

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2011

Public Authority: Northamptonshire County Council

Address: County Hall
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant requested a copy of a local government pension scheme admission agreement between Northamptonshire County Council [the council] and a third party. The council refused to provide a copy; instead it told the complainant that the requested information was available for inspection.
2. The Commissioner's decision is that section 21 would be applicable in this case as the requested information is reasonably accessible outside of the Freedom of Information Act 2000 (FOIA); therefore the council has acted correctly. The Commissioner does not require the council to take any further action.

Request and response

3. On 14 December 2010, the complainant wrote to the council and requested information in the following terms:
"Can I request a copy of the Admission Agreements entered into between Northampton Enterprise Ltd (NEL) and NCC when NEL became an admitted body in the Local Government Pension Scheme."
4. The council responded on 7 January 2011. It stated that the requested information was available for public inspection under the pension regulations and asked the complainant to make an appointment to attend the council office to view it.
5. Following an internal review the council wrote to the complainant on 11 January 2011. It stated that it upheld its initial response and again

invited the complainant to make an appointment to view the requested information.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider whether the council had breached section 11 by failing to provide him with a copy of the requested information.
7. The Commissioner considers that the applicable exemption in this case is section 21 – information accessible by other means. He has therefore not considered section 11 because this will not apply if section 21 is engaged.

Reasons for decision

8. Section 21(1) can be applied when all of the relevant recorded information is reasonably accessible to the applicant. It is an absolute exemption and does not require a public interest test to be carried out.
9. The council did not specifically refer to section 21(1) in this case; in its original response it explained that the requested information was available for inspection under the pension regulations. The Commissioner considers that the council was effectively relying on section 21(1) although it failed to state the specific exemption in its refusal.
10. The council has explained that schedule 3(11) of the Local Government Pension Scheme (Administration) Regulations states that the admission agreement in its final form must be made available for public inspection at the administering authority.
11. Although the FOIA is designed to be applicant blind, in order to consider whether section 21 applies it is important to consider the individual circumstances of the complainant, and whether the information is reasonably accessible to them.
12. The explanatory notes to section 21 of the FOIA explain that *“Information which is available for inspection, whether voluntarily or under another enactment, will only be exempt by virtue of this section if it is in fact reasonably accessible to the applicant.”* In determining whether the information is reasonably accessible to the complainant, the council should therefore take into account whether or not the

complainant is able to travel to the council offices to view the requested information. In this instance the council has informed the Commissioner that the complainant has visited the council offices numerous times in the past and therefore it could see no reason why the complainant was prohibited from visiting the council offices on this occasion.

13. The complainant has not made the Commissioner aware of any reasons which would prohibit him from visiting the council offices. Therefore in these circumstances the Commissioner is satisfied that the information is exempt under section 21(1) of the FOIA as the information is reasonably accessible to the complainant in this case.

Right of appeal

14. 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

15. 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.
16. 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

Lisa Adshead
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