

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2014

Public Authority: Central Bedfordshire Council

Address: Priory House

Monks Walk

Chicksands

Shefford

Bedfordshire

SG17 5TQ

Decision (including any steps ordered)

1. The complainant has requested information generated by proposals for developments within the boundaries of Central Bedfordshire Council.
2. The Commissioner's decision is that Central Bedfordshire Council has released to the complainant all the requested information which it held at the time of the request and where it was required to do so.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Background

4. Central Bedfordshire Council ("the Council") is in the process of developing and implementing a Development Strategy which will be the main planning document for Central Bedfordshire. It will set out the overarching spatial strategy and development principles for the area

together with more detailed policies to help determine planning applications.¹

5. The Community Infrastructure Levy² (CIL) is a central government initiative regarding the funding of the infrastructure that councils need to support the well-planned growth of their areas and the needs of their residents. It is a development tax, adopted and collected locally, which is imposed on the grant of planning permission and becomes due for payment on the commencement of building works. The Council is a charging authority under the CIL legislation.

Request and response

6. On 1 June 2013, the complainant wrote to the Council and requested information in the following terms:
 1. Please supply a list of meetings held between the planning Officers or Members at Luton Borough Council and Central Bedfordshire Council in / since 2011 regarding the Development Strategies for Luton or Central Bedfordshire?
 2. Please supply copies of any letters between Officers or Members regarding to the Development Strategies / Local Plans for Luton or Central Bedfordshire since 2011?
 3. Please supply copies of any transport reports relating to Junction 11a, the Luton Northern Bypass or the M1- A6 link since 2011?
 4. Please supply a copy of any contracts or legal agreements between Central Bedfordshire Council or Luton Borough Council and the developers to the North of Luton or Sundon Quarry?
 5. Please detail how much the developers are contributing to the infrastructure costs to their respective developments to the North of Luton and Sundon Quarry?

¹ <http://www.centralbedfordshire.gov.uk/planning/strategic-planning/development-strategy.aspx>

² <https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>

6. Please supply any information relating to the Tax Incremental Finance test that was undertaken for the Luton Northern Bypass?
 7. Please supply a copy of any letters from the Assets and Finance Department at Central Bedfordshire Council regarding their landholdings to the North of Luton that is included in the Development Strategy as a preferred location for growth?
7. The Council ultimately provided to the complainant the information requested, or notification of what it did not hold, in relation to requests 1, 2, 3, 4 and 6.

Scope of the case

8. The complainant contacted the Commissioner, on 26 June 2013, to complain about the way his request for information had been handled.
9. In a letter dated 15 January 2014, the complainant confirmed to the Commissioner that ultimately he only took issue with the Council's handling of his information requests 5 and 7. The Commissioner therefore restricted his investigation to the Council's handling of requests 5 and 7.
10. On 16 May 2014, the Council released further information (pursuant to information request 7) to the complainant. It consisted of an email exchange between the Council and third parties. However, on the grounds it was personal data, the Council (relying on section 40(2)) redacted certain names and other personal data from those emails.
11. The complainant has confirmed to the Commissioner that he did not take issue with the withholding of information by relying on section 40(2), as described above.

Reasons for decision

12. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.

13. Request 5

"Please detail how much the developers are contributing to the infrastructure costs to their respective developments to the North of Luton and Sundon Quarry?"

14. The Council's position on this is that it does not hold the requested information.
15. The complainant disputes this and has provided to the Commissioner, by way of evidence, documentation related to the Draft Community Infrastructure Levy (CIL)³ published by the Council in January 2013, from which he concludes that all the critical funding for new infrastructure (i.e. the A6-M1 link etc.) has been secured through development.
16. In reply to the complainant's assertion, the Council has said in a letter to the Commissioner dated 4 December 2013 as follows;

"In our response to the request for the amount that the developer is contributing to the scheme, we stated that the amount has not yet been calculated and this response was upheld on appeal. The complainant disputes this and has provided, by way of evidence, documentation related to the Draft Community Infrastructure Levy (CIL) published by the Council in January 2013, from which he concludes that all the critical funding for new infrastructure (i.e. The A6-M1 link etc.) has been secured through development.

This is misinterpretation of the published CIL documentation which clearly states that costs are still being considered. At the time of the request, we had not entered into negotiations with the developer nor had we conducted any viability studies which may have provided an indication of the expected contribution development might make. As this work had not been carried out, there is no way we could have held this information..."

17. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of "on the balance of probabilities".

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http://plaintext.centralbedfordshire.gov.uk/Images/PDCS%20Final%2010%2001%2013_consultation%20version_tcm8-47709.pdf#False

18. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
19. Having regard to both assertions and upon considering the evidence put forward by both parties the Commissioner is satisfied that, at the time of the request, the Council did not hold information as per request 5.
20. In particular the Commissioner makes this finding on the evidence actually supplied by the complainant. The document itself states, for example, as follows-

"The Preliminary Draft Charging Schedule is the Council's first stage consultation on its proposed CIL charge. It is an opportunity to consider whether the Council should proceed to formally adopt a Charge and at what level or levels the Charge(s) should be set. Comments, responses and representations will be taken into account prior to the second Draft Charging Schedule stage later this year."

21. This evidence strongly suggests to the Commissioner that matters were in the preparatory stages of development. Any actual developers' contributions to infrastructure development appear therefore not to have been fixed at the time the information request was made.

22. **Request 7**

"Please supply a copy of any letters from the Assets and Finance Department at Central Bedfordshire Council regarding their landholdings to the North of Luton that is included in the Development Strategy as a preferred location for growth."

23. The Council's position is that it does not hold the requested information. It stated to the Commissioner (in a letter dated 4th December 2013) that-

"This complaint relates to his request for copies of any letters from our Assets team in relation to landholdings to the north of Luton. In our original response we stated that no letters were held but on review it was stated that this was not correct but that any letters sent by Assets would⁴ be commercially confidential.

⁴ On this , see paragraph 31 below.

Having revisited this section of the request, I can confirm that there are no formal letters from the Assets team with regards to the Council's landholdings affected by this development.

In order to determine this, we have carried out an extensive search of the Council's file servers concentrating in particular on the Assets section of the network. Although the Council is implementing a document management system, it does not yet extend to Assets so it is not possible to carry out any form of robust keyword search but by reviewing those folders directly linked to the development we have been able to determine that no formal letters exist. We recognise that the wording in our response to the complainant's appeal is misleading in that it suggests that such letters do exist and for that we apologise."

24. The complainant countered the Council's assertion in a letter to the Commissioner dated 15 January 2014. The complainant stated that-

"... for any land to be considered for development landowners would have to respond to the "Call for sites" and complete a pro-forma by 26 March 2012. This included contact details, site location, ownership details, proposed development /land use and site details/constraints. These matters (and others) were all to be required to be disclosed by landowners."
25. The complainant also provided the Commissioner with a pro-forma and a copy of a "Call for Sites" advertisement that is (he says) targeted at agents, landowners and developers. The complainant also queried that if the Council has not written any letters (i.e. the subject matter of Request 7) how could Council owned land be included in the plan for developments for the north of Luton?
26. The Commissioner put these assertions of the complainant to the Council in correspondence dated 22 January 2014. The Council eventually supplied the Commissioner with its substantive reply on 17 April 2014.
27. It said, as to the complainant's letter of 15 January 2014, that as a landowner it is part of the consortium of those that own the land that the bypass (this being specifically mentioned in the complainant's letter of 15 January 2014) will be built upon but it does not mean it was a developer at the time of the request. It, at the time of the request, had not entered into negotiations with developers and therefore it did not hold any information regarding "its" contribution.
28. As stated more fully above the Commissioner must determine this issue on the balance of probabilities.

29. On balance the Commissioner accepts as correct the explanation of the Council. The Commissioner is satisfied, primarily since the "developments" were in their early stages at the time of the request that the information being sought by the complainant had yet to be actually generated. Furthermore the Commissioner has not been able to ascertain that the Council was a developer at the time of the request. This goes to supporting the assertions of the Council that it would not have responded to the "Call for Sites". That is, at the time of the request, the Council had not submitted plans to develop land North of Luton.
30. The Commissioner is satisfied by the Council's explanations and searches for information confirmed that the requested information was not held by it. Notwithstanding the complainant's legitimate concerns the Commissioner's view is that at the time of the request the plans for development had not reached a stage whereby the information sought had been generated.

Other matters

31. It would appear that rather than checking to see whether it actually held the requested information (see paragraph 23 above), the Council simply assumed that any letters would be commercially confidential. The Commissioner impresses upon the Council (and public authorities in general) the importance of actually carrying out appropriate checks and searches for requested information, rather than making assumptions (however reasonable) that such information is held and/or would be exempt from disclosure.

Right of appeal

32. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF