

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 06 September 2010

Public Authority: Buckinghamshire County Council
Address: County Hall
Walton Street
Aylesbury
Buckinghamshire
HP20 1UU

Summary

The complainants submitted a series of 8 questions on the subject of the 11+ system. The public authority responded in a way which the complainants maintain is not a confirmation or denial that information is held. The Commissioner's decision is that the public authority's response constitutes a denial that it holds information of the description specified in the request and that, on the balance of probabilities, he is satisfied that no information is held. In providing its response later than 20 working days from its receipt of the request, the public authority breached section 10(1) of the Freedom of Information Act. The Commissioner requires no action to be taken.

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 29 May 2009 the complainants sent a letter to the public authority which made various points about their views on the administration of the 11+ examination within the public authority. Reference was also made to

a previous letter sent by the complainants to the public authority, dated 24 October 2006, which contains more detailed arguments. Associated with some of those points were questions which were described as FOI requests, summarised below:

[With regard to an argument put forward by the complainants about coaching for 11+ tests and guidelines given to the council by the National Foundation for Educational Research (NFER)]:

“(FOI Request Part 1). Have you corrected the false statements made to schools on this issue? Please provide evidence of this.

(FOI Request Part 2). Have you independently verified, with the vast amount of data that you have at your disposal, or by any other means, that coaching is not a factor in achievement and that an unfair advantage is not gained through coaching? Please provide any information related to this.

(FOI Request Part 3). What have you done, intend to do, to take into account the factors related to coaching highlighted above – (particularly the Bunting and Mooney research)? Please provide any information related to this.”

[With regard to a proposition put forward by the complainants about what they describe as ‘Consistent underperformance of certain schools and certain areas’]:

“(FOI Request Part 4). Please [provide] any information in which you have addressed these issues. For example have you tried to understand why the problem exists? Have you done anything to remedy the problem?”

[With regard to an argument put forward by the complainants about what they describe as ‘Inconsistency between Order of Suitability and Strength of Recommendation Matrix’ described as ‘a muddle’ and detailed in their 24 October 2006 letter]:

“(FOI Request Part 5). What have you done to understand and correct this inconsistency? Please provide any information related to this.”

[With regard to an argument put forward by the complainants about what they describe as ‘Current Appeal system is based on a false statement’ and detailed in their 24 October 2006 letter]:

“(FOI Request Part 6). Please provide any information in which you have addressed these issues.”

[With regard to a proposition put forward by the complainants about what they describe as '11+ Communication and Messaging' and detailed in their 24 October 2006 letter]:

“(FOI Request Part 7). With the problems raised in our letter and the recommendation made, what have you done to remedy these problems? Please provide any information related to this.”

[With regard to a proposition put forward by the complainants about what they describe as '11+ Appeals' and detailed in their 24 October 2006 letter]:

“(FOI Request Part 8). Please provide any information in which you have addressed these issues.”

3. The public authority replied on 3 July 2009. It stated that it did not intend to respond to parts of the complainants' letter which seek to revive complaints dating back to October 2006, which the council is satisfied it has responded to appropriately and reasonably. With regard to those elements of the letter which invoke the Freedom of Information Act, the public authority points out to the complainant that the Act creates a duty on the local authority to disclose information which it holds, and not a duty to answer questions. It cites the Information Commissioner's Office (ICO) guidance¹, quoting the following:
 - *“You can ask for any information you think a public authority may hold. The right only covers recorded information.*
 - *Your request can be in the form of a question, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgement that is not already recorded.*
 - *You should clearly identify the information you want.”*
4. The public authority stated that, in its opinion, the complainants' eight requests are wholly or to a large extent *“questions... which would mean... giving an opinion or judgement that is not already recorded”*. The Commissioner observes that this phrase is largely derived from the second bulleted point in the quotation from the ICO guidance, above.
5. The public authority then responded to each of the eight questions, as follows:

¹ Available online at http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/fop100_how_to_make_a_request_v1.pdf

FOI Request Part 1

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The public authority also provided a copy of a council-produced document entitled "Manual for Headteachers" which it explained reproduces the wording quoted by the complainants from the NFER website.

FOI Request Part 2

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the document provided in response to Part 1, above and it is stated that it *"constitutes information related to this"*. The public authority also states that *"the term 'coaching' covers a variety of activities, none of which are formally declared to or recorded by the council and therefore there is no dataset to draw any conclusions from."*

FOI Request Part 3

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the document provided in response to Part 1, above and it is stated that it *"constitutes information related to this"*.

FOI Request Part 4

"It is the council's view that your second two questions are not a request for information, but rather questions the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the public authority's 'Community Cohesion and Equalities Forum' which deals with certain of the issues raised by the complainant. The response provides the complainants with links to minutes relating to that forum, held on the public authority's website.

FOI Request Part 5

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the document provided in response to Part 1, above and it is stated that it *"constitutes information related to this"*. Copies of the minutes of a working group are disclosed, as that group was set up to consider issues relating to Selection Appeals.

FOI Request Part 6

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the response to 'FOI request Part 5'.

FOI Request Part 7

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

The complainants are also referred to the response to 'FOI request Part 5'.

FOI Request Part 8

The complainants are referred to the response to 'FOI request Part 5'.

6. The complainants wrote again to the public authority on 5 August 2009. They argued that the public authority's response, namely:

"It is the council's view that this is not a request for information, but rather a question the answer to which is an opinion or judgement that is not already recorded."

is not an appropriate response to a request for information, affirming that their requests were indeed requests for information. They ask the public authority to *"Please respond to the original request in a proper manner."* [sic]

7. The public authority replied on 13 August 2009, indicating that it was unclear whether the complainants' letter of 5 August was a request for internal review and, if so, requesting the complainants to clarify in what way its response fails to address their requests. The complainants responded on the same date, indicating that their last letter clearly states the complainants' reasons why the public authority has not addressed their request for information.
8. The public authority wrote again on 14 August, explaining that its response intended to make clear that, unless indicated otherwise, the

council does not hold recorded information in response to their request. The complainants were advised to *“extract those parts of your 11+ Administration complaint that you consider to be requests for recorded information and provide me with them. We will then give them due consideration.”*

9. The complainants replied on the same date, stating that their *“request for information dated 29th May does exactly that,”*
10. The public authority conducted an internal review and wrote to the complainants on 21 September 2009 with the outcome. The review forms the view that the 29 May 2009 letter as a whole seeks the council's opinion on the administration of the 11+ system and, in particular, the issues raised by the complainants in their letter of 24 October 2006. It goes on to note various points, including:
 - The 8 parts of the complainants' FOI request appear to be statements of their opinions on the 11+ system, followed by requests for what information the council holds in relation to those statements/opinions.
 - The language of their request is, in the public authority's opinion, designed to elicit comment.
 - It would not be possible for the public authority to respond to certain parts of the request without it being in agreement with the opinions expressed.
11. The public authority goes on to conclude that, if the council does not hold information on the issues raised by the complainants, it may be because it has not done anything about those issues, and that the complainants' argument - that the council will clearly hold information on the matters - is based on the supposition that it agrees with their opinions or believes most of them to have validity.
12. The public authority then states that ***“where we do not provide any information it is because no information is recorded or held”*** and that the fact that it does not hold much recorded information is because it does not share the complainants' views.

The Investigation

Scope of the case

13. On 8 January 2010 the complainants contacted the Commissioner to complain about the way their request for information had been handled.

The complainants specifically asked the Commissioner to consider the following points:

- The council appears to be refusing to deal with their request because it is formed in a bad way; they are expressing an opinion and not making a valid request for information.
- The complainants are not expressing an opinion but merely requesting information based on facts and factual discrepancies obtained from the council and other sources.
- The complainants remain unclear whether the council is stating that it does not hold the information because it would have to agree with their opinions before it could recognise the request as valid; or that it does indeed recognise the request is valid and that they are denying the existence of information in good faith.
- Contrary to what is stated in the internal review, they have been provided with no information that addresses any of the request.
- The responses from the council are ambiguous and the complainants would like a proper response to each of their requests.

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

Chronology

15. On 18 March 2010 the Commissioner wrote to the complainants. He referred them to the Information Tribunal decision in the case of *Day v the ICO and the Department for Work and Pensions (EA/2006/0069)*² which states, at paragraph 15:

"Information is defined in section 84 of the Act as 'information recorded in any form'. The Act therefore only extends to requests for recorded information. It does not require public authorities to answer questions generally; only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action – unless, of course, the answer to any such request is already held in recorded form."

16. The Commissioner explained that, unless the council holds information which answers their questions, it is not obliged to answer under the Freedom of Information Act, but a public authority may still choose to respond to queries and questions in the normal course of business. In

² Available online at http://www.informationtribunal.gov.uk/Documents/decisions/mrrdayvinforcomm_24Sept07.pdf

those circumstances, the Act will not apply and the Commissioner has no powers to accept complaints in such cases. He further explained that his interpretation of the public authority's response given, to-date, was that the council was stating that it does not hold information which would provide answers to the various questions, other than the information disclosed in its 3 July letter.

17. The complainants replied on 6 April. They explained that

"if the Council state clearly for each of the requested items that they do not hold the requested information then I would consider that an appropriate response. At the moment I would argue that the Council is not responding in an unambiguous manner because they do not agree with me (or do not want to acknowledge) an assumed premise behind the question" [sic]

They further explained that they were

"not attempting to express an opinion in these requests, but more a presentation of certain facts, and a request to know if there is anything recorded that addresses issues raised by these facts."

18. The complainants stated that they had evidence that information does exist; re-stated an element of their request with emphasis on certain points; and quoted a local press report, dated 17 April 2009, which appears to show that *"an overview and scrutiny committee, a watchdog made up of councillors, would be 'looking at the entire 11+ process, including the tests'."* They further stated that they require to know what the Council is doing in the areas they have highlighted (by way of recorded information) and they insist on a clear, unambiguous response to these requests for information.

19. The Commissioner replied on 15 April, indicating that he understood the complaint to be that the response provided by the public authority was not sufficiently clear when it stated that it does not hold information of the description in their request, and that his investigation of the complaint was concerned with any failure of the public authority to properly comply with the Act by failing to state that the requested information was not held by it.

20. The Commissioner explained that he had corresponded with the public authority on the matter and it was his assessment that it was reasonably clear that the element *"...the answer to which is an opinion or judgment that is not already recorded"* in the public authority's response was intended to explain that the information sought by the complainants' question was not held by the public authority. He noted that the

complainants had indicated that they had evidence that information does indeed exist, but explained that he had not interpreted the material provided to constitute evidence that the public authority holds information.

21. The complainants replied on 30 April, arguing that

*"... the Council **have not** stated that it does not hold the information requested. It has stated that the request made is not a request for information. It cannot confirm or deny the existence of information of it does not accept that the request itself is a request for information.*

Please note that it is correct that my complaint stems from the fact that the council will not confirm or deny the existence of the information requested. It is also based on the fact that I have evidence that the information does indeed exist. That is exactly why I want an explicit confirm or denial from the council." [sic].

22. The complainants also clarified that their re-quoting of part of their original request was not intended to be the evidence of the existence of information held by the council, but instead the evidence was in the reference to the local press report, directing the Commissioner to the quoted section relating to 'an overview and scrutiny committee'. They further argued that the scope of the Commissioner's investigation should be extended beyond their original complaint, to take into account their allegations that further information is held by the public authority.

23. The Commissioner wrote again to the complainants on 4 May, pointing out that a more complete version of the council's response states:

*"It is the council's view that this is not a request for information, but rather a **question the answer to which is an opinion or judgment that is not already recorded.**" (ICO emphasis).*

24. The Commissioner indicated that this should be interpreted as a denial that the public authority holds information. The public authority is stating that it holds no recorded opinion or judgment which would answer the complainants' question and it is therefore a matter of fact that the public authority is stating that it does not hold information which would answer the complainants' question. The complainants replied on the same day, stating:

"we should not be in a position of analysing with a fine tooth comb the statement from the council as to whether or not they have confirmed or denied."

25. During this period, the Commissioner also corresponded with the public authority, asking it for details of any searches it had conducted for information of the description in the complainants' requests. The public authority explained that it did not make specific searches in response to this request but that it has, on many occasions made searches for 11+ information on behalf of the complainants, including on the specific matters referenced in the current complaint.

27. The public authority also argued that the requests are statements of the complainants' views on the 11+ system and that, if the public authority did not agree with those views, it would not hold information on matters such as:

- "False statements" [request part 1]
- "Unfair advantage" [request part 2]
- "Inconsistency" [request part 5]
- "Specific problems" [request part 8]

28. The public authority also referred to the Information Tribunal in *Day*, referenced above, citing paragraph 17:

"In replying in this way, the CSA were not always able to respond precisely to Mr Day's questions, since their premises were disputed. However, the answers seem to us to take into account the duty under section 16 to provide advice and assistance to people who make requests under the Act. The CSA might, for example, have simply given a blank denial to some of the requests, under section 1(1)(a), stating that they did not hold the information sought in recorded form. That may have been a technically correct answer, but it would not have been helpful to Mr Day."

and also, the Tribunal's comments at paragraph 16:

"FOIA should not be extended to require public authorities to enter into debate about the merits of processes, systems or policies, or to challenge misleading assumptions contained within questions, when complying with a FOIA request."

29. The Commissioner also put the complainants' argument relating to the local press cutting (and their assertion that this constituted evidence that further information was held), to the public authority. It responded, pointing out that the press cutting was dated 17 April 2009 and the complainants' request was dated 29 May 2009. The Commissioner acknowledges that the short timeframe between the article and the request, and the article's comment that the committee '**would be** looking at' [the matters raised by the complainants] might indicate that,

by the time of the request, the committee had taken no action which would have created information of the sort described in the request.

30. The public authority provided the Commissioner with links to the minutes of the committee's meetings and summarised these, explaining that they show that the issues raised by the complainants have not been looked at within the past 5 years. While there was an expectation among council officers that councillors would be looking into the general area of the 11+ at the date of the article, by the time of the request the matters raised by the complainants had not been considered by the committee. The public authority also volunteered that the committee's deliberations subsequent to the request (and therefore not covered by the request) had not covered the matters raised.
31. The public authority confirmed that it would be happy for this information to be shared with the complainants and the Commissioner has therefore provided them with the links to the online minutes of this committee submitted by the public authority.

Analysis

Substantive Procedural Matters

Section 1

Requests for information

32. The Commissioner's guidance, 'Making a request for information' referenced earlier in this Decision Notice, makes clear that the Act provides a right to request any recorded information held by a public authority. From this it follows that a question, or request, submitted to a public authority will only require consideration under the Freedom of Information Act, to the extent that the response requires the disclosure of **information** which is **held** by the public authority in its records.
33. The public authority has observed, in its response to the complainant's letter and at internal review, that the way the complainants have framed their letter does not necessarily make the elements, described by the complainants as 'FOI Requests', eligible for a response under the Act. The complainants are referred to the Commissioner's guidance and it is clear that the way the requests have been framed bears similarities to various examples of poor request-making given by the Commissioner.

34. It is incumbent on a public authority to make an objective reading of a request received by it and, if it is unsure what such an objective reading should be, it is entitled to request clarification under section 1(3) of the Act. This approach has been endorsed on several occasions by the Information Tribunal, for example in the case of *Berend v the ICO & London Borough of Richmond upon Thames* (EA/2006/0049 & 0050), which states, at paragraph 46:

"The Tribunal is satisfied that the request should be read objectively. The request is applicant and motive blind and as such public authorities are not expected to go behind the phrasing of the request."

35. Similarly, in the case of *Boddy v the ICO and North Norfolk District Council* (EA/2007/0074) at paragraph 25, a differently-constituted Tribunal states:

"The Tribunal's conclusions on this aspect of the appeal are that the correct approach to the law is that a request for information ought to be "taken at face value", i.e. it should be read objectively [...] However, we would qualify this by saying that if an applicant had been in discussions or correspondence with the public authority about a particular matter [...] then we would expect the public authority to take into account the contemporaneous dealings with the applicant to clarify the information that was being requested.."

36. In this case, the public authority has been receiving, and responding to, correspondence from the complainants about the 11+ system over an extended period (as can be seen from the complainants' reference to a letter of 24 October 2006). The public authority has explained to the Commissioner that, in light of this, it had no difficulty establishing an objective reading of each request. The Commissioner notes, as observed at paragraphs 8 and 9, above, that the public authority did suggest to the complainants that they might wish to clarify their requests and the complainants declined to do so. The Commissioner considers that, in such circumstances, a public authority may attempt to make whatever reasonably objective reading of the request it can, and he is satisfied that in this case, its responses indicate that the public authority did read the requests objectively.

37. Section 8 of the Freedom of Information Act states:

8(1) In this Act any reference to a "request for information" is a reference to such a request which-

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested

Section 84 of the Act explains that, unless the context requires otherwise, "information" means information recorded in any form.

38. The complainants argue that the public authority's refusal states that *"It is the council's view that this is not a request for information"* and assert that their questions do in fact constitute requests for information. The complainants also acknowledge that *"if the Council state clearly for each of the requested items that they do not hold the requested information then I would consider that an appropriate response."*

39. The Commissioner understands from this that the essence of their complaint is a perceived ambiguity in the public authority's response and that the resolution sought by the complainants is a clear statement that the information requested is 'not held' by the public authority. In subsequent correspondence to the complainants, the Commissioner observed that a fuller quotation of the public authority's refusal would be:

*"It is the council's view that this is not a request for information, but rather a **question the answer to which is an opinion or judgment that is not already recorded.**"* (ICO emphasis).

40. The Commissioner considers the extract chosen by the complainants is partial in its interpretation and that a proper interpretation of the response requires inclusion of the second part of the sentence. When the response is considered in-full, this then makes it clear that the refusal is given because the council has no recorded information on an opinion or judgment which would answer the complainants' question.

41. The Commissioner's view is that any written question submitted by an applicant to a public authority is technically a request for information under the Freedom of Information Act, and this view is supported by his reading of section 8 and section 84 of the Act, as quoted earlier in this Decision Notice. However, if a question cannot be answered by the provision of information held by a public authority in its records, then the public authority is entitled to state, under section 1(1)(a) of the Act, that it does not hold information and therefore the applicant is not entitled to a response under section 1(1)(b) of the Act. This does not prevent a public authority from continuing to engage with an applicant, in the normal course of business, but the Freedom of Information Act has no influence on the matter.

42. In this case, the Commissioner is satisfied that the public authority intends the complainants to understand that it does not hold any information in its records which would answer their questions.
43. This has been put by the Commissioner to the complainants, who responded that *"we should not be in a position of analysing with a fine tooth comb the statement from the council as to whether or not they have confirmed or denied"*. The Commissioner disagrees that this is what is required. The interpretation of the council's response is reasonably straightforward and is fundamental to the complaint, and the remedy requested by the complainants.
44. If, in response to a request, a public authority fails to confirm or deny that information is held by it, it commits a breach of section 1(1)(a) of the Act. In this case, the Commissioner has considered whether he was able to conclude that the form of the response given by the public authority meant that it had breached section 1(1)(a). He has decided that no breach of section 1(1)(a) has occurred, because an objective interpretation of the response provided in each of the elements of the request contains the wording at paragraph 39, which the Commissioner is satisfied should be interpreted as meaning that no information is held by the public authority which would answer the question.
45. For this reason, and having already explained this to the complainants during his investigation, the Commissioner is unable to require the public authority to provide a clear statement that it does not hold information (as the complainants have asked), as it is apparent to him that the public authority has already done so. If an applicant misinterprets a response, that does not make the response invalid under the Act. Furthermore, the Commissioner will normally consider a complaint in the context of the circumstances which prevail at the time of the public authority's internal review. That internal review states clearly that ***"where we do not provide any information it is because no information is recorded or held"***.

Is the information held?

46. The complainants have gone on to argue that they have evidence that the public authority does hold information of the description specified in the request, citing a press report which appears to indicate that a council scrutiny committee will be looking at the matters raised by the complainants. While this did not form part of the original complaint, the Commissioner has given it some consideration, to the extent that it has a bearing on the original 'not held' response given by the council.

47. The public authority responds that, at the time of the complainants' request, the news report was approximately 6 weeks old and the council scrutiny committee was reported as *"would be looking at [...]"*, in other words, intending to look into the subject of the 11+ in the future. By the time of the request, it had not done so. The Commissioner has seen online copies of the minutes of the relevant committee which do not appear to cover the issues raised by the complainants.
48. While the committee might have intended to address the matter of the 11+, it would be a matter of speculation to infer that its scrutiny would necessarily cover the issues described by the complainants and the Commissioner does not consider the complainants' submission of this press report to be firm evidence that the public authority holds information as they allege.
49. In circumstances where a public authority states that it does not hold information, the standard of proof to be used is the normal civil standard of the 'balance of probabilities'. The Commissioner will look at the scope, quality, thoroughness and results of any searches made by the public authority, together with any other explanations offered as to why the information is not held.
50. The public authority informed the Commissioner that it had been in correspondence with the complainants on the subject of the 11+ system since 2005. Its correspondence log with the complainants has 214 entries, and the request log has 37 entries. This makes it clear that it has, on many occasions made searches for 11+ information on behalf of the complainants, including on the specific matters referenced in the current complaint. The current responses were drafted by council officers well-versed in matters relating to the 11+ and therefore the public authority stated that, to the best of its knowledge, it holds no further information which could be said to be directly related to the complainants' requests.
51. The public authority has therefore explained that, while it did not conduct searches for information in its records in response to this particular request, this was the latest in a succession of letters and requests submitted by the complainants and, by this time, it was familiar both with the nature of the requests, and with the information it held on the subject. The Commissioner is satisfied that the explanations offered by the public authority demonstrate that a search was not necessary in this case.
52. The public authority's wider argument, as expressed to the Commissioner, is that it has been in lengthy contact with the complainants and there is disagreement over what the complainants

describe as problems with the 11+ system, which the public authority does not perceive as problems. For that reason, it has not taken action in respect of many of the issues under discussion and, while the council scrutiny committee might consider some of these matters, under its wide remit, it had not done so by the time of the complainants' request (nor indeed, by the time of the Commissioner's investigation).

53. The Commissioner notes similarities with the Information Tribunal's findings in the case of Linda Bromley & others and the ICO and Environment Agency (EA/2006/0072)³, for example at paragraph 16:

"The Appellants have suggested that the relevant information must have been retained because it related to a "live" flood defence. However, the Environment Agency has consistently said that, although it took account of the existence of the informal flood defence when advising the local planning authority on the flood risk to any proposed new development in the vicinity, it did not own or take responsibility for it, or regard it as an official flood defence structure. Whether or not the Appellants accept that the Environment Agency was entitled to adopt this position, it explains why the Environment Agency would not have given a high priority to the retention of information about the informal flood defence. We find that its explanation for the absence of documents falling within this category is entirely credible and, in the absence of any evidence pointing in any other direction, we accept that on the balance of probabilities, the Environment Agency does not hold any."

54. The complainants have asserted their belief that the public authority holds information, but the evidence they produce in support of that assertion is inconclusive. The public authority, in turn, argues that it does not hold information, that the response was prepared by staff members familiar with the subject matter, and aware of what the public authority holds from the outcome of previous searches on the same general subject, for the same complainants. The public authority also argues that it has no 'business need' to hold the information, as it disagrees with the fundamental premise on which the requests have been made.
55. The Commissioner has been directed to the online minutes of the committee cited as the complainants' evidence, and has not located any entries which would appear to address the subject matter of the complainants' requests. The public authority states that the issues raised by the complainants *"have not been looked at within the past five years"*. The Commissioner accordingly concludes that the balance of probabilities

³ Available online at

http://www.informationtribunal.gov.uk/Documents/decisions/EA20060072_lindabromleyVinf_or_31Aug07.pdf

suggests that the public authority does not hold information of the description in the complainants' request.

Procedural Requirements

Section 10

56. The complainants submitted their request on 29 May 2009, the public authority's response is dated 3 July 2009, a period of 25 working days. This exceeds the statutory 20 working day period for response provided by section 10(1) of the Act.

The Decision

57. 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 correctly denied that it held information of the description specified in the complainants' request.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- By its failure to provide a response within 20 working days, the public authority breached section 10(1) of the Act.

Steps Required

The Commissioner requires no steps to be taken.

Other matters

Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

58. The complainants expressed some difficulty in understanding the nature of the response provided by the public authority. The Commissioner is aware that the council's answer was derived, in part, from phraseology used in the Commissioner's own guidance, but he considers that its use,

in the context of the response provided by the public authority, may have contributed to the apparent misinterpretation of its intended meaning by the complainants.

59. He observes that a similar message could have been communicated more simply, for example a statement along the lines of the following:

"Your request contains a question. We do not hold any information in our records which would answer that question."

Right of Appeal

60. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: 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 sent.

Dated the 06 day of September 2010

Signed

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

Legal Annex

S.1 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'.'

S.8 Request for Information

Section 8(1) provides that –

'In this Act any reference to a 'request for information' is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.'*

Section 8(2) provides that –

'For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,*
- (b) is received in legible form, and*
- (c) is capable of being used for subsequent reference.*

S.10 Time for Compliance

Section 10(1) provides that –

'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.'

Section 10(2) provides that –

'Where the authority has given a fees notice to the applicant and the fee paid is 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.'

Section 10(3) provides that –

'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.'

Section 10(4) provides that –

'The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.'

Section 10(5) provides that –

'Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and*
- (b) confer a discretion on the Commissioner.'*

Section 10(6) provides that –

'In this section –

"the date of receipt" means –

- (a) *the day on which the public authority receives the request for information, or*
- (b) *if later, the day on which it receives the information referred to in section 1(3);*

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.’