

Freedom of Information Act 2000 (the Act) Decision notice

Date: 01 May 2012

Public Authority: Nottingham City Council
Address: Loxley House
Station Street
Nottingham
NG2 3NG

Decision

The complainant has requested "Details of various meetings between Nottingham City Council (the council) and Nottinghamshire Police in 2006". The Commissioner's decision is that Nottingham City Council has not successfully engaged section 30(1)(a) of the Act in relation to the requested information but finds that section 40(2) is engaged in relation to any references to the group of individuals associated with the investigation

The Commissioner requires Nottingham City Council to take the following steps to ensure compliance with the legislation.

- Disclose the requested information with any references to the group of individuals connected with the investigation redacted under section 40(2)

Nottingham City Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

1. In April 2005 the management of Nottingham City Council's (the council) housing stock was transferred to Nottingham City Homes (NCH), a newly formed arm's length management organisation (ALMO).

2. In November 2005 the Audit Commission began an investigation into the council's housing service.
3. In March 2006, the Audit Commission published an Inspection Report on NCH. The report found that, at that time, there were significant weaknesses in the processes for allocating properties to tenants:

'The allocations and lettings service is poorly managed. The allocation policy lacks accountability; it is neither demonstrably fair nor effectively controlled.....this has led to inappropriate lettings'.
4. Coinciding with the inspection, allegations were received by the Audit Commission and the council concerning property allocations made between 2003 and 2005 that were either inappropriate and/or not made in accordance with the council's policies and procedures.
5. Given the nature of the allegations the Audit Commission deemed it appropriate to carry out further work as part of the statutory audit.
6. At the same time the council's internal Audit Service also carried out an investigation.
7. On various dates during 2006 the council met with Nottinghamshire Police to discuss the possibility of any criminality involving public officials.
8. In January 2009 the District Auditor issued a Public Interest Report under section 8 of the Audit Commission Act 1998¹ which highlighted various failings in relation to the council's allocation and management of its housing stock and made various recommendations including giving consideration into its findings in relation to individual cases.²
9. In December 2010 the council issued a 'Public Interest Report on Housing Allocations'³ summarising the action taken on civil legal issues

¹ Under Section 8 of the Audit Commission Act 1998, the appointed auditor is required to consider whether to issue a report in the public interest on any significant matter coming to his or her notice in the course of an audit, and to bring it to the attention of the audited body and the public.

² <http://www.audit-commission.gov.uk/inspection-assessment/public-interest-reports/local-gov/Pages/pir09nottingham.aspx>

³ <http://open.nottinghamcity.gov.uk/comm/agenda.asp?CtteMeetID=3721>

arising from the District Auditor's Public Interest Report on housing allocations issues and other matters. It concluded that legal avenues had been explored to reasonable conclusions and that further investment in officer time and external expertise was not warranted.

Request and response

10. On 3 December 2010 the complainant wrote to the council and requested information in the following terms:

'Please could you provide me with a list of dates, during 2006, when representatives of Nottingham City Council met with representatives of Nottinghamshire Police to discuss findings (including interim findings) of investigations carried out by the police and/or by the District Auditor in relation to the misallocation of council houses in the city between 2003 and 2005? (The District Auditor's investigation eventually concluded with publication of his Public Interest Report into the matter in January 2009).

For each meeting, please could you provide details of:

where the discussion took place.

all those who attended

the purpose of the meeting

an outline of what was discussed at the meeting

decisions taken at the meeting

minutes of the meeting'

11. The council responded on 1 June 2011 and apologised 'for the substantial delay'. It stated that there were 4 meetings with the police in 2006 and disclosed the dates as being 14 May, 15 May, 11 July and 17 August.
12. On 8 June 2011 the complainant requested an internal review as he was dissatisfied with the council's response. In particular, he pointed out that it had omitted to address the second part of his request when he asked for information regarding the location of the meetings, the attendees, the purpose, what was discussed, the decisions taken and the minutes/notes.

13. The council responded on 4 July 2011 with the outcome of its internal review. It said there was an error in its initial response in that no meeting took place on 14 May 2006. With regard to the remaining three meetings it disclosed the locations and attendees but withheld the notes/minutes under section 30(1)(a) of the Act. Although it did not specify the subsection, the council said that the reason it was engaging section 30(1) was because the information was required for the purpose of an investigation which it had a duty to conduct with a view to ascertaining whether a person should be charged with an offence.

Scope of the case

14. The complainant contacted the Commissioner on various occasions in 2011 to complain about the way his request for information had been handled. Initially, he complained about the council's failure to respond to his request in a timely manner and subsequently, its decision to apply section 30(1)(a) of the Act in relation to some of the information requested.

Chronology

15. On 17 January 2012 the Commissioner wrote to the council to request the withheld information and seek clarification of the actual information held in respect of the number, dates and notes of the meetings with the police in 2006.
16. The council responded on 24 January and 1 March 2012 reiterating its reliance on section 30(1)(a) of the Act and confirming that the only recorded information it held within the scope of the complainant's request was for the meetings which took place with the police on 15 May, 11 July and 17 August 2006.
17. On 14 March 2012 the council (having carried out further enquiries and made additional searches) disclosed to the Commissioner the entirety of the information it held falling within the scope of the complainant's request and stated that in addition to section 30(1)(a) of the Act, it wished to rely on section 40(2) in respect of the individual members of a particular group who were the subjects of its investigation.

Reasons for decision

Section 30(1)(a)(i) of the Act

18. In its internal review response to the complainant dated 4 July 2011 and its communications to the Commissioner dated 24 January and 1 and 14 March 2012 the council stated that it was withholding the requested information under section 30(1)(a)(i) of the Act.
19. Section 30(1)(a)(i) provides that information held by a public authority is exempt if it has been held at any time for the purpose of any investigation which it has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
20. Section 30 is a class (as opposed to a prejudice) based exemption. Accordingly, in order to demonstrate that it has been engaged it is only necessary for the public authority to show that the information being withheld has been held for the purpose of a specific investigation which it has a duty to investigate.
21. Only those public authorities with duties and powers to carry out investigations of the kind described in subsections of 30(1)(a)(i) and (ii) may cite this section of the Act. In considering whether this exemption is engaged, it is firstly necessary to consider whether the council has powers to carry out investigations of this kind.
22. In this the case the council has stated that the reason why it has engaged section 30(1)(a)(i) of the Act is because the information requested was required for the purpose of an investigation which it had a duty to conduct with a view to ascertaining whether a person should be charged with an offence. The council has not explained in its internal review response to the complainant or its various communications to the Commissioner the authority or basis under which it had a duty to conduct an investigation of the type described in subsection 30(1)(a)(i).
23. The Commissioner has seen the withheld information but has not been provided with information about the authority under which the council had a duty to conduct a criminal investigation or about the particular offence with which someone might be charged as a result.
24. It is clear to the Commissioner from perusing the withheld information that the council carried out its own investigation. This was in relation to its involvement and that of NCH in the alleged failure to follow internal policies and procedures for the allocation of council housing and also the adequacy of the management controls and record keeping in connection with decisions made.

25. It appears to the Commissioner from the withheld information that the main focus of the council's investigation was to produce information to discuss with and ultimately pass on to the Nottinghamshire Police to assess whether there was sufficient evidence to pursue a criminal investigation leading to a recommendation for prosecution.
26. The Commissioner might be persuaded that the Nottinghamshire Police had a duty to conduct an investigation of the type described in section 30(1)(a)(i) to ascertain whether a person should be charged with an offence (for example, misconduct in public office). However, he is not persuaded from the information provided by the council that it had such a duty. Accordingly, he finds that section 30(1)(a)(i) of the Act is not engaged.
27. The Commissioner accepts that the council in exercising its general functions would be entitled to conduct an investigation to see whether any civil remedies existed to pursue claims for a failure to comply with the law and or improper conduct. However, this would not be covered by section 30(1)(a) of the Act.

Section 40(2) of the Act

28. In addition to section 30(1)(a) the council has also informed the Commissioner that it would consider elements of the requested information to be exempt under section 40(2) of the Act in so far as it identifies members of a particular group as being the subjects of the investigation.
29. Section 40(2) provides an exemption for information which is the personal data of any individual other than the complainant where disclosure would contravene any of the data protection principles as set out in schedule 1 to the Data Protection Act 1998 (the DPA).
30. The first data protection principle in schedule 1 states that personal data shall be processed fairly and lawfully and in particular shall not be processed unless –
 - a. at least one of the conditions in Schedule 2 is met and
 - b. in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met.
31. The Commissioner is satisfied that by naming a particular group would lead to the identification of the individuals connected with it and therefore reveals their personal data.
32. The Commissioner is also satisfied that the individuals connected with the group would have a reasonable expectation that their personal data

would not be disclosed to the world at large as to do so would identify them as the possible subjects of an investigation into allegations of wrongdoing.

33. The Commissioner is therefore satisfied that section 40(2) of the Act is engaged in relation to the name of the particular group as disclosure of this information would be unfair processing of the personal data of those associated with it under the DPA.

Other matters

34. The Commissioner finds that the council breached section 10(1) of the Act by failing to respond to the complainant's request promptly and in any event within twenty working days following the date of receipt.

Right of appeal

35. 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

36. 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.
37. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF