

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 24 May 2011

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

### Summary

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The complainant asked the Council to release the details of any discretionary or mandatory rate relief granted to the Scientology Religious Education College (COSREC) in the last 5 years. Specifically, he requested to know why such relief had been granted and to be provided with a copy of COSREC's application for such relief and any information it submitted to the Council in support of this application. The Council informed the complainant that COSREC has been in receipt of discretionary rate relief since at least 1999 and explained why COSREC met the assessment criteria. It confirmed that COSREC's award was reviewed in 2005 and COSREC submitted a revised application and supporting evidence at this time. However, the Council informed the complainant that it could not provide a copy of this information, as it had either been lost or destroyed. As the complainant remained dissatisfied, he approached the Commissioner. The Commissioner has undertaken a detailed investigation and he has concluded that on the balance of probabilities the requested information has either been lost or destroyed by the Council in error. As there are no steps the Commissioner can order by way of a Decision Notice to remedy this situation he requires no further action to be taken.

### 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. The complainant contacted the Council on 15 April 2010 to request the following information:

"In respect of the following property:

8 Ethel Street  
Birmingham  
B2 4BG

please provide details of any mandatory or discretionary relief from non-domestic rates which has been applied at any time over the past 5 years.

If such relief has been applied, please provide:

- a copy of the application and all documents supplied in support of it.
  - the reasons behind the Council's decision to apply the relief".
3. The Council responded on 15 April 2010 addressing bullet point 2 of the complainant's request. It informed the complainant that COSREC is currently in receipt of 80% discretionary rate relief and explained why the application was granted.
4. The complainant wrote to the Council again later that same day (15 April 2010) to request that it address the first bullet point of his request (for a copy of the application and any supporting information) and to explain in more detail exactly why COSREC had been granted such relief.
5. The Council responded on 20 April 2010. It explained in more detail why COSREC had been granted discretionary rate relief. However, it again failed to address the complainant's request for a copy of COSREC's application and any information it sent to the Council in support of it.
6. The complainant requested an internal review on 20 April 2010.
7. The Council replied on 17 June 2010. It explained in more detail why COSREC was granted discretionary rate relief and informed the complainant that the application form received from COSREC in 2005 is no longer held.

## The Investigation

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### Scope of the case

8. On 17 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, he stated that he remained dissatisfied with the Council's response that COSREC's application for discretionary rate relief and any support information supplied with it is no longer held. The complainant confirmed that he understood that COSREC was still in receipt of discretionary rate relief and therefore he felt the Council should still hold the application itself and any information COSREC submitted with this application to support its decision to grant such relief.
9. As the Council explained to the complainant why COSREC is in receipt of this relief in its responses dated 14, 20 April and 17 June 2010, the Commissioner considers this element of the request was resolved prior to the complainant raising a formal complaint with him. This Notice will therefore focus on bullet point one of the complainant's request only and will address whether, on the balance of probabilities, the Council holds COSREC's application for discretionary rate relief and any information it sent to the Council in support of it.
10. The Commissioner notes that the 2005 application was a renewed application for discretionary rate relief and that COSREC has been in receipt of this benefit from at least 1999. For clarity, the Commissioner will be considering COSREC's renewed application for discretionary rate relief in 2005, as this would be the information which falls within the timeframe specified in the complainant's request if it is still held.

### Chronology

11. The Commissioner wrote to the Council on 1 February 2011 to request some additional information.
12. The Council responded on 28 February 2011.
13. As the Council's response of 28 February 2011 raised some additional questions, the Commissioner wrote to the Council on 23 March 2011 to request that it address these outstanding matters as soon as possible.
14. The Council responded on 29 March 2011 providing the outstanding information.

## Analysis

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### Does the Council hold the requested information?

15. The Commissioner made a series of enquiries to the Council to establish whether on the balance of probabilities the requested information is in fact held.
16. The Council confirmed that COSREC has been in receipt of discretionary rate relief since at least 1999. The award was reviewed in 2005 and COSREC was asked to submit a new application and supporting evidence as part of this process. The Council explained that this application was successful and COSREC has been in receipt of discretionary rate relief since. The Council informed the Commissioner that discretionary rate relief awards are due for review again and COSREC is currently assisting it with this process.
17. In respect of the application submitted by COSREC in 2005 and any supporting evidence, the Council advised that it is unable to provide the complainant with a copy of this information as it is no longer held. It stated that it has made numerous searches of its storage facilities to try and locate this information. However, these searches have been unsuccessful and the requested information cannot be found. The Council explained that it is of the view that the requested information has either been lost or destroyed in error.
18. The Commissioner questioned whether this information should be held and asked the Council to explain in more detail exactly what searches it has undertaken to try and locate this information. He also requested the Council to provide a copy of its records management policy.
19. The Council responded to the above matters. Concerning the searches it has undertaken, it first explained exactly how the requested information should be held. It explained that prior to 2009 all discretionary rate relief applications were kept in hard copy only in a particular storage facility operated by the Revenues Office. Prior to 2009 no applications were held electronically. This practice changed after 2009 and all new applications were scanned on to the electronic management system. The Council confirmed that there was also an exercise undertaken shortly afterwards to back scan all hard copy applications received prior to 2009 on to the same system.
20. The Council confirmed that in theory COSREC's 2005 application should be held on the electronic management system. However, this system has been checked thoroughly several times and the application is not held on this database. The Council explained that it is of the view that this information must have been lost or destroyed in error prior to this

exercise because if it had not it would have been scanned on to the electronic management system and therefore held on this database.

21. The Council explained that it does still hold a selection of hard copy applications. Again, this storage facility has been checked several times and COSREC's application is not held here. It confirmed that this information would only be held in these two locations and it cannot be located.
22. Regarding the Commissioner's request for a copy of its records management policy, the Council confirmed that it does have a formal policy in place but this was only implemented recently. It provided a copy of its policy for Revenues data and explained that the revised policy was developed as a result of this request and its acknowledgement that its previous procedures were insufficient. Prior to this policy, it was the Council's procedure to destroy these applications after a period of 7 years (6 years and the current year) regardless of whether the claim was still live. This has now been changed so that all applications are retained for the life of the claim plus 12 months.
23. Having made detailed enquiries to the Council the Commissioner is satisfied that on the balance of probabilities the requested information is no longer held. He is satisfied that the Council has undertaken sufficient searches to try and locate the requested information. As it cannot be located he can only conclude that it has either been lost by the Council or destroyed in error.

### **Procedural Requirements**

24. The Council failed to inform the complainant within 20 working days of his request whether it holds the information he requested in bullet point one of this request. The Council failed to address this aspect of his request until 17 June 2010 when it informed the complainant that the information is not held. The Commissioner has therefore found the Council in breach of section 1(1)(a) of the Act in this case.

### **The Decision**

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25. The Commissioner's decision overall is that the Council dealt with the request for information in accordance with the Act. However, it is noted that the Council breached section 1(1)(a) of the Act in this case as it failed to inform the complainant within 20 working days whether it holds the information he requested in bullet point one of his request.

## Steps Required

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26. The Commissioner requires no steps to be taken.

## Other matters

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27. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern in respect of the Council's handling of this request. Regarding the complainant's request for an internal review, the Commissioner notes that the Council took 8 weeks to respond. The complainant's request was made on 20 April 2010. However, the Council did not respond until 17 June 2010.

28. There is no timescale laid down in the Act for a public authority to complete an internal review but the Commissioner has since issued guidance which recommends 20 working days from the date of request as a reasonable time for completing an internal review and (in exceptional circumstances) no later than 40 working days. Also, Part VI of the Code of Practice issued under section 45 of the Act states in this regard:

*"41. In all cases, complaints should be acknowledged promptly and the complainant should be informed of an authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the complainant and explain the reason for the delay."*

29. The Commissioner notes that, in failing to advise the complainant of the estimated date for completion of the internal review and in failing to complete the internal review within a reasonable timescale the Council failed to conform to Part VI of the section 45 Code of Practice.

## Right of Appeal

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30. 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](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 sent.

**Dated the 24<sup>th</sup> day of May 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### 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."