled for 6 June 2006 and it would inform the Commissioner of the outcome of this meeting.

12. The Commissioner wrote to the complainant on 14 July 2006 to establish whether or not he had received a satisfactory response from the public authority. He replied on 18 July 2006 stating he had not been provided with any additional information in relation to this request. He advised that during the meeting of 6 July, he had discussed the type of information he expected the public authority to provide. He explained that the public authority stated it would need to consult with the relevant council departments to obtain the information in question. However he had not received any further information from them.
13. The Commissioner wrote to the public authority on 28 July 2006 asking it to provide evidence of any additional information it had disclosed to the complainant in connection with his request, and on 1 August 2006 it e-mailed the Commissioner to advise that it had now substantively responded to the complainant's request. The public authority provided correspondence it had sent the complainant, which it believed addressed the information in question, namely the following: a copy of an internal e-mail dated 4 July 2006 which lists estimates put forward by companies who took part in the tender exercise for two schemes in connection with the proposed development; a copy of a letter the complainant had already been sent dated 18 July 2005 listing the original five tender values. The public authority also states in the letter of 1 August 2006 'the requested brief has not been supplied because of commercial confidentiality', no further explanation is provided in respect of this brief.
14. The Commissioner wrote to the complainant on 4 August 2006 advising that it appeared the public authority albeit belatedly had now provided the information that was outstanding in relation to his request.
15. However, on 9 August 2006 the complainant replied to the Commissioner to advise that although he had been provided with new information which he had not had sight of previously this information did not answer his request. The complainant stated:

“...it now transpires that the costings for scheme 2 were not included in the figures originally given to us...but we still do not have details of the work quoted for in both tenders for the different contracts...”
16. The Commissioner wrote to the public authority on 21 August 2006 explaining precisely what information the complainant required and asking the public authority to disclose this information or issue a proper refusal notice within 10 working days.
17. No response was received and so the Commissioner wrote to the public authority again on 14 September, reminding it of its obligations under Part 1 of the Act, and asking it to disclose the outstanding information or to issue a proper refusal notice.
18. On 17 October 2006 the Commissioner received a copy of a letter the public authority had written to the complainant dated 9 October 2006. Although this letter deals with other issues raised by the complainant it fails to supply any additional information in connection with this request.

19. The Commissioner wrote to the public authority on 23 October advising it that the letter of 9 October does not appear to answer the complainant's request. The Commissioner referred to his letter of 21 August in which he had clarified the substance of the complainant's request to the public authority. The Commissioner stated it did not appear that the public authority had provided all of the information it held in relation to this request, and it had not stated in any correspondence that it did not hold the information in question; specifically information surrounding details of the contracts that were tendered for in respect of the two sites considered for the proposed building (information that would be associated with a tendering process).
20. On 25 October 2006 the complainant contacted the Commissioner to advise that he had received the public authority's letter of 9 October 2006 and that this letter did not provide any further information in connection with his request. The complainant advised the Commissioner he would be writing to the public authority making it aware of this.

Analysis

Procedural matters

21. The Commissioner has considered whether the public authority has complied with its obligations under section 1 of the Act.
22. The complainant maintains he has not received a substantive response to his request of 4 July 2005 from the public authority. The public authority has responded fully to the second part of the complainant's request advising no feasibility studies were undertaken, and it has provided the complainant with some information in connection with the first part. This is evident from the public authority's letter of 18 July 2005 which lists five tender values and e-mail of 4 July 2006 which lists estimates put forward by companies who bid for two schemes in connection with the proposed development.
23. In its letter of 1 August 2006 the public authority makes reference to a brief which implies it does hold further information in connection with this request. The public authority has not been able to demonstrate to the Commissioner that it has released the information in question, namely details of the tenders submitted in respect of the two sites considered and it has not issued a proper refusal notice for withholding this information.
24. Although the public authority did respond to the 4 July 2005 request it has not disclosed all of the requested information. The Public authority has neither issued the complainant with a refusal notice nor stated that it does not hold the information in question.

The Decision

25. The Commissioner's decision is that the public authority dealt with the following elements of the request for information in accordance with the Act:
26. The public authority did inform the complainant within twenty working days that no feasibility studies were undertaken therefore it did not hold any information on costs for any other potential sites.

27. However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act :
28. The complainant requested details of all original estimates and/or tenders for the educational building in the Botanical Gardens as well as any costings that were made for any other potential sites. Although the public authority responded to the second part of this request advising the complainant no feasibility studies were undertaken, it has not provided the complainant with a full response in relation to the first part of the request and has therefore not complied with sections 1(1) and 10(1) of the Act

Steps Required

29. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose the information in question namely details of all estimates and/or tenders for the educational building in the Botanical Gardens, or issue a proper refusal notice in accordance with section 17 of the Act.
30. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

31. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
32. During the course of the Commissioner's investigation into this complaint the public authority assured the Commissioner on a number of occasions that the outstanding information would be disclosed within a certain timescale. The public authority has failed to meet its own deadlines on each occasion.
33. The Commissioner is disappointed that the public authority has yet to disclose the information in question following many guarantees from it that the information would be disclosed.

Failure to comply

34. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

35. 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 20 day of December 2006

Signed

**Anne Jones
Assistant Commissioner (Wales)**

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

Legal Annex

Relevant Statutory Obligations and Provisions of the Act

Section 1(1) provides that –

- (1) “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.”

Section 10(1) provides that –

- (1) “Subject to subsections (2) and (3), public authority must comply with section 1 (1) promptly and in any event not later than the twentieth working day following the date of receipt.”