

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

28 January 2008

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Beverley  
East Riding of Yorkshire  
HU17 9BA

### Summary

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The complainant requested a number of items relating to the maintenance of a caravan site owned by the East Riding of Yorkshire Council (the "Council"). The Council refused the request in its entirety, citing the exemption under section 43 (commercial interests) of the Freedom of Information Act 2000 (the "Act"). Following the intervention of the Commissioner, the Council disclosed the majority of the information requested to the complainant. However, the Council maintained that section 43 applied to two items of requested information and further, that the appropriate limit would be exceeded if the Council was to respond to one of these requests. The Commissioner's decision is that the Council would not exceed the appropriate limit in responding to the remaining requests and further, that the information is not exempt under section 43. The Council is therefore required to disclose the remaining information to the complainant.

### The Commissioner's Role

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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

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2. On 17 May 2005, the complainant requested the following information from the Council, via email:

"We would request the following financial information specific to the South Cliff Caravan Park as detailed below.

1. How much revenue was created through site license fees for the period 1st March 2004 to 28th February 2005
  2. How much revenue was created through the sale of caravans for the period 1st March 2004 to 28th February 2005
  3. How much profit did the park make through the sale of LPG gas for the period 1st March 2004 to 28th February 2005
  4. How much does the park pay the gas supplier, for a 47kg cylinder of gas.
  5. How much revenue was created through the touring section for the period 1 March 2004 to 28th February 2005.
  6. How much money was spent on park improvements for the period 1st March 2004 to 28th February 2005
  7. What were the improvements and please suppl[y] a break down of the costs.
  8. How much money was spent on overheads e.g. staffing costs, accommodation etc within the park for period 1st March 2004 to 28th February 2005.
  9. How much profit (after overheads) did the park make for period 1st March 2004 to February 2005.
  10. How much money did the park make as a result of promoting Wallace as the preferred insurer for on site caravans. [sic]"
3. On 2 June 2005, the Council responded by issuing a refusal notice under section 17 of the Act. This stated that the information was exempt under section 43 of the Act, in that by disclosing the information the Council would be likely to prejudice the commercial interests of any person including the public authority. It also stated that the public interest lay in withholding the information.
4. On 13 June 2005, the complainant requested an internal review of the decision to withhold the information.
5. The internal review was carried out and the Council communicated the result to the complainant on 27 June 2005. The internal review upheld the Council's original decision.

## The Investigation

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### Scope of the case

6. On 5 October 2005, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the Council's decision to withhold the requested information.
7. For the reasons outlined in paragraphs 9 to 11 below, the Commissioner has limited himself to considering whether the Council was correct to withhold the information requested under points 4 and 7 of the original request.

## Chronology

8. On 28 September 2006, the Commissioner telephoned the Council and asked for an explanation as to how the Council's (or any other parties') commercial interests would be prejudiced by the disclosure of the information in question.
9. Following this conversation, the Commissioner emailed the Council later the same day, and invited it to reconsider its decision to withhold the information under section 43 of the Act. In order to assist the Council, the Commissioner provided a number of pieces of guidance on the application of section 43.
10. The Council contacted the Commissioner on 13 October 2006, advising that it was prepared to release the majority of the information requested by the complainant. However, it stated that it was not prepared to release the information requested under points 4 and 7 of the original request. It asked whether it should write directly to the complainant and advise him of this development or whether it should provide the Commissioner with further details of the application of the exemption and the public interest considerations.
11. On 23 October 2006, the Commissioner wrote to the Council and asked it to write to the complainant directly and supply him with the information he had requested, with the exception of the information relating to points 4 and 7 of the request. The Commissioner contacted the complainant on the same date to inform him of this and to ask whether he wanted the Commissioner to assess the Council's decision to withhold the remaining information.
12. On 29 October 2006, the complainant confirmed that he would like the Commissioner to assess the Council's decision to withhold the information requested at points 4 and 7. The Commissioner acknowledged receipt of this correspondence the following day.
13. In view of the above, the Commissioner wrote to the Council on 31 October 2006 and asked it to supply him with a copy of the withheld information. This was to enable the Commissioner to assess the validity of the exemption.
14. On 17 November 2006, the Council telephoned the Commissioner to discuss the provision of the withheld information. It claimed that it would take approximately 40 hours to compile this information and to supply it to the Commissioner. A brief discussion as to whether complying with this request would therefore exceed the appropriate limit, as described in section 12 of the Act, took place and the Council undertook to consider this.
15. The Commissioner telephoned the Council on 28 November 2006 to ask for an update. It was agreed that the Council would send the withheld information relating to point 4 of the request and provide a breakdown of the costs that would be involved in complying with point 7 of the request, to the Commissioner. This would allow him to determine whether it would exceed the appropriate limit to supply the requested information to the complainant. At this stage, the Commissioner raised the possibility that the Council may have to provide the complainant with advice and assistance, in line with its obligations under section

- 16 of the Act, in order to assist the complainant in narrowing his request, if it transpired that the appropriate limit would be exceeded by complying with the request.
16. On 30 November 2006, the Council wrote to the Commissioner and provided the withheld information relating to point 4 of the request, as well as a further explanation as to how the exemption applied. It also provided a brief outline of the improvements which related to point 7, but did not however provide a breakdown of the cost of complying with the request for information as the Commissioner had requested. The Council also stated that the exemption under section 43 of the Act applied to the information contained in point 7 of the request and provided an explanation to support this view.
  17. On 5 December 2006, the Commissioner telephoned the Council again, further outlining the need for it to supply a comprehensive breakdown of the costs involved in complying with point 7 of the request. The Commissioner briefly outlined some of the considerations which the Council should take into account, for example, the location of the documents, the volume of information involved, and so on. He also referred the Council to guidance and previous decisions taken on the subject of the appropriate limit in an email of the same day.
  18. The Council responded in a letter dated 22 December 2006, setting out the costs of responding to the request.
  19. Having considered this letter, it became clear to the Commissioner that further information was required in order to take a final decision on the issue of whether responding to the request would exceed the appropriate limit. In view of this, the Commissioner contacted the Council again on 15 January 2007 to pose some further questions relating to section 12 of the Act.
  20. The Commissioner then made a follow up telephone call to the Council on 30 January 2007. This call yielded some answers to the questions posed in the Commissioner's letter.
  21. The Council responded in writing on 7 February 2007. It provided further details about the way in which the information requested under point 7 is held and how responding to the request in its current format would exceed the appropriate limit.

## **Analysis**

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22. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. Full extracts of the relevant law considered in this case can also be found in the Legal Annex to this Notice.

## Procedural matters

### Section 1 – General right of access

23. The Commissioner has considered whether the Council has complied with section 1 of the Act.
24. 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.”
25. The complainant wrote to the Council on 17 May 2005 and requested the information set out at points 4 and 7. The Council confirmed that it held the requested information in a letter to the complainant dated 2 June 2005, however refused to supply it. For reasons that shall be outlined below, the Commissioner does not agree that the information should have been withheld. The Council has therefore breached section 1(1)(b) of the Act.

### Section 12 – Cost of compliance exceeds appropriate limit

26. The Commissioner has considered whether the cost of handling the request of 17 May 2005 and, in particular, point 7 of this request, exceeds the appropriate limit. In dealing with this point, it has been necessary to consider the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”).
27. Section 12(1) of the Act provides that –
- “Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”
28. The appropriate limit is set out in the Fees Regulations as £450 for local authorities. This equates to 18 hours work. A local authority may only legitimately refuse requests for information on fees grounds if it would take more than 18 hours to:
- a) determine whether it holds the information requested;
  - b) locate the information requested;
  - c) retrieve the information from a document containing it; and
  - d) extract the information from a document containing it.
29. In its letters to the Commissioner of 22 December 2006 and 7 February 2007, the Council stated that it thought responding to the complainant’s request would exceed the appropriate limit. It provided an explanation of the way in which the

- information requested is held, along with an estimate of the time it would take to extract the information.
30. The Council confirmed that the information requested at point 7 is held, however that the difficulty in responding to the request would be in locating, retrieving and extracting the information in question. It submitted that basic information is held on the Council's accounting system, known as Masterpiece, however, the information requested is likely to be on two codes, the Development code and the Infrastructure and Facilities code.
31. Whilst it may be possible for the Council to provide a rough outline of what improvements were carried out on the caravan park from the information held on the accounting system, Masterpiece would not hold the precise detail of the work that was carried out. This information is only held elsewhere. The Council stated in its letter of 7 February 2007 (which clarified its earlier statements) that to find out exactly what work was done, each invoice would need to be located in the first instance. These are held in a number of different locations, depending on who placed the order. The Council stated that the invoices could be at one of the following sites:
- a) South Cliff Caravan Park,
  - b) Infrastructure and Facilities department, or
  - c) County Hall loft storage area.
32. The Council went on to argue that there is no guarantee that the invoices themselves will contain any more than a general description of the works carried out. It is therefore likely that it would be necessary to carry out a further search to locate the original order copy and any attachments that may have been sent, detailing the works. This would therefore ensure that all of the information held by the Council which is relevant to the request would be provided to the complainant.
33. The Council estimated the length of time it would take to deal with the request as follows:
- i. Finance accountants to provide an in-depth list of spending against the relevant code – **approx 30 minutes**.
  - ii. Infrastructure and Facilities to provide an in depth list of the spending which may have been applied to other codes – **approx 3 hours**.
  - iii. Finance payments to search for original invoices in the loft storage area and copy – **approx 5 hours depending on the number identified**.
  - iv. Orders raised in site or by Infrastructure and Facilities to be identified and the information sent electronically to remote site – **approx 1 hour**.
  - v. Site and Infrastructure and Facilities to search for original invoices and copy – **approx 2 hours depending on the number identified**.
  - vi. Unit manager to check validity of all information and seek additional papers where appropriate – **approx 4 hours depending on the number identified**.
  - vii. Extracting information from the relevant documents into a form to provide to complainant – **approx 3 hours**.

34. In addition to this time, the Council stated that it had already taken **2 hours** to determine whether the information requested on 17 May 2005 was held and a further **2 hours** providing the information already released during the course of the Commissioner's investigation. A further **2 hours** had been taken in order to determine how the Council could identify the most effective method of answering the outstanding requests.
35. This estimate adds up to a total of **24.5 hours**. As this exceeds the appropriate limit, the Commissioner has analysed whether the estimates provided fall into the categories of information highlighted in paragraph 28 above and, consequently, whether the Council is entitled to take into account all of the things raised at paragraph 33 above.
36. The Commissioner has considered the points raised by the Council above in paragraph 33. It is clear that many of the points raised by the Council can be taken into account when calculating the appropriate limit. Points (i) to (v) in paragraph 33 are concerned with determining whether the Council holds the information requested and in locating this information, and points (vi) to (vii) are concerned with checking and extracting the information and providing it to the complainant.
37. Whilst the Commissioner accepts that it is permissible to take into account the time taken to provide a response to the points of the request already resolved during the course of his investigation, he does not believe that it is acceptable to include the time taken by the Council in order to identify the most effective method of answering the request. This does not relate to one of the categories which can be taken into account when calculating the time taken to deal with a request under the Fees Regulations, as set out at paragraph 28 above. This 2 hour period should therefore be disregarded, leaving the total estimate standing at **22.5 hours**.
38. From the evidence he has seen, the Commissioner does not consider that the Council can take into account the activities set out at point (vi) at paragraph 33. This is because the Commissioner would assume that the Council would only retrieve information which answered the request during the course of the activities listed at (i) to (v). This 4 hour period should be disregarded, leaving the total at **18.5 hours**.
39. At point (iv), the Council took into account the time taken to transfer information to a remote site in calculating the time taken to comply with the request. Further, the Council also included the time taken to copy information (at points (iii) and (iv)) in its calculation. Despite a number of requests to provide the Commissioner with a detailed breakdown of the time taken to comply with this request, the Council has not provided a separate calculation of the time taken to copy the requested information. The Council's calculation of the time taken to comply with the request is therefore inaccurate, as it includes activities not provided for by the Fees Regulations, as set out at paragraph 28 above. However, removing the time taken to transfer and copy the information would further reduce the

appropriate limit calculation.

40. The Council has stated that it would take 3 hours to extract the requested information from the various copy invoices and to prepare it for being dispatched to the complainant. To avoid incurring a cost against this activity, the Council could provide the invoices (which it would have already copied) to the complainant. This 3 hour period should be disregarded, leaving the total at **less than 15.5 hours**. This is below the appropriate limit.
41. In carrying out his investigation into the Council's application of the Fees Regulations, the Commissioner has taken into account that the Council stated that no test search had been carried out to verify this estimate. The reasons for this were two-fold. Firstly, the Council felt that it was more appropriate to consult the various members of staff who would be carrying out the search, as they would have the most knowledge and experience in retrieving such information previously. Secondly, a test search would have limited value, as the full search could not be calculated with absolute accuracy unless it was also known how many invoices there are to check.
42. The Commissioner is of the opinion that, even if the Council had underestimated the amount of work required to fulfil the requests, at least an additional 2.5 hours work could be carried out before the appropriate limit would be exceeded. He therefore requires the Council to provide the complainant with the information requested at point 7.

## Exemption

### Section 43 – Commercial interests

43. The Commissioner has considered whether it was appropriate for the Council to withhold the information requested under point 4 and point 7 of the request using the exemption under section 43 of the Act. Section 43 allows public authorities to withhold information which would, or would be likely to, prejudice a public authority's commercial interests or those of a third party.
44. Turning first to the information under point 4 of the request. The Council submitted that it tenders for the supply of gas cylinders, meaning that it pays a set amount for each gas cylinder. It then decides upon a rate at which to sell the cylinders to its customers. It argues that putting the amount paid to its suppliers would amount to revealing the price paid to the company submitting the successful tender.
45. The Council asserts that making this information available to the public would harm its position in two ways. Firstly, that prospective future suppliers would be able to relate their bids to those of the successful tenderer. The Council argues that this would lead to reduced competition in the future, along with objections from the tenderer who will have submitted its bid on a confidential basis. Secondly, putting this information into the public domain could affect the park's position in the market place, because other rival suppliers could adjust their charges to the disadvantage of the Council.



46. The Commissioner does not accept either of these arguments. It is just as likely that the release of this information into the public domain could increase competition for supplying the cylinders to the Council. Competitors to the current supplier may see that they could also provide the same service to the Council and make a profit. Increased competition would almost inevitably drive down the cost to the Council of procuring the cylinders, which would increase the potential profitability of the park. Further, rival suppliers of gas cylinders would already be able to ascertain how much a cylinder is sold for at the caravan park. They could therefore choose to undercut this figure and potentially damage the number of cylinders sold at the caravan park. However, it is unclear how additionally disclosing the price which the Council pays for a cylinder would allow rival suppliers to reduce their own prices. All this information would show is how much profit is made from the sale of every cylinder.
47. As the Commissioner does not consider, from the evidence he has seen, that there would be any likelihood of prejudice to the commercial interests of either the Council or its supplier, he does not believe that the exemption under section 43 of the Act can be engaged.
48. Dealing now with point 7 of the information request, the Council makes very similar arguments as those already rehearsed in paragraph 45. By providing a breakdown of costs, the Council would, it argues, be disclosing how the contractors who carried out the work make up their costs.
49. Further (and in line with the arguments put forward in paragraph 45), the Council believes that putting this information into the public domain could affect the park's position in the market place, because other rival contractors could adjust their charges to the disadvantage of the Council.
50. The Commissioner is unconvinced by either of these arguments for the reasons set out in paragraph 46. Firstly, contractors' prices will vary from job to job, depending on numerous factors such as the size of the task, the length of time it will take to complete, the cost of materials and so on. Disclosure of the information may reveal how much a particular contractor has charged for a particular job, but it does not follow that the charges for another job will be identical or even similar. A contractor will make a bid in an effort to win business and make a profit and this could mean wide fluctuations in the price it would offer to carry out work.
51. Secondly, revealing the prices paid to contractors is just as likely to encourage other bidders to compete for the work as to discourage them. Increased competition would almost inevitably drive down the cost to the Council of procuring such services, thereby maximising the value which the Council is able to obtain for its money. In this case, this is likely to increase the potential profitability of the park rather than damage it as the Council has argued.
52. As the Commissioner does not consider, from the evidence he has seen, that there would be any likelihood of prejudice to the commercial interests of either the Council or its supplier, he does not believe that the exemption under section 43 of the Act can be engaged. The Commissioner believes that contractors and public

authorities alike should now expect greater scrutiny in commercial dealings, but that this is not in itself enough to engage the exemption under section 43.

## **The Decision**

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53. The Commissioner's decision is that the public authority did not deal with the request in accordance with the requirements of the Act.

## **Steps Required**

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

The public authority should provide the complainant with the information requested at points 4 and 7 of his request of 17 May 2005.

55. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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

## Right of Appeal

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57. 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](mailto: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 28<sup>th</sup> day of January 2008**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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

## Legal Annex

### General Right of Access

**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.”

**Section 1(2)** provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

### **Commercial interests**

**Section 43(1)** provides that –

“Information is exempt information if it constitutes a trade secret.”

**Section 43(2)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

**Section 43(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”