

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 February 2012

**Public Authority:** Welwyn Hatfield Borough Council

**Address:** The Campus  
Welwyn Garden City  
Herts  
AL8 6AE

### Decision

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1. The complainant has requested information from Welwyn Hatfield Borough Council in connection with certain enactments and legal matters. The public authority was unable to determine what the information described in the request might be, and requested clarification from the complainant. Having received the complainant's response, it has disclosed information to him.
2. The complainant is not satisfied with the response to his request and has complained to the Information Commissioner that information he requested has not been disclosed.
3. The Commissioner's decision is that the public authority has responded to the complainant's request as far as it is able, given the nature of the initial request and the clarification it has obtained from the complainant. He requires no further action to be taken.

### Request and response

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4. On 10 April 2011, the complainant wrote to Welwyn Hatfield Borough Council (the council) and requested information from it. The request is reproduced in full at Annex 1 to this decision notice. There is one overt request at section 1, relating to payments to barristers instructed by the council and further elements at sections 2,3 and 4, which may be interpreted as requesting copies of various statutes. One element, section 5, refers to decisions of the Local Government Ombudsman against the council.

5. The council responded on 18 April 2011. It stated that it required further clarification from the complainant to ascertain exactly what information he required. It explained that the request appeared to relate to a specific court case, and asked the complainant to tell it which case this was. It also gave its understanding of the request in relation to the five numbered parts, stating:
  - Section 1 concerns costs, which it understands.
  - Sections 2, 3 and 4 relate to Acts of Parliament and Statutory Instruments, and these are available from the relevant government offices.
  - Section 5 requires no clarification.
6. On 12 May 2011, the council reminded the complainant that it was unable to process his request until it received clarification, which had not been received at that point.
7. On 17 May 2011, the complainant provided the clarification reproduced at Annex 1 to this decision notice.
8. The council replied on 1 June 2011. It summarised its attempts to obtain clarification by email and over the telephone on various occasions between 18 April and 17 May 2011. It explained its interpretation of the request in light of the clarification it had received in a telephone conversation with the complainant on 17 May 2011, followed by two emails (the first of which is reproduced at Annex 1), as follows:
  - Question one was understood to be seeking the costs that the council has paid to barristers in the court case referred to in the request. This was refused as confidential, under section 41 of FOIA;
  - Its response to question two explained that the Act specified in the request was repealed by the Local Democracy, Economic Development and construction Act 2009.
  - Its response to question three explained the purpose of the legislation cited by the complainant.
  - The council confirmed that, in respect of question four, the specified Act is available from the relevant government department.
  - It disclosed information about the number of times decisions had been made against the council for each of the years 2008-2009; 2009-2010, 2010-2011. It clarified that these decisions were not only in relation to planning matters and provided a link to its website for specific planning cases and appeal decisions.

9. Following an internal review the council wrote to the complainant on 16 June 2011. It stated that its responses to sections 2,3,4 and 5 should stand, and it disclosed the global figure paid to its barristers in response to part 1 of the request.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the council had refused to provide information and explained that the Supreme Court had not disclosed the [Court] Orders and Final Costs Orders to him.
11. The Commissioner contacted the complainant to give him an opportunity to comment on the proposed scope of his investigation. The complainant's response did not raise any points which require the Commissioner to change that scope. The Commissioner therefore considers that his investigation is to determine whether any requested information has been incorrectly withheld by the council.

### **Reasons for decision**

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#### **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(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."

12. The Commissioner has examined the request quoted at Annex 1 to this decision notice. To the extent that the 'clarification' submitted by the complainant on 17 May 2011 is of assistance, it specifies the court case of interest to the complainant and lists five elements. Those elements, however, are not found in the original request and it is far from clear that they are related, directly or indirectly, to elements in the original request.
13. Furthermore, the 'clarification' contains numbered elements which do not appear to relate to the similarly-numbered elements in the original request, and numbered elements whose numbering does not correspond to numbering in the original request.
14. The Commissioner observes that the greater part of the initial request is somewhat opaque, and the 'clarification' provided by the complainant does little to render the request easier to understand.
15. Under section 1(3) of FOIA, above, where a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant that it requires that clarification of the request, it is not obliged to comply with the request unless it is supplied with that clarification. The Code of Practice issued under section 45 of FOIA<sup>1</sup> (the section 45 COP) relates to good practice for compliance with FOIA. The section 45 COP gives guidance on, among other things, good practice for providing advice and assistance to applicants, in order to help them frame a request which a public authority is able to comply with.
16. The section 45 COP also states, at paragraph 12, that there are limits to the extent of the advice and assistance a public authority is expected to provide:

*"If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption [...]"*

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<http://webarchive.nationalarchives.gov.uk/20100512160448/http://www.foi.gov.uk/reference/impref/codepafunc.htm#partII>

17. The Commissioner is aware that the council sent three emails to the complainant on 18 April, 12 May and 17 May requesting clarification, receiving responses which were of little or no assistance to it. It also spoke to the complainant on the telephone directly before receiving the clarification reproduced at Annex 1 to this decision notice. The Commissioner spoke to the council, which explained that its telephone discussion of the request with the complainant led it to the view that the first part of the request related to the costs to the council, in respect of various elements of the court case which was of interest to the complainant.
18. The Commissioner notes therefore that the council went to some lengths to try to understand what the complainant was asking for, and that its understanding of the request does not rest solely on interpretation of the 17 May email but, as it explained in its response to the complainant, also on the outcome of a telephone conversation shortly before that clarification was received.
19. The Commissioner is satisfied that the council has given sufficient advice and assistance to the complainant, including writing to him and speaking to him on the telephone and that, as confirmed in paragraph 12 of the section 45 COP, it is therefore entitled to deal with the request, to the extent that it understands it having received the complainant's clarification.
20. It has determined that the complainant had requested the costs paid to barristers in the specified case. The Commissioner agrees that this is a reasonable and objective interpretation of item 1 in the original request. Items A-E in that part of the request, insofar as they assist the reader, appear to list those elements of the case which the complainant wishes to learn have attracted costs paid to the council's barristers.
21. The information about costs paid to barristers was initially refused, but a global figure for these costs was subsequently disclosed at internal review. That information has therefore not been refused. The complainant has not indicated that he required this figure broken down into constituent parts. The complainant comments to the Commissioner about the costs order from the Supreme Court. To the extent that this comment is of assistance to the Commissioner, it does not suggest that the complainant was expecting to receive anything other than a global figure for the payments to barristers instructed by the council, as has been disclosed to him.
22. The council responded to items 2, 3 and 4, as far as it was able due to its understanding of the request, and disclosed information in response to item 5 of the request which was clear enough on its face for a response to be given without clarification.

23. The Commissioner has not found any instance of the council refusing information, subsequent to the internal review. If the complainant remains dissatisfied with the response he has received, the Commissioner's finding is that this is likely to be a consequence of the complainant's failure to describe the information he requested, in terms which would have enabled the council to locate that information. The Commissioner has also seen copies of internal emails, and correspondence from the council to the complainant which shows that the council tried hard to establish what the complainant required.
24. The evidence suggests that the council went to some lengths to try to understand what the complainant was asking for, but that he has failed to respond constructively to the council's requests for clarification. It has followed the steps required in the section 45 COP and it is not required to go to greater lengths in order to understand the request.
25. The Commissioner finds that the council has correctly disclosed the information which it was able to identify from the complainant's clarification and has not withheld any information so identified. He does not uphold the complaint.

## Right of appeal

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26. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex 1 – the request for information and clarification of the request**

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### **Request (10 April 2011)**

"hereby make a request that: -

1. You should provide us with the details of the payments made to the Barristers instructed by the Council in the case of: -

Secretary of State for Communities and Local Government (Respondent) and Welwyn Hatfield Borough Council (Appellant)

- A. Planning Inspectorate Appeals Office.
- B. High Court of Justice Administrative Court Office.
- C. Court of Appeal Civil Division. (2010) EWCA Civ 26.
- D. Supreme Court of the United Kingdom. Decision given on the 6th April 2011
- E. Copy of the Order made in the Supreme Court of the United Kingdom.

2. The Repeals made under Schedule 9 of the Planning and Compulsory Purchase Act 2004.

Town and Country Planning Act 1990 Part 2.

Section 55 (2) (b), the Word " Local"

Section 73 (3)

Section 76

Section 83 (1)

Section 106 to 106 B

Section 294 to 297

Section 299 to 301

3. The Statutory Instrument 1995 No 297

Class B1

Class B2

Class B8 Storage.

List of Planning Permissions given under the General Permitted Development Order 1995 No 418 Schedule 2 Part 3 Changes of use to a Building.

Where the space does not exceed more than 235 Square Metres of Floor Space.

4. The Equality Act 2010 and Statutory Instrument 2011 No 1060

Which came into force on the 4th and 5th April 2011.

5. Decisions made against the Council by the Local Government Ombudsman Commissioner's Office in the last three years for Mal-Administration in the Council"

#### **Clarification of the request sent by the complainant (17/05/2011)**

- "1. ENFORCEMENT NOTICE Issued by the Council
2. Costs before the Planning Inspectorate.
3. Costs and Orders made in the High Court of Justice
4. Costs and Orders made in the Court of Appeal.
5. Order made in the Supreme Court of the United Kingdom and Costs paid to the Counsel-Barrister.

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Section 66 to 72 of the Town and Country Planning Act 1971 was repealed under Schedule 12 of the Housing and Planning Act 1986.

This is a Parliament Act

Control on Industrial Development had been abolished.

List of Planning Permission during the last 10 Years-

General Permitted Development Order 1995 No 418

Class B1 (C)

Class B2

Class B8 Storage

House of Lords decision- Newbury District Council Versus The Secretary of State for the Environment.

And

Dunoon Developments Ltd Versus The Secretary of State and Poole District Council which was decided in the Court of Appeal in the Year 1992

3. "The Planning and Compulsory Purchase Act 2004"

Schedule 9 Repeals

As many other Sections under the TCPA 1990 had been repealed

4. The Local Democracy, Economic Development and Construction Act 2009: -

This Act does not repeal Schedule 9 Repeals.

5. The Information Commissioner's Office

A copy had been sent to them as under the Freedom of Information Act 2000, you had to respond to us within a period of 20 days, and not compel us to provide more information as if you don't understand than your statement is inadmissible evidence on a point of law."

6. Her Majesty's Courts & Tribunal Service

High Court of Justice- Queens Bench Division

Technology and Construction Court-

Application for Permission of the High Court Judge-

Before Mr Justice Ramsay-

An Application Notice shall be made for a disclosure Order before the High Court Judge, and for a declaration that under Section 8 of the SCA 1981, the High Court Judge is also a Judge of the Crown Court.

7. The Upper Tribunal:

There is an Appeal before the Upper Tribunal,

We have to lodge some documents, as you have caused us delay. If you could provide the above information within a period of Seven days

You can inform the Registrar of the Upper Tribunal how many days you require to furnish copies of those documents by E-Mail or on a CD Disk that any person in the future can have reasonable access without causing more expenses.

8. Application Notice for a Disclosure Order before a High Court Judge under the SCA 1981

We shall have to make an Application without any further notice, where you shall have to pay the costs.