

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 26 October 2009**

**Public Authority:** Haringey Council  
**Address:** Chief Executive Services  
5<sup>th</sup> Floor  
River Park House  
225 High Road  
Wood Green  
London  
N22 8HQ

### Summary

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The complainant requested information about the owner of the property that she was renting from the Council. The Council had a 99 year leasehold interest the expiry of which was approaching. The Council replied that it held the information but that it felt section 21(1) applied as the information could be accessed through the Land Registry. It confirmed its approach in its internal review. After being told that the information was not held by the Land Registry, it applied section 40(2) in its second internal review. After the intervention of the Commissioner, it indicated that actually it did not hold the information that had been requested, and that it should have told the complainant that was so. The Commissioner asked it to issue a refusal notice informing the complainant of its new position and it did so. The Commissioner has determined that the Council does not on the balance of probabilities hold the requested information. The Commissioner has noted a breach of section 1(1)(a) in wrongly confirming it held the information. In addition he has found a breach of section 10(1) for not complying with section 1(1)(a) in twenty working days. He requires no further remedial steps to be taken in this case.

### 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.

## Background

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2. In the UK a title can be either registered title or unregistered title. Title details about registered land are kept on a national register maintained by the Land Registry.
3. In land law each property interest has its own title. This means that there is a divide between the leasehold interest (the owner of the lease) and the freehold interest (the owner of the land).
4. In this case the Council has purchased a 99 year lease from the original owner on 25 December 1912, which is due to expire on 25 December 2011.
5. This lease has been registered at the Land Registry and the reversionary owner of the lease on 25 December 1912 is known by the complainant. The public authority is aware that this individual continued to be the freeholder up to 15 January 1959.
6. However, the freehold title has not been registered. Therefore due to the passage of time it is not clear who the freehold owner of the land is in 2009 (at least 50 years later). The Land Registry is unable to help as the title remains unregistered.
7. The complainant wants the name of the owner in order to enable her to contact him/her and renew her lease.

## The Request

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8. On 1 December 2008 the complainant requested the following information in accordance with section 1(1) of the Act:  
  
*'I write to ask if I can please have the name of the owner of the property I live in under the Freedom of Information Act 2000 as I understand you have this information from previous communications we have had. I do want to meet with you but require this information before I can properly discuss this matter.'*
9. On 4 December 2008 the public authority provided a response. It stated that it had consulted with the Council's information team and been advised that it was unable to provide the information about the owner. It did state that she would be able to obtain details of ownership via the Land Registry and provided the website address. It did not provide details of its internal review procedure or the right to appeal to the Commissioner.
10. In a letter dated only February 2009 the complainant requested an internal review. She explained that she had contacted the Commissioner and found out that this was necessary. She also explained that it was the freehold owner's name that she wanted.

11. On 6 March 2009 the public authority provided its first internal review. It explained that it had failed to log the original request as a Freedom of Information request. It went on to respond that its decision echoes the past advice that the information is reasonably accessible by other means and exempt by virtue of section 21(1) of the Act. It explained that the Land Registry details the ownership of properties and provided the website address again.
12. On 13 March 2009 the complainant wrote to the public authority again. She explained that she had approached the Land Registry and they were unable to assist. On 1 April 2009 the public authority conducted a second internal review. It expressed surprise that the Land Registry could not help. It stated rather obliquely that it felt that it remained correct to advise that section 21(1) applied, since the complainant had failed to tell them that the Land Registry could not help. It stated in any event that it had reconsidered the request and that it now felt that section 40(2) applied to the information and that it remained exempt. It explained that it felt that it would not be a legitimate use of the owner's personal data for it to process it. This is because it would be contrary to their expectation and therefore be unfair and unlawful.
13. After the Commissioner's intervention the public authority issued a new refusal notice in this case on 10 September 2009. It explained that it was incorrect previously and that actually it did not hold the information that she was requesting. It explained that its private letting team could provide the following explanation:

*"The Council's interest in the property [Property redacted] is a long leasehold interest (i.e. 99 year lease dated 25 December 1912), which is due to expire on 25 December 2011.*

*As Leaseholders the Council does not have any contact with the owner, nor do we hold the contact details on file. As you may appreciate the freehold interest could well have changed hands a number of times over the years and any purchaser would be aware that there was a long leasehold interest, the Council would not have to be informed of any sale of the freehold.*

*When the property becomes vacant and subject to the time left on the lease, the Council will decide whether or not to request this information from the Land Registry which will then be included in any marketing particulars or Tender Pack.*

*We will only request the owner's details when we are ready to market our leasehold interest."*

## The Investigation

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### Scope of the case

14. On 18 June 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to determine whether she was entitled to receive the information about the owner of her home.

### Chronology

15. On 8 July 2009 the Commissioner wrote to the public authority to inform it that he had received a complaint and to ask for the withheld information. On 13 July 2009 the public authority acknowledged this letter and said that it would acquire the withheld information.
16. On 3 August 2009 the public authority responded to the Commissioner. It explained the evolution of the request and said that actually it did not hold the requested information and could not provide it. It also provided the explanation that it restated to the complainant (in paragraph 13).
17. On 2 September 2009 the Commissioner telephoned the advocate of the complainant. He explained that having checked the Land Registry website there was some information held about the relevant property and queried whether the complainant had asked for it. The advocate responded that indeed she had and that the information could only provide information about who the owner of the freehold was in 1959 and that she believed that the owner may have changed from that time. She agreed to provide the Commissioner with a copy of the information that was obtained from the Land Registry.
18. Also on 2 September 2009 the Commissioner telephoned the public authority and asked it to issue a new refusal notice to the complainant that corresponded with its position. The public authority did so on 10 September 2009 (the details are contained in paragraph 13 above).
19. On 8 September 2009 the Commissioner received a copy of the information that the complainant had acquired from the Land Registry. On 9 September 2009 the advocate of the complainant called for an update. The Commissioner confirmed that he needed to make further enquiries.
20. On 9 September 2009 the Commissioner addressed enquiries to the Land Registry about this particular property. He received a response from it on 11 September 2009.
21. On 11 September 2009 the Commissioner asked the public authority to provide more detail about why it did not hold any information. In particular he asked for it to explain how it pays the rent for the property and to inform him who it pays.

22. On 30 September 2009 the Commissioner received a detailed response to his enquiries.
23. On 15 October 2009 the complainant's advocate contacted the Commissioner and asked that the Decision Notice was issued.

### **Findings of fact**

24. The leasehold was registered on 15 January 1959 and this is the latest date that the complainant is aware of the freeholder's name. This is because the freeholder's name was the same as the reversionary owner at this point in time (entry numbered 2 in the property register as party numbered [1]). The lease was registered on this date because this was when it was assigned to the Council.
25. This also is the latest date the Council are aware of the freeholder's name for the reasons noted in the analysis section of this Notice.
26. The compulsory registration date for the area was 1 January 1937. Therefore any legal person who obtains the freehold after this date should register that they have done so for their legal rights to be protected.
27. The Commissioner has contacted the Land Registry and it has confirmed that it is unable to help with this matter. It has also explained that it is not unusual for the leasehold interest to be registered, without the freehold itself being registered. All it can confirm is that the freehold is yet to be registered (as of September 2009).

### **Analysis**

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#### **Substantive Procedural Matters**

##### *Is relevant recorded information held?*

28. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. This is made clear in section 1(4) of the Act. The time of the request was 1 December 2008 in this case.
29. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.
30. The complainant indicated that the public authority must know who it is that owns her property, as it owns the lease and would have obligations under it to the

owner. She therefore believed that the information was held. In addition, as indicated above the public authority attempted to apply exemptions to the information on no less than three occasions.

31. The public authority indicated to the Commissioner that it had applied exemptions erroneously in this case and that would seem to be because it believed that the information as a category was exempt and therefore it had not gone and determined whether it held the particular information requested in this case. Only when the Commissioner asked for the information did it realise that it did not have it. It issued a new notice after the Commissioner asked it to do so.
32. The public authority explained that as leaseholders it had no reason to contact the owner. It also explained that the freeholder had not contacted it.
33. The Commissioner was not convinced by this statement at first. The lease indicated that £6 10s [50p] needed to be paid every year. He asked for the public authority to explain to who it pays the rent and how it does so. The public authority replied that it had not paid the freeholder for the last few years. It informed the Commissioner that the yearly payment was stopped when it introduced a new financial database in 2000 and that it was unable to verify the date of the last payment. It explained that the only way it could identify the payments on the current or previous computer system was by freeholder name and this is the information that it does not know. It informed the Commissioner that the freeholder had not approached the Council regarding the payments. The Commissioner is content that this is a reasonable explanation in the circumstances.
34. The Commissioner has also asked the Land Registry to provide him with information about the property and in particular whether the situation about the freehold not being registered at the same time as the lease being registered was usual. He was informed that it was usual that a lease on unregistered land at that period did not necessitate first registration of the freehold.
35. The Commissioner has also checked Halsbury's Laws of England and notes that the situation that he is considering is one of the imperfections of having land unregistered and why the aspiration is to ensure complete registration by 2012.
36. The Commissioner has also asked the public authority what it plans to do when the lease comes to an end on 25 December 2011. The Council's intention is to either dispose of the residue of its leasehold interest on the open market or to enfranchise i.e. acquire the freehold interest under the provisions of the Leasehold Reform Act 1967. The Notice to Enfranchise can be served into court if the freehold title is unregistered.
37. The Commissioner is satisfied by the Council's position that it makes sense for it not to pay when there is no one chasing the payments. He notes that the rent is a very small sum and as explained it is not an easy task to identify to who the payments are due.

38. Having regard to the answers above and the steps the public authority has informed him that it has taken, the Commissioner believes that on the balance of probabilities there is no relevant recorded information held in this case.
39. The public authority has therefore breached section 1(1)(a) in wrongly stating that it held information at the time of the internal review. It has also breached section 10(1) in failing to deny that it held relevant recorded information in 20 working days.
40. The Commissioner notes the failure to cite an exemption or provide details of how to appeal the refusal notice at first instance. However, this issue was rectified at the internal review and is not therefore a procedural breach of the Act.

## The Decision

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41. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - \* *The public authority complied with section 1(1)(b) of the Act as it was correct that it did not hold relevant recorded information for this request.*
42. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - \* *The public authority breached section 1(1)(a) as it incorrectly confirmed that it held relevant recorded information for this request in both its refusal notice and its internal review.*
  - \* *The public authority breached section 10(1) as it failed to comply with section 1(1)(a) within the statutory timescales (twenty working days from the date of the request).*

## Steps Required

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43. The Commissioner requires no remedial steps to be taken. This is because he has asked for a new notice to be issued that complies with section 1(1)(a) and the public authority has now issued it.

## Right of Appeal

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44. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 26<sup>th</sup> day of October 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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



## Legal Annex

### Section 1 - General right of access to information held by public authorities

(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.

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

(3) 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.

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### Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a 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.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

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