

Further Grounds for ICO Appeal Against NCC Withholding Information – Case No FS50400156

1. Two of the three emails provided have significant redactions but there is no explanation as to why. This is a breach of s.17(1) of the Act which requires a statement informing that provision of information is being refused and explaining which exemption applies and why.
2. Nottingham City Council (NCC) states that four meetings occurred at various times between 2006-10 and that they have located notes of these. They claim that these notes are exempt under s.30(1)(a).

I dispute the use of this exemption as NCC were under no duty to carry out such an investigation, it is common knowledge that they chose to do so and Notts Police agreed to let them.

Even if the application of the exemption was valid I submit that the public interest test carried out is flawed. The decision to allow NCC to investigate itself is highly controversial, especially due to the involvement of the Leader and former Lord Mayor in some instances of alleged wrongdoing.

Furthermore, the reason given i.e. that future investigations may be compromised or reputations may be damaged holds little water. Such an investigation is likely (hopefully) to be unique and the likelihood that revelation of the details would assist others in carrying out similar frauds is extremely small. NCC claims that 'lessons have been learnt' and so we'd hope that anybody trying similar actions again would be caught by improved checks and balances. If that's not the case there is a strong public interest in knowing that, just as there is a strong public interest in being able to see what went wrong and that everything possible was done to hold those responsible to account. It is my view that this public interest overwhelms the hugely unlikely possibility that release of the information would be useful to wrongdoers.

As for the assertion that 'nothing would be added to the public debate', that obviously remains to be seen. In particular it is important to see whether NCC's public explanations are reasonable.

Lastly, individual's names could be redacted, which would mean that their identity would not be compromised or their reputations damaged.

3. NCC's response contains a rather bizarre list of instances where no communication has taken place between certain individuals. This seems to cover two periods of time, October 2009 – December 2010 and October 2005 – December 2006. It is not clear what the message is here, are NCC saying there **was** correspondence between these individuals at other times? If so why is this not confirmed and provided?

There is a later mention of compliance with my request exceeding the appropriate costs limit and maybe this relates to the above possible correspondence. It would have been helpful to have been more clear about this but, importantly, I find it hard to believe that so much work would be required as the matter has been under one form of investigation or another for around six years and it seems likely that there is a central file with all relevant information in one place. This would be likely to include correspondence, copies of notes, minutes etc. It would hardly take long to locate this file.

This is an issue of the balance of probabilities. Because of the various investigations, NCC must provide an explanation as to why the various materials are not centrally located for such a claim to be credible. Failure to do so should result in that explanation not being accepted and the exemption refused.

NCC needs to properly confirm what correspondence exists and whether it is to be provided, providing details of exemptions relied on if not.

4. There is a mention of a request from Notts Police for a meeting with the Leader of NCC, Cllr Collins. No date for this is given and no correspondence has been provided. It would be important to know these details because Cllr Collins became the Chair of Notts Police Authority in May 2010 and if Notts Police's failure to chase this meeting up occurred at around the same time questions need to be asked.

5. A further justification for not providing information is the following strange paragraph;

"Finally in relation to your request for a copy of all internal reports produced on this matter, I can initially confirm that the matter is no longer being investigated by Nottingham City Council (NCC) or the Audit Commission."

I cannot see any relevance as to whether an investigation is current or not in a decision whether to release information in this case. All in all this and my above concerns seem to point to a rather confused response combined with an attempt to cram as many exemptions in as possible without due concern as to whether they are appropriate or not. This lack of clarity has also made it extremely difficult for me to argue against NCC's case.

6. NCC also seeks to rely on exemptions under s.31 'Law Enforcement' provisions. This appears to be largely a rehash of their s.30 arguments and my arguments around the public interest would be the same. It must be remembered that nobody has faced any criminal or civil sanction over the mis-allocation of council housing apart from one temporary worker who lost their job. Again, the likelihood of a similar investigation occurring in the future is remote.

7. NCC also relies on s.36 of the Act. Again, there is a reliance on a claim that this could give criminals an advantage by letting them know how the police work but there is already much information about police methods in the public domain, from 'Police, Camera, Action' type TV programs to the fact that criminal trials are held in public and are widely reported on. As I have argued already, the likelihood of a future similar investigation is remote and in any case there is a strong public interest for the police and the council to be open and accountable. This is one of the reasons trials are held in public, so justice can be seen to be done.

8. NCC also relies on the s.42 exemption for legal professional privilege. While there is no doubt this exemption will apply to some of the information concerned this exemption is also subject to a public interest test, which NCC does not appear to have considered in this case. My view is that the public interest arguments are similar to those discussed above.

9. In general, it must be noted that the mis-allocation of council houses was a major scandal which included involvement of one, perhaps two, councillors who went on to hold

senior office. One of these councillors is being investigated by the Standards Committee but this investigation has dragged on for over two years now. Furthermore, the Leader of the council works as freelance trainer for the Audit Commission and is now the Chair of Notts Police Authority.

It is alleged that thousands of properties may be involved and this, along with the above interconnections between the organisations involved with investigating the matter means that there is a strong public interest in openness. The matter has attracted considerable attention from the local press. The publicly available document makes no mention of the involvement of the councillors concerned and confirms that NCC used its own legal staff to investigate the matter while hiring outside staff to cover their normal work. This was a bizarre arrangement which raises further questions about NCC's determination to properly investigate the matter.

I can understand that there will be some information that must be withheld, mainly personal details of individuals but other than that provision of information such as this is exactly the core purpose of the Freedom of Information Act i.e. to hold public authorities to account and the public interest should be judged in that context.

10. Finally I would like to take the opportunity to comment on the manner in which NCC has handled my request. I was initially refused the information on the basis that my request was vexatious. This required me to expend considerable effort and time submitting a review request challenging this. This was ignored until the Information Commissioner became involved when the latest response was provided, some months late. This made no mention of the 'vexatious' allegation meaning I now have to provide a further response meaning my time was wasted.

This appears to be a variation of a theme for NCC. They have previously ignored requests altogether before providing a response only days after a decision by the Information Commissioner. I suspect that NCC had no intention of ever relying on the vexatious requests exemption and used it merely as a delaying tactic.

I ask that the Commissioner investigates NCC's tactics and demand an explanation for the way that NCC has acted.