

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2013

Public Authority: North East Derbyshire District Council

Address: The Council House
Saltergate
Chesterfield
S40 1LF

Decision (including any steps ordered)

1. The complainant requested information relating to the councils sale of land in Mickley. The council provided a report it had undertaken into the sale of the land stating that this would answer his concerns. However the complainant wrote back stating that the report did not answer the specific questions he had asked the council to respond to. The Commissioner's decision is that the complainant is correct in arguing that the report does not answer all of his specific requests, although it does respond to some of them. However during the Commissioner's investigation the council fully responded to the complainant. He therefore requires no steps to be taken by the council.
2. The Commissioner's decision is that North East Derbyshire District Council (the council) did not respond fully to the complainant within the specified time period of 20 working days required by section 10(1) of the Act.

Request and response

3. On 21 May 2012 the complainant wrote to a specific officer at the council and requested information relating to land in Mickley in the following terms:
- a) With the vast 'increase' in land and house prices during the period 2004-2006; why was the price of £80 000 in 2006 still acceptable to the council? Why were the house/land price index increases not applied?
 - b) Did you as valuation officer and as a RICS member protest at this static price and did you seek to secure a higher price (i.e. market value) as one would naturally expect for a RICS member?
 - c) If you did register a protest; which parties at NEDDC refused to acknowledge that a substantial price increase was warranted?
 - d) Have you any documentation available to verify the reasons for not applying the appropriate increase in the lands valuation over a significant 2 year time span?
 - e) According to the Development Brief, the purchaser was requested to make payment in full. Therefore, why was Wulf Investments allowed to make an £8000 deposit in April 2006 and when was the remaining £72 000 paid over to the council?

The complainant also included at the bottom of his request: "*Please provide documents to support your response.*"

4. The council said that the chief executive responded to the request on 29 May 2012. It later confirmed to the Commissioner that this was a mistake and that the actual date of the letter was 26 May 2012. The complainant says that he did not receive that letter, and hence he wrote to the council again on 9 June 2012 stating that his questions should be considered to be FOI requests and that the council should respond appropriately.
5. The council's chief executive responded to this on 25 June 2012. He provided a review report which the council had undertaken into the sale of the land in question and stated that this should hopefully resolve any issues which the complainant may have regarding the land sale. In effect this stated that the council took the decision to put the land onto the open market and that only one bid was received. The market price had therefore been determined by offering the land on the open market for sale.

6. Following this the complainant wrote to the council on 30 June 2012 asking it to review its decision and to respond to the specific questions he had asked. He also asked further questions about the council's response which the council took to be further requests for information. He asked:
 - f) Why the chief executive of the council had responded instead of the officer he had initially written to.
 - g) He stated that the report was clearly inconsistent and inaccurate, with many issues being 'argued' rather than being factually accurate or correct and other issues being merely dismissed or diverted. He gave an example from the report and commented: *"How did the council 'receive £200 000' when clearly the shop at Mickley is not and never has been an asset of the council? How can an 11% uplift be applied to something the council does not own?"*
 - h) He stated that his conclusion on the report was that it was drafted so as to mislead anyone reading it into believing that £200 000 has been banked by the council from this land sale and stated that this was untrue.
7. Following an internal review the council wrote to the complainant on 25 June 2012. The council provided the following responses:
 - a) It said that the response was held in the minutes of the executive meeting held in 2004. It explained that it had chosen to test market prices by putting the site on the open market. It provided the complainant with a copy of those minutes.
 - b) It explained that the process was as outlined above.
 - c) Again it stated that the process was outlined above.
 - d) Again it stated that the process was outlined above.
 - e) It stated that the answer to this question was held in its response to FOI requests numbers 228 and 229 which were available from its website. It did not provide a copy of the minutes to the complainant. It also explained that it was normal for a deposit to be paid, and the full payment to be made on completion of the contract.
 - f) It explained that the chief executive could respond on behalf of officers should he choose to do so. He had done so on this occasion because he considered that officers had been harassed in relation to this issue though other requests for information (not

made by this complainant) in relation to this matter. As an employer the council is duty bound under employment law to protect its staff from harassment.

- g) It said that the complainant's 'question' was in fact a statement of opinion and that the council disagreed with that opinion. It also stated that it did not agree that the report was drafted to mislead.
- h) As regards the sum obtained by the council in return for the land it stated that the £200 000 was received partly in cash and partly in other value. It referred the complainant to FOI requests 228, 229 and 357 on its website for further information. It later provided the complainant with a copy of these requests.

Scope of the case

- 8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argues that the council has not answered his specific questions and has instead simply relied upon the report and the minutes of a meeting to justify its position. He argues that neither the report nor the minutes answer the questions he has asked.
- 9. The Commissioner considers that the complainant's complaint is therefore whether the council's response complies with the requirements of the Regulations.

Reasons for decision

- 10. Section 1(1) of the Act states 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."

- 11. Section 10(1) of the Act states 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."

12. The complainant's initial request for information was made to a particular council officer. The Act provides a right to request information from a public authority rather than from an individual within that authority. The chief executive's response on behalf of the officer was therefore compliant with the Act.
13. The Act provides the right to request recorded information held by a public authority. There is no requirement under the Act to respond to direct questions, however if recorded information is held which can respond to the questions asked then that information should be considered for disclosure by the authority. In this case the complainant made clear when asking his questions that he wanted copies of any documents held which the council was using to support its response to his questions. The Commissioner notes that this is not the same as asking the council for all documentation relating to the matters to which the request relates. It is a qualified request for information which the council is relying upon when answering his questions.
14. The council's response to the complainant's requests was to provide him with a copy of a review into the matter. It subsequently provided him with a link to the FOI section of its website in order to respond to other parts of his request. It also disclosed minutes of meetings which referred to the matters asked about.
15. In response to question a) and d) the council did not state whether further information is held, nor did it clarify whether any information was being withheld. It did not however need to do so as the complainant had stated that he only wanted copies of documents which the council was relying upon to support its arguments. The council was relying upon the review to explain its actions in placing the property on the open market.
16. The Commissioner therefore considers that the council sought to answer the questions asked by the complainant. Its response answered the question he had asked, and it also provided a copy of the documents which supported its response.
17. Question d) is responded to in that the council minutes showed that the reason for not applying an uplift for the intervening 2 year period was because the council sought to obtain best value by placing the property on the open market. No uplift would be applicable as the cost of the land was to be determined by the bids it received. Whether that was the correct decision or not is not a question for the Commissioner to consider.
18. The complainant believes that the minutes are not an accurate reflection of the meeting. However the minutes are the records which were

recorded and are held as accurate by the council. The council has complied with the request by providing these even if the complainant disputes whether the minutes are an accurate representation of the meeting itself. The Act relates to recorded information held by an authority, not whether those records are correct or not.

19. The Commissioner is therefore satisfied that the council has complied with the requirements of the Act as regards questions a) and d) above. The council was under a duty to consider the documents it held which supported its response to his question for disclosure and it did so.
20. The complainant also asked specific questions relating to the actions of the officer he had initially written to, (questions b) and c) above). He asked the officer to clarify whether he had protested the price and whether he had taken any action relating to that such as protesting the value which the land was being sold at. The council's response to these questions merely referred the complainant to its response to part a) and d) and reiterated that this was the process which took place.
21. The council's response was inadequate as it did not specifically confirm or deny whether information was held which could respond to those parts of the request. Whilst the Commissioner recognises that the council did answer the complainant's questions as regards how the sale price was reached, its response did not specifically confirm whether any of specific information requested was held relating to the officer protesting the sale price. This effectively left the complainant not knowing whether the officer concerned had raised concerns or protested about the sale price.
22. The Commissioner therefore contacted the council and pointed out that it had not responded appropriately to this part of the request. The council admitted that it had not dealt with this as well as it should and agreed to provide a response to the complainant outlining whether it held relevant information. It did so on 22 May 2013.
23. In general, the council is under a duty confirm whether information is held which falls within the scope of the request within 20 working days. It did not initially do so regarding this specific information. The request was received on 21 May 2012 but the council did not respond stating whether information was held until 22 May 2013.
24. The Commissioner's decision is therefore that the council has not complied with the requirements of section 10(1) of the Act as regards questions b) and c).
25. The Commissioner has considered the council's responses to the remaining questions g) and h). His decision is that the council was

compliant with the Act. Where the questions were in fact statements of opinion the council is not under a duty to provide information in response to that as they are not valid requests under the Act. The Act does not require a public authority to engage in discussion over the nature of its actions or the reasons for its decisions. It merely requires it to provide recorded information. The Commissioner notes that the council did try to provide some information to support its position in that it referred the complainant to its responses to previous FOI requests.

26. Further correspondence has taken place between the parties since the complaint was made to the Commissioner. In that correspondence the council provided copies of the FOI requests which it referred to in its responses to the complainant. The Commissioner notes that the complainant subsequently asked the council to reconsider his requests outside of the Act, not as FOI requests. It appears that he was frustrated with the council's answers simply referring to documents held (or not held) by the council. In effect, at that point the council was absolved from making further responses to the complainant under the Act. However this did not absolve it from making a full response to the initial requests.
27. In conclusion therefore the Commissioner's decision is that the council breached section 10(1) in that it did not respond to the complainant's request at b) and c) as required by section 1(1)(a) within 20 working days. It has subsequently confirmed however that it holds no information which can respond to this request other than the information which it has already disclosed to the complainant.
28. Given that the council has now responded to the complainant confirming that no information is held however the Commissioner does not require the council to take any steps.

Right of appeal

29. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

30. 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.
31. 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