

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 September 2014

Public Authority: Your Homes Newcastle
Address: YHN House
Benton Park Road
Newcastle upon Tyne
NE7 7LX

Decision (including any steps ordered)

1. The complainant has requested information from Your Homes Newcastle which concerns a consultation exercise it conducted in 2012/13, focussed on the possible segmentation of communal land at the rear of properties at three locations.
2. The Commissioner's decision is that, on the balance of probabilities, Your Homes Newcastle does not hold the information sought by the complainant and consequently YHN, by informing the complainant of this, has satisfied the requirements of section 1 of the FOIA.
3. The Commissioner does not require YHN to take any further action in this matter.

Request and response

4. On 6 February 2014, the complainant wrote to Your Homes Newcastle ("YHN") and requested information in the following terms:
 1. "All documents / emails etc relating to a consultation exercise conducted in 2012/2013 with residents / occupants in properties in Wretham Place / Coppice Way / Shield Street in Shieldfield (NE1 1XU) in connection with a proposal to divide the existing area of open space to the rear of these properties into separate private gardens.

2. The results of that consultation exercise in terms of: the number of occupants / residents responding; the number indicating support for the proposal; the number indicating opposition; and the number not responding.
3. All emails / documents and other correspondence (including between officers / councillors / members of the public etc) relating to the outcome of the consultation exercise and any decisions on future action consequent to it.
5. On 9 April YHN responded to the complainant's request by confirming that, 'a consultation exercise took place, however there is no supporting documentation'.
6. On 29 April the complainant wrote to YHN to complain about its response to his information request. The complainant expressed his belief that the consultation revealed strong support from the tenants of the properties included in the exercise to the dividing up of the identified land into private gardens. The complainant considered that YHN chose not to pursue that option.
7. On 29 May YHN concluded its internal review of the way it had handled the complainant's request. YHN advised the complainant that, 'the housing officer who carried out the informal garden consultation exercise approximately two years ago recalls seeking the views of the related residents. Whilst notes of the informal consultation may have been taken at the time concluding that very few people were interested, the records are no longer retained'.

Scope of the case

8. The complainant contacted the Commissioner on 18 June 2014 to complain about the way his request for information had been handled.
9. In his complaint to the Commissioner the complainant stated that:
10. "Any public body undertaking such an exercise would have a paper and electronic record. One would expect there to have been formal authorisation from Senior Management for the exercise to have been conducted. Presumably it was part of a wider consultation exercise on similar type properties within Newcastle. Further, members of the public can rightfully expect a public body undertaking such an exercise to give

feedback stating what the outcome was and what further action will be taken (the principle of legitimate expectation).”

11. To further support his contention that YHN holds recorded information relevant to his information request above, the complainant provided the Commissioner with documentation he received on 17 June in respect of a second request for information made to YHN. The second request concerned a different consultation exercise to enclose Byron Street, Napier Street and Milton Street and YHN was able to furnish the complainant with several pieces of recorded information.
12. The focus this notice is the Commissioner’s determination of whether, on the balance of probabilities, YHN holds recorded information falling within the terms of the complainant’s request.

Reasons for decision

Section 1 – Is the information held?

14. Section 1 of FOIA 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.”

15. The Commissioner has sought to determine whether, on the balance of probabilities, the YHN holds the information sought by the complainant.
16. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
17. The Commissioner began his investigation of this complaint by asking YHN to explain the nature of the consultation in respect of Wretham Place, Coppice Way and Shield Street. He also asked YHN a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.

18. YHN advised the Commissioner that the consultation was an informal exercise to gauge resident's views about the possible division of the open spaces to the rear of the properties on the named addresses.
19. The consultation was prompted following an enquiry made by a local ward councillor. YHN was able to give the Commissioner this information as both the Housing Services Manager – who authorised the exercise, and the Housing assistant - who conducted the consultation, both recalled the exercise in question.
20. The communal land at the rear of the properties was maintained by Newcastle City Council under a grounds maintenance contract and there had been fly tipping in the areas concerned. The exercise was undertaken to see whether the residents of the effected properties would be interested in the land being segmented and maintained by those residents.
21. The exercise involved the Housing Assistant visiting each of the properties in question and canvassing the views of those residents who answered their doors.
22. There was only one resident who expressed their interest in the segmentation of the land, with the remaining residents who responded to the Housing Assistant's enquiry, preferring the communal land to remain under the terms of the grounds maintenance contract. YHN provided informal feedback about the consultation to the local ward councillor who had made the initial enquiry.
23. In order to determine whether YHN holds recorded information relevant to the complainant's request searches were made of its paper records. It is YHN's practice to hold copies of all formal customer contact in 'house files'.
24. Although it is not its normal practice for emails to be stored for long periods, YHN also searched its email records as undeleted emails would likely be identified by the search.
25. As relevant information might have been saved in YHN's network folders, a search was made of these for such items as copies of emails and minutes of meetings.
26. Neither the Housing Services Manager nor the Housing Assistant recalled having made electronic notes relating to the consultation exercise and nothing of that nature was found as a result of the searches made. The search terms used included the addresses of the properties, the estate name and the councillor's name who prompted the exercise.

27. In addition to searching its electronic system the Housing Services Manager and the Housing Assistant searched their personal non-electronic paperwork to ascertain whether any one-to-one records, contemporaneous notes or paper files were held. The local ward councillor was also asked whether he had retained emails relating to the consultation exercise.
28. YHN was able to confirm to the Commissioner that it had held manually recorded information about the exercise. This information was in the form of handwritten notes made by the Housing Officer, which were shared with the Housing Services Manager. These notes were destroyed when the decision was made not to pursue the matter due to lack of interest by the residents.
29. The notes were likely to have been destroyed within six months of them being made, although YHN does not have a record of the destruction of routinely made handwritten notes.
30. YHN's "Looking After Information Staff Handbook" states that:

"YHN is requires to keep records for business, legal and regulatory purposes. These records should not be retained for longer than is necessary.

The retention action specified in the Retention Guidelines for Local Authorities should be followed unless a different retention action is set out explicitly in a corporate or local YHN policy."
31. The consultation exercise undertaken in this case is characterised by YHN as being 'informal'. The exercise was considered to be part of YHN's normal day-to-day operational management and consequently the recorded information that was held was destroyed.
32. The destroyed information did not meet the criteria for retention as it did not relate to the development of either minor or significant policies for the local authority, nor was it was information which related to the preparation of business for consideration and making the record of discussion, debate and resolutions.
33. Had the recorded information been discussed at a team meeting it would have been appropriate for the results of the consultation to have been retained. Nevertheless, due to the circumstances outlined above, YHN is not required to have retained the consultation exercise information.
34. The Commissioner asked YHN to comment on the information it had provided in response to the second request referred to the Commissioner by the complainant. YHN was able to provide information in respect of that request because it related to a formal consultation

exercise, carried out as part of YHN's "Modern Homes" programme. That was a major five-year £400m programme which was completed in 2012 as part of the national "Decent Homes Initiative". In that case, public consultation was a statutory requirement.

35. The Commissioner has carefully considered the representations made by both the complainant and YHN. He is persuaded by what YHN has told him about the status of the consultation exercise which is of concern to the complainant and he finds it perfectly plausible that the recorded information that YHN once held is no longer held. He has therefore decided that, on the balance of probabilities, YHN does not hold the information which the complainant seeks and YHN has therefore satisfied the requirements of section 1 of the FOIA.
36. It is clear to the Commissioner that the second consultation exercise referred to by the complainant is of a different order to the informal exercise relating to his and neighbouring properties. It is obvious to the Commissioner why YHN would retain information relating to the national Decent Homes initiative and not retain the information about an informal consultation exercise which resulted in very little interest.

Right of appeal

13. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

14. 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.
15. 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
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