

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2015

Public Authority: Arch: The Northumberland Development Company

Address: Ashington Workspace
Lintoville Parkway
Ashington
Northumberland
NE63 9SZ

Decision (including any steps ordered)

1. The complainant has requested information held by Arch: The Northumberland Development Company ("Arch") in relation to the Berwick Portas Pilot. Arch responded withholding some of the information. During the course of the investigation, it transpired that the withheld information was now otherwise available to the complainant, but he was concerned that further information was held which had not been located. Some further information was then discovered and disclosed.
2. The Commissioner's decision is that Arch failed to comply fully with section 1 as all the requested information had not been provided in response to the request. The additional information was provided outside 20 working days, and so the Commissioner finds that Arch breached section 10. In addition to this, he finds that the initial response did not provide adequate advice and assistance and therefore Arch breached section 16.
3. The Commissioner is satisfied that on the balance of probabilities all the information has now been located and provided. As such he does not require Arch to take any steps to ensure compliance with the legislation.

Request and response

4. On 1 November 2013 the complainant made the following information request:

"I should like to request the following information: correspondence and documentation relating to the Berwick Portas Pilot and Berwick Town Team, between 01/12/12 and 31/03/13 and again between 01/07/13 and 01/11/13 held by yourselves or originated by yourselves (taken to include Berwick's Project Director.)

I should prefer to receive these in electronic format at this email address, however, I am happy to receive them by post if that is more convenient. [Address redacted]

If for any reason you feel this request is unclear, please do not hesitate to contact me at [telephone number redacted]. If you are not the appropriate authority for this request, or for part of it, please let me know as soon as is convenient.

If the information requested contains sections of confidential information, please blank out or remove these sections, and mark clearly that they have been removed."

5. On 26 November 2013 Arch responded stating that compliance with the request would exceed the statutory time limit for responding, and that section 12 therefore applied. However, it also provided the complainant with an interim review report of the Berwick Portas Pilot.
6. The complainant then made the following refined request on 4 December 2013:

"I can refine my request to the time period 01/08/2013 to 01/11/13. I should like to see correspondence for this period relating to the Berwick Portas Pilot held by you or generated by you specifically that of Berwick's Project Director John Lord. You can limit this to the correspondence of and with Arch's Berwick Project Director and to that dealing with Berwick's Portas Project.

Given the electronic nature of the information, the refined time period and correspondence description I would expect that you should now be able to comply with my request."

7. Arch responded on 30 December 2013 and provided a number of emails with some redactions made under section 36 of the FOIA. It stated that the time taken to respond to both requests had exceeded the statutory 18 hour time limit and therefore further requests would be chargeable.

8. The complainant requested an internal review on 7 January 2014. Arch initially responded on 14 January 2014 addressing the specific points he raised. It then formally upheld its original position on 27 January 2014 stating that the redactions it had made were appropriate and that the information provided was a full return of what was available.

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2014 to complain about the way his request for information had been handled. There was some delay in identifying the request in this case as Arch is a wholly owned subsidiary of Northumberland County Council, and the complainant had also made a complaint about a similar request he made to the council.
10. The complainant initially stated that he was concerned about the redactions that had been made and that he had not been provided with all the information that was held. During the course of the investigation, it became apparent that the complainant had gained access to the redacted information through other means. As such, he agreed that the Commissioner's investigation in this case should focus only on the extent to which further information was held.
11. The Commissioner's investigation uncovered additional information which had not previously been disclosed, however, the complainant maintained that he was not satisfied with Arch's responses to the Commissioner and he therefore requested that a decision notice be served.

Reasons for decision

Section 3 – Public authority

12. Section 3(1)(b) states that a publically owned company is a public authority where it is wholly owned by a public authority. In this case, Arch is a wholly owned subsidiary of Northumberland County Council set up to attract investment, deliver development and implement regeneration. Under this remit, Arch has offered support to the Berwick Portas Pilot.
13. As Arch is a wholly owned subsidiary of Northumberland County Council, the Commissioner is satisfied that Arch is a public authority for the purposes of the FOIA.

Section 1 – Information not held

14. Section 1 of the FOIA provides that a public authority must respond to a request and confirm or deny whether the relevant information is held. If there is no reason why the information is exempt then the public authority must provide the information to the requester.
15. In this case, Arch maintained that it had provided all the requested information, but the complainant believes that further information is held.
16. 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, in accordance with a number of Information Tribunal decisions, the Commissioner applies the civil standard of the balance of probabilities. In other words, in order to reach a decision in a case such as this, the Commissioner must decide whether on the balance of probabilities the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
17. The Commissioner asked Arch to reconsider the complainant's request and it conducted further searches to locate information falling within the scope of the request. In doing so it located additional documents which had not been provided in response to the request. These consisted of draft letters, draft press releases and a small amount of financial information.
18. The complainant had informed the Commissioner that he was particularly concerned that emails were missing from the information disclosed. He had expected further emails to be held around 2 and 3 September, particularly to and from John Lord, a contractor with Arch. He also expected further correspondence with the Town Clerk of Berwick Town Council, whom he described as having a key role in the pilot.
19. Arch confirmed to the Commissioner that no further emails are held. It provided details of the searches it had undertaken and was confident that it has disclosed all the emails held. Arch explained that all Arch Group computers are networked and the email accounts of Arch employees directly involved with the Portas Pilot were searched. John Lord was a contractor and as such his computer was not networked. However, Arch asked John Lord to search his email archive and have then corroborated the results by searching for emails received from him. In searching the electronic data, Arch searched both by sender/recipient names and by key words.

20. In view of the complainant's concerns about emails around 2 and 3 September 2013, Arch explained that having conducted additional searches it has been unable to locate any additional emails around these dates. Arch acknowledge that John Lord's email of 2 September 2013 referred to an earlier message, but it has been unable to trace anything and has therefore confirmed that Arch does not hold any additional information of this nature. Arch contacted John Lord to seek an explanation and he has suggested that he may have decided to make a phone call instead, but there are no records held to verify what happened. In any case, Arch has analysed the other emails around that time and believe that if such an email was sent, it would simply have been to confirm Ed Swales' resignation from the Berwick Town Team. Arch has confirmed that the emails and letters containing the substantive discussions about the resignation have already been disclosed.
21. With regard to the complainant's concerns that there ought to be more correspondence with Berwick Town Council Clerk, Arch explained that she did not have a key role in the Berwick Portas Pilot in the time period in question. As such, the only correspondence that Arch holds relating to the clerk are the letters inviting the town council to form a new town team, which have been disclosed.
22. It is clear from the investigation that Arch initially failed to comply fully with section 1 for the FOIA as during the course of the case, it located further information which ought to have been provided in response to the request. However, this relates only to the small number of attachments which have now been located, consisting of draft letters, draft press releases and a small amount of financial information. This information has now been disclosed.
23. The Commissioner recognises that this leaves a degree of dispute about how much information is held. It is clear that the complainant expected Arch to hold more emails than have been disclosed. As noted above, the Commissioner's duty in relation to cases where there is a dispute about how much information is held is to make a decision on the balance of probabilities. Based on the information available regarding the searches Arch has undertaken to locate information falling within the scope of the request and the fact that additional information was located, the Commissioner is satisfied that on the balance of probabilities, Arch has now located all the information it holds falling within the scope of his request.

Section 16 – Advice and assistance

24. Section 16 places a duty on a public authority to provide advice and assistance in compliance with the section 45 Code of Practice. This

states that where a public authority refuses a request because it would exceed the appropriate limit to do so, it should consider providing an indication of what, if any, information could be provided within the cost ceiling.

25. In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
- provide an indication of what information could be provided within the appropriate limit; and
- provide advice and assistance to enable the requestor to make a refined request.

26. The initial response to the complainant relied on section 12 of the FOIA, but did not seek in any way to advise the complainant of any refined request he could make to bring his request within the time limit. Arch has acknowledged that it failed to provide adequate advice and assistance to the complainant in this respect. It informed the Commissioner that it should have advised him that it would consider a request for emails within a shorter defined period. This is the refined request the complainant submitted himself on 4 December 2013.

Section 10 – Time for compliance

27. Under section 10 of the FOIA a public authority must respond to a freedom of information request promptly or within 20 working days after receipt of a request.

28. AS Arch located and disclosed some additional information falling within the scope of the request during the course of the Commissioner's investigation, he finds that Arch did not respond fully to the request within the prescribed 20 working day time frame.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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
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Wycliffe House
Water Lane
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