

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 May 2014

**Public Authority:** Brecon Beacons National Park Authority  
**Address:** Plas y Ffynnon  
Cambrian Way  
Brecon  
Powys  
LD3 7HP

### Decision (including any steps ordered)

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1. The complainant requested various information in respect of advice given to the Brecon Beacons National Park Authority ('the Park Authority'), regarding the Tina Douglas opinion of 2006 and the Morag Ellis opinion of 2007. The Park Authority provided some information but informed the complainant that it held no further relevant information. The Commissioner's decision is that the Park Authority has complied with its obligations under section 1(1) of the FOIA. The Commissioner does not require the Park Authority to take any steps.

### Request and response

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2. On 18 June 2013, the complainant wrote to the Park Authority and requested the following information:

*"1. ...the documentation/advice/names of persons responsible for advising BBNP to hide the Tina Douglas opinion of [Sept] 2006, and also the Morag Ellis opinion of 2007 – Both of which made it quite clear to the Authority that the consent for a caravan and camping park at Gilestone was not a valid one. It must have been a conscious decision to withhold 2 lots of barristers advice – who made that call?"*

*2. Also, ...please disclose to me the documentation/advice and names of persons responsible for having authorised [named individual A] to write to our then consultant [named individual B] on 28 November 2006*

*(approx [sic] 2 months from receiving the Douglas opinion) to confirm our consent was 'valid' – This was indeed, a direct contradiction to the legal opinion hidden by your Authority.*

*3...The documentation/advice/persons names who made a direct decision not to take the Douglas and Ellis opinions into account during the investigation of the Clarks report and its production, and also in the three Hooker Reports."*

3. The Park Authority responded on 11 July 2013. It informed the complainant that it does not hold information in respect of items one and three, but provided information in respect of item two of this request.
4. The complainant requested an internal review on 3 September 2013 and the Park Authority responded on 2 October 2013, informing the complainant that:

*"There appears to be some confusion as to the internal review process (which relates to a response to a particular (the Park Authority's emphasis) request for information under the Freedom of Information Act 2000 (the Act)), and the complaints procedure."*

## **Scope of the case**

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5. The complainant contacted the Commissioner on 8 October 2013 to complain about the way her request for information had been handled.
6. The Commissioner notes that the Park Authority has responded to item two of the complainant's request, however the complainant is not satisfied with the Park Authority's response in respect of items one and three of her request. The Commissioner has therefore considered whether the Park Authority has complied with its obligations under section 1(1) of the FOIA in respect of items one and three of her request for information.

## **Reasons for decision**

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### **Section 1**

7. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it

holds and is not therefore required to create new information in order to respond to a request.

8. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
9. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
10. In this particular case, the complainant considers that there must be documented information within the scope of items one and three of her request for information. The Commissioner therefore asked the Park Authority for details of its search and the rationale for its decision.
11. The Park Authority confirmed that any decisions regarding items one and three of the complainant's request for information, could only have been taken at Director level or above. It therefore approached the Chief Executive, his PA, the Director of Planning and the Democratic Services Manager to ask if they held any relevant information. With the exception of information identified as falling within the scope of item two of the request, it was confirmed that no relevant information was held.
12. The Park Authority also confirmed that named individual A is no longer an employee of the Park Authority, and the role of Head of Conservation and Community no longer exists. The post was made redundant in 2009 with overall responsibility reverting back to the Planning Department, and ultimately the Director of Planning.
13. The Commissioner therefore considers that the Park Authority has conducted a reasonable and proportionate search of its records, and that based on the balance of probabilities, it does not hold any further relevant information falling within the scope of this request. The Commissioner has therefore concluded that the Park Authority has complied with its obligations under section 1(1) of the FOIA.

## **Other matters**

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## **Internal review**

14. The Commissioner acknowledges that it is not a formal requirement for a public authority to conduct an internal review under the FOIA. However, the Section 45 Code of Practice recommends that public authorities do undertake an internal review and the Commissioner has also produced guidance in relation to this matter.
15. The Commissioner notes that the complainant requested an internal review on 3 September 2013. However, although the Park Authority provided a response to this letter, it failed to recognise it as a request for an internal review and to deal with it as such.
16. The Commissioner expects the Park Authority to deal with requests for an internal review appropriately in future.

## Right of appeal

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17. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. 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.
19. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**