

Freedom of Information Act 2000 (Section 50)

Decision Notice

6 March 2007

Public Authority: Chester City Council
Address: The Forum
Chester
CH1 2HS

Summary

The complainant requested information about Chester City Council's (the "Council") contact with West Cheshire College (the "College") over the disposal of a piece of land. He was particularly interested in obtaining the minutes of a meeting held by West Cheshire College, at which Council representatives were present, and a letter from the Council to the College relating to that meeting. The Council supplied some information in response to the request but denied holding a record of the meeting or a copy of the letter. The complainant appealed and as a result of the internal review carried out by the Council he eventually received a copy of the letter and a single page which the Council claimed was its sole record of the meeting, obtained from West Cheshire College in the course of dealing with his appeal. The complainant continued to maintain that the Council must hold a more detailed report on the meeting. Having considered the correspondence supplied by the complainant and questioned the Council on the purpose of the meeting and the nature of the Council's involvement in it, the Information Commissioner is satisfied that the Council does not hold the information requested by the complainant.

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. The complainant has not provided a copy of his original request. The Commissioner is in possession of a copy of the Council's letter to the complainant dated 22 September 2005, which states:

"I refer to your letter dated 17 September 2005 and acknowledge your further request for information specifically:

"...all details of meetings and of decisions, including notification of dates/groups involved/persons involved, concerning any contacts between Chester City Council and West Cheshire College and any ancillary involved third parties regarding the proposed disposal..."

3. The Commissioner is therefore satisfied that a request was made in accordance with section 1 of the Act and considers the date of the request to be 17 September 2005.
4. The Council's Principal Development Surveyor responded to the request on 18 October 2005, supplying a number of documents and explaining that certain material had not been included as it was available from the Council's website.
5. On 27 October 2005 the complainant wrote to the Principal Development Surveyor expressing disappointment that the minutes of the various meetings listed in his response had not been included. He also drew attention to a letter from the Council to the College dated 23 March 2004, which he knew to exist, and to the minutes of a meeting held by the College on Thursday 25 March 2004 which was attended by Council representatives (who he identified as A. Farrell and C. Hardy). He had expected to receive both items in response to his request.
6. On 12 December 2005, having reviewed the matter, the Council's Strategic Director provided an amended schedule of meetings together with corresponding minutes (where held). He explained that the Council held no record of the letter of 23 March 2004 or its participation in the meeting of Thursday 25 March 2004, stating:

"Chris Hardy and Andrew Farrell have checked their files and I am informed that there is no record of either of these matters"
7. He suggested that the complainant redirect his request to West Cheshire College.
8. Amongst the enclosures supplied was a redacted minute of a Status Review Meeting of 22 March 2004, which stated:

"RG was to provide a letter confirming the Council's commitment to negotiate the sale of Northgate with the College...RG to circulate the letter prior to the Governor's meeting due to take place this Thursday...The above letter was to be presented to the Governing board by AF and CH on Thursday evening."
9. On 24 December 2005 the complainant contacted the Information Commissioner to complain about the handling of his request. Whilst waiting for the Commissioner's investigation to commence the complainant continued to pursue the matter with the Council.

10. On 6 February 2006 the complainant wrote to a local Councillor, complaining about the matter. On 26 February 2006 he wrote to the Strategic Director of the Council, complaining about the matter.
11. On 13 March 2006 one of the Council officers named as present at the meeting of 25 March 2004 [Andy Farrell] wrote to the complainant. He enclosed a copy of the letter of 23 March 2004, explaining that it had been overlooked in error. He also supplied a copy of what he claimed to be a minute of the meeting of 25 March 2004, which he said had recently been supplied to him by West Cheshire College.
12. On 28 March 2006 the complainant wrote to the Council's Strategic Director voicing concerns about the way in which the Council had handled his request.
13. On 11 April 2006 Mr Farrell wrote to the complainant. Referring to whether the minutes supplied constituted a full record of the meeting, he stated:

"As far as I am aware this page covered the New Campus minute in total. The page concludes with reference to a separate confidential West Cheshire College minute which the Council has no access to and no copy of."
14. On 16 April 2006 the complainant wrote to Mr Farrell, reiterating his right to see a full version of the minutes of the meeting, and alleging that they had previously been displayed on West Cheshire College's website.
15. On 16 August 2006 the Strategic Director wrote to the complainant regarding his concerns. She indicated that the failure to provide the letter of 23 March 2004 had been due to human error and that she had addressed this with the Council to prevent further such mistakes.
16. On 18 August 2006 the complainant wrote to the Strategic Director, clarifying that he still wished to receive a full copy of the minutes of the meeting of 25 March 2004.
17. On 7 September 2006 the Strategic Director replied, stating:

"The Council does not hold a full set of the minutes. It provided you with what it received from West Cheshire College. The Council is under no legal duty to obtain a full set of these minutes, nor can it make West Cheshire College provide a full set. Your remedy is to make a request to the College direct."

The Investigation

Scope of the case

18. The complainant is concerned that the Council has withheld information to which he is entitled. The Commissioner has considered whether the Council holds the information that the complainant is seeking access to.

19. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

20. The Information Commissioner wrote to the Council on 12 December 2006, and asked the Council to clarify:
- 1) whether it held a fuller version of the minutes of the meeting of 25 March 2004 than had been supplied to the complainant on 13 March 2006;
 - 2) if it did not, why not;
 - 3) the circumstances, in general terms, in which Council officers would (or would not) decide to make meeting notes.
21. On 23 January 2007 the Council replied, confirming that it did not hold a more detailed record of the meeting. It explained that the document supplied to the complainant on 13 March 2006 was an extract from West Cheshire College's own minutes of the meeting. The meeting was West Cheshire College's Board meeting to which Council representatives had been invited to outline the Council's view on a development proposal involving the College and the Council. Their role was to provide facts for the College's governors and to respond to their questions, and so they took no notes. There was no debate or discussion – this took place in the private part of the Board meeting, from which the Council officers withdrew.

Analysis

22. The Commissioner has considered the public authority's response to the complainant's request for information. In doing so, he has considered whether the minutes supplied to the complainant on 13 March 2006 were held by the Council at the time of his original request in September 2005 and whether a more detailed record of the meeting of 25 March 2004 is held by the Council.

Procedural matters

23. The complainant specifically asked for a copy of the minutes of the meeting of 25 March 2004 in his letter of 27 October 2005 and has asserted that if Council representatives were present for all or part of the meeting, good practice dictates that they would have taken notes. The Council claims its representatives made no notes of their participation in the meeting as it amounted to little more than a presentation to the College, and that the Council therefore did not hold the requested information at the time of the original request. Furthermore, it claims that the minutes it supplied to the complainant on 13 March 2006 were obtained by it from the College expressly for the purpose of sending to him, whilst carrying out the internal review of the request.
24. The meeting was held on the premises of West Cheshire College. The meeting notes provided to the complainant on 13 March 2006 are headed "Unapproved minutes of a meeting of the Corporation Board" and the listed attendees all

appear to be representatives of the College. The presence of the two Council representatives is referred to in a separate section entitled "Introductory Item".

25. The minutes state that the Council representatives gave a short presentation on the plans for the new College, the substance of which was then debated by the attendees. They state that the minutes of the discussion are recorded in a separate, confidential minute due to their "commercial sensitivity".
26. These facts, taken together, appear to support the Council's claim that this was the College's meeting and that these are College-authored minutes.

Did the Council hold these minutes at the time of the complainant's original request?

27. In his letter to the complainant of 13 March 2006, Mr Farrell states:
"..., West Cheshire College have been approached concerning the minutes of the meeting of 25 March 2004. They have now provided the Council with a copy of those minutes, and I enclose a copy for your information".
28. In her letter of 16 August 2006, the Strategic Director states:

"You have raised concerns about...the minutes of a meeting of West Cheshire College on 25 March 2004...the Council has subsequently secured an extract of the minutes."

29. The Commissioner is therefore satisfied that the minutes supplied to the complainant on 13 March 2006 were not held by the Council at the time of his original request, and that they only came into the Council's possession as a result of it asking the College for a copy to give to him when carrying out an internal review of his request.

Did the Council hold a more detailed record of the meeting at the time of the request, or at any point since?

30. The Council has stated that its representatives saw no need to make their own note of the proceedings as they gave what amounted to little more than a presentation to the College before withdrawing from the meeting to allow confidential discussions to commence. The complainant considers that the representatives would, as a matter of course, have kept their own record of their participation in the meeting and obtained a copy of the confidential minutes taken by the College. He also alleges that the confidential minutes were previously publicly available on the College's website, thereby challenging the Council's claim that it was not entitled to see a copy.
31. The minutes supplied to the complainant on 13 March 2006 point to the existence of a separate minute detailing confidential discussions following on from the Introductory Item. This appears to support the Council's claim that the meeting was divided into public and private sessions. The Commissioner is satisfied with the Council's explanation as to why no note was taken by it of the public session, and that it was excluded from the private session. The Commissioner is therefore

satisfied that the Council did not hold the information that the complainant requested, either at the time of the original request or at any point subsequently.

32. Consequently the Commissioner is of the opinion that the Council complied with Section 1(1) of the Act in dealing with the request for the minutes of the meeting of 25 March 2004.

The Decision

33. The Commissioner's decision is that the public authority dealt with the request for information in accordance with section 1 of the Act insofar as it did not hold the information when the complainant's request was made. In addition, the Council also directed the complainant to contact the public authority which did hold the information in accordance with its duty to provide advice and assistance under section 16 of the Act. In obtaining the minutes from the College, expressly for the purpose of supplying them to the complainant, it acted over and above the obligations the Act imposes on it.

Steps Required

34. The Commissioner requires no steps to be taken.

Other matters

35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
36. The complainant went to significant lengths to obtain information about and relating to the meeting of 25 March 2004. The Council eventually supplied him with a copy of its letter of 23 March 2004 prior to the Commissioner's intervention, and so the Commissioner has not considered this aspect of the complaint in detail. However the Council's delay in providing a copy of the letter would appear to constitute a breach of section 10 of the Act. The Commissioner reminds the Council of the need to ensure that all relevant records are thoroughly checked in the course of responding to FOI requests and draws attention to the advice contained in the Section 46 Code on records management.

Right of Appeal

37. 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 6th day of March 2007

Signed

**Graham Smith
Deputy Commissioner**

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