

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 June 2007

Public Authority: South Norfolk District Council
Address: Swan Lane
Long Stratton
Norfolk
NR15 2XE

Summary

The complainants have been in dispute with the Council for some time in respect of a variety of issues. As a result of a judicial review brought against the Council by the complainants, the Council was awarded costs by the court by virtue of a court order dated 16 March 2006. The complainants submitted an information request to the Council for a detailed breakdown or invoice of the costs awarded. The Council responded and informed the complainants that it does not hold the information specified in their request. As the complainants remained dissatisfied, they raised a complaint with the Commissioner. The Commissioner considered the case and concluded that the Council does not hold the information the complainants requested. It was established that the Council does hold a copy of the "summary assessment" submitted to court and information relating to the time spent by its legal adviser on the judicial review. This information has now been communicated to the complainants. The Commissioner is therefore satisfied that the Council dealt with the complainants request in accordance with Section 1 of the Act.

The Commissioner's Role

1. The Commissioner's role 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 21 June 2006 the complainants made the following request to the Council in accordance with section 1 of the Act (the full text of this section of the Act is available in the Legal Annex to the end of this Notice):

“Could we have a detailed cost breakdown of the above invoice in relation to the above case [CO/7277/05]...The Council’s solicitor will identify that we are fully entitled to sight of the itemized invoice”.

This email was directed to a Senior Billing Assistant in the Council’s Finance Department.

3. The complainants contacted the Council further on 28 and 29 June 2006 sending emails to the Right to Know Officer, who is responsible for the handling of information requests, and the Chief Executive. The communications to the Right to Know Officer were also copied into the Commissioner. The complainants informed the Council that they were unhappy with the actions of its solicitors and believed it should have “no problem” in providing an invoice appropriately signed by the Council’s solicitors which details a breakdown of the costs awarded to the Council.
4. It is apparent from the documentation available that the complainants received a number of responses to this request from different Council officers, including its Right to Know Officer. The Council confirmed that the majority of communications between the Council and the complainants were attempts to enforce the court order and that this reflects the number of Council officers engaged in this matter and issues surrounding the nature of the request.
5. In respect of the Council’s response to the request under the Act, the Right to Know Officer replied on 7 July 2006 and advised the complainants that the Council does not hold the information requested. The Right to Know Officer stated that the Council regarded the complainants’ information request to be for a new document or record that does not currently exist and such a request is not within the scope of the Act.
6. As the complainants were unhappy with the responses they had received from the Council they approached the Commissioner on 26 June 2006 to ask that their complaint be given formal consideration. The complainants provided the Commissioner with a vast amount of information relating to their ongoing disputes with the Council. However, the complainants confirmed by email on 5 July 2006 that they wished the Commissioner to focus its investigation on their request to receive a detailed breakdown or invoice of the court costs order on 16 March 2006 as detailed above in paragraph 1.

Validity of the request

7. The Commissioner notes that the Council did not conduct an internal review of the complainants’ concerns prior to the complainants approaching him for their case to be considered. Whilst it is the Commissioner’s view that the complainants should have exhausted the internal complaints process at the Council prior to contacting the Commissioner, he accepts in this case that this may not have been practical due to the number and level of seniority of Council officers involved in the complainants’ various disputes. The Commissioner considers that there would be little gained at this stage by asking the Council to conduct an internal review

and therefore he is satisfied that this case is eligible for formal consideration under the Act.

The Investigation

Scope of the case

8. The Commissioner's investigation into the complainants' concerns sought to establish whether the Council had complied with the requirements of Section 1 of the Act and, in particular, whether it held any recorded information relevant to their information request.
9. The Commissioner notes that the complainants have also raised a complaint regarding a number of alleged breaches of the Data Protection Act 1998. This matter has been referred to the Data Protection Division and a separate investigation will take place into these issues.
10. The complainants raised a number of other issues concerning the conduct of the Council and its officers. Although this provided useful background and context to the complainants' information request, these issues have not been addressed in this Notice because they are not requirements of Section 1 and therefore fall outside the scope of the Act.

Chronology of the case

11. The Commissioner contacted the Council on 7 March 2007 by telephone to discuss this case and to request further information to enable him to establish how the complainants' request was handled and what information it holds relevant to their request.
12. During this telephone conversation the Council confirmed that the court costs awarded were the result of a judicial review brought against it by the complainants and that the court order was made on the basis of a "summary assessment" of the council's costs. It explained that in such court cases cost awards can be made in two ways, by "summary assessment" and by "detailed assessment". It stated that if the court costs are by "summary assessment" this means that the costs are an estimate of the costs incurred. The Council confirmed that its external legal adviser submitted to the court an estimate of the costs incurred and then the court made an order to reflect those costs. It believed that the complainants would have agreed to this method of assessing costs at the hearing and that had a "detailed assessment" been carried out this would have resulted in higher costs being awarded, as costs awarded by "summary assessment" are a more conservative and favourable estimate of the overall costs.
13. The council explained that the second method by which costs are assessed is by "detailed assessment" and it believed this method involved an item by item invoice being submitted to the court, as opposed to an estimate, which would

- detail the exact costs incurred by the Council. However, it believed this method was more time consuming, involved more in depth consideration by the court and was therefore used less often. In respect of the information it holds, the Council confirmed that in relation to this particular court order it does not hold a detailed breakdown or invoice of the costs awarded, as the costs award was generated by the court. It explained that it does hold copies of the “summary assessment” submitted to the court by its external legal adviser and that a copy of this information had already been disclosed to the complainants.
14. The Council stated that it had received a further more recent information request from the complainants for the same information. The Council later provided a copy of its response to the more recent request to assist with the Commissioner's investigation into the information request made on 21 June 2006. This response was dated 8 March 2007 and it advised the complainants that the documents requested do not exist. The Council stated that it holds a copy of the “summary assessment” submitted to court but it does not hold any further recorded information relating to the costs awarded.
 15. Following receipt of the Council's response the complainants contacted the Commissioner by telephone on 9 March 2007 and sent a number of emails to express their dissatisfaction with its decision and to outline in their opinion various reasons why the information does exist or, at least, should exist. The complainants stated that they believe an itemized invoice of the costs is held through the Council's billing system, as it invoiced them. The complainants referred to an email they received from the Council dated 12 June 2006 that quoted an individual invoice number. In addition, the complainants stated that they understood the Council's solicitors instructed an external legal adviser to act on the Council's behalf in respect of the judicial review and therefore it is likely that the Council holds internal invoices between the two parties which may contain a breakdown of the costs they were ordered to pay. Furthermore, the complainants are of the opinion that the Council's Head of Paid Service would have been personally responsible for authorizing the cost claims and the statement of truth submitted to court by the external legal adviser, and that the Council would be in breach of audit regulations if the information was not held.
 16. The Commissioner wrote to the Council on 19 March 2007 to put forward the complainants' arguments as to why they consider the information requested exists and asked the Council to address these points.
 17. The Council responded on 5 April 2007 and confirmed again that it does not hold the information the complainants have requested. In respect of the individual invoice number given to court costs, the Council explained that this invoice was raised internally to simply comply with normal accounting practice so that the income received could be clearly linked to the court order once it was paid and for the purposes of creating an “audit trail”. It confirmed that there was no cost breakdown “lying behind” the Council's billing system, as the complainants seemed to suggest. With regards to the complainants' assertion that invoices may exist between the Council and its external legal adviser, the Council confirmed that no such invoices exist and there is no such established practice within the Council. It stated that the costs accepted by the court were provided by its

external legal adviser and generated by them using their expert knowledge and that the costs awarded were then generated by the court itself. However, it confirmed that there are records held in the form of timesheets and a communication between the Council's solicitor and its external legal adviser. It stated that although this information does not strictly relate to invoices, it indicates the time spent on various tasks including the judicial review. The Council confirmed that it released this additional information to the complainants by email on 5 April 2007. Concerning the role of the Head of Paid Service, the Council explained that the complainants' assertion was incorrect and that the Head of Paid Service was not personally involved in any supervisory capacity.

Analysis

18. The Commissioner has carefully considered the arguments put forward by the Council and the complainants. It is the Commissioner's view that the Council does not hold a detailed breakdown or invoice of the court costs ordered by the court on 16 March 2006. The Council confirmed in detail that the court order detailing the costs awarded was generated by the court and not the Council and that these were based on a "summary assessment" of the estimated costs submitted to the court by its external legal adviser.
19. The Council confirmed that it does hold records of the "summary assessment" or statement of accounts submitted to the court and information relating to units of time spent by its legal adviser on various tasks, including work completed on the complainants' request for judicial review. The Commissioner is satisfied that this information has now been disclosed to the complainants.

The Decision

20. The Commissioner has concluded that the Council dealt with the complainants' information request in accordance with section 1 of the Act. The Commissioner is satisfied that the Council has now provided all information it does hold relevant to the complainants' request, and it informed the complainants accordingly that it does not hold a detailed breakdown or invoice of costs awarded as a result of the court order dated 16 March 2006.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

23. 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 25th day of June 2007

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act (2000)

Section 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.”