

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 1 February 2007

**Public Authority:** Oxford City Council  
**Address:** Town Hall  
St Aldate's  
Oxford  
OX1 1BX

### Summary

---

The complainant requested details in relation to the sale of land at Minchery Farm (subsequently developed as the site for a football stadium and a cinema complex), bought from Oxford City Council by Firoka companies. The public authority refused to supply some of the information requested, citing section 41, information supplied in confidence, and section 43, commercial confidentiality. Following consideration of all relevant factors, the Information Commissioner's decision is that the authority cannot rely on the exemptions and requires the authority to make the information available to the complainant.

### The Commissioner's Role

---

1. The Information Commissioner's ('the Commissioner') duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

### The Request

---

2. On 11 February 2005, Oxford City Council received a request for the following information:
  - A. Exactly how much money, when, and under what terms, did Firoka pay Oxford City Council for land at Minchery Farm upon which the football stadium and the Ozone are now built? How much did Firoka pay for the Priory Pub, the freehold of which was owned by Oxford City Council?
  - B. How was the £1.5m valuation of the land upon which the Ozone is now built arrived at? How much was the earlier valuation that would have left the council owning a percentage of the equity on the development?

- C. How much did the council pay out in costs and compensation to Thames Water after the utility company sued it and Oxford United over the land? Did the council also pay Oxford United's legal fees in the case, and did it pay the club's share of the compensation awarded?
  - D. Was MP Andrew Smith ever consulted or involved in putting together the development deal which resulted in Oxford United being bought by Firoka?
3. The council acknowledged the request in a letter dated 15 February 2005. On 9 March 2005, the council wrote again providing some of the information requested.
4. The council confirmed that it is still the freehold owner of the Priory Pub. Additionally, the Council informed the complainant that certain details of the sale were available to the public from the Land Registry, and that there was an agreement dated 4 February 2000 between the council, three Firoka companies and the football club.
5. The council contributed £20,000 towards Thames Water's legal costs paid from the receipts of the sale but no compensatory payment was made. A further payment was made to Thames Water for the release of a restrictive covenant in relation to the land, the total amount paid to Thames Water is available from the Land Registry, and the council has expressed its willingness to inform the complainant of the exact amount. Furthermore, the council had not paid any of Oxford United Football Club's legal fees and had not consulted or contacted the Rt Hon Andrew Smith MP regarding Oxford United being bought by Firoka.
6. As third parties were involved in both the agreement and the valuations, the council informed the complainant that it had contacted them to obtain their permission to release the information.
7. On 11 July 2005, the council wrote again to the complainant explaining that the third parties had refused permission for the information to be released. Therefore, it was unable to provide either, the information requested contained within the agreement dated 4 February 2000 between the council and Firoka companies, or the valuations. Although not explicitly stated, it appears that the council were specifically relying on the exemption set out in section 41 of the Act, information provided in confidence as the council referred to 'duties of confidentiality' and 'breach of contract'.
8. The council and the complainant exchanged correspondence by email and in a letter dated 15 September 2005, the council wrote to the complainant explaining that it had interpreted his email of 12 July 2005 as a formal appeal against the decision to withhold the information. The letter went on to explain that the original decision to rely on section 41 had been upheld and stated that the council could also have relied on the exemption at section 43 of the Act, commercial interests.

## The Investigation

---

### Scope of the case

9. On 5 October 2005, the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant maintained that the public authority had been wrong to refuse to release the remaining information requested and stressed the public interest in transparency regarding the disposal of public assets.
10. The Commissioner is satisfied that the council have provided the information requested in parts C and D of the request and some of the information requested in part A. The investigation therefore, focuses on part A, in respect of the terms under which the sale was concluded (in effect, the agreement of February 2000), and part B, the valuations.

### Chronology

11. The Commissioner contacted the public authority on 8 December 2005 and asked it to provide copies of all correspondence, documentary evidence and any submissions it wanted to make.
12. The authority acknowledged this communication in a letter dated 19 December 2005, stating that it would investigate, and that a substantive response and documents would be provided.
13. In a letter dated 10 April 2006, the Commissioner again contacted the public authority. The authority was asked to justify its reliance on the exemptions cited and provide its response to particular comments raised.
14. The council was reminded that the consent of third parties is not necessarily fundamental to the decision to release or withhold information in every case and asked to justify its position in this regard. It was also asked whether redaction of the documents had been assessed, and how the timing of the request had affected its decision considering the sale had occurred some years before.
15. The council sent its substantive response on 15 May 2006, in which it reiterated its reliance on sections 41 and 43, and referred to section 22 of the Act, information intended for future publication. The council sent copies of correspondence and selected sections of the valuations and the agreement, which allowed the Commissioner to satisfy himself that the agreement and the valuations contain confidentiality clauses that the council had agreed to abide by.
16. In response, the council once again referred to the contractual obligations of confidentiality. The council confirmed that it had considered redaction; however, it believed that it would have been a futile exercise as the information requested was precisely that which would have been redacted. Concerning the timing of the request, the council argued that the unanimity of the responses from the third parties refusing permission to release meant it was reasonable for them to

assume that insufficient time had elapsed for the confidentiality restrictions to be considered 'time-served and meaningless'. It also pointed out that Oxford United Football Club had recently been sold again, which had once again made these matters 'topical and sensitive'.

17. The Commissioner does not consider the sale of Oxford United Football Club to be a relevant factor, as the sale that forms the subject of the request involved the land on which the club's stadium is now situated and not the football club.

### **Findings of Fact**

18. During the course of the investigation, the Commissioner established that on 4 February 2000, the council entered into an agreement with Firoka companies and Oxford United Football Club Limited to sell land known as Minchery Farm. The sale of this land included the condition that Firoka complete construction of the football stadium, as such, a high profile sale attracting public and media attention.
19. Concerns regarding the sale were raised with the District Auditor in 2002/3. When disposing of public land, councils are under a statutory duty, created by section 123 of the Local Government Act 1972, to ensure that they secure the best value for the land that is reasonably obtainable. The District Auditor began an investigation to examine this, which was ongoing at the time of the request.
20. On 21 March 2006, Oxford United Football Club was sold by Firoka companies and ownership passed to Woodstock Partners Limited who also secured first refusal pre-emption rights for the future acquisition of the stadium and conference centre.
21. On Friday 28 April 2006, the complainant, a local newspaper, published an article regarding the original sale of the land to Firoka. The article (which was supplied to the Commissioner by the council), claimed that the newspaper was in possession of a letter written by the council's legal services manager to the District Auditor and leaked by an unnamed council source, a claim that has not been disputed by the council.
22. The council believe that the leaked letter contains all the information asked for in the request. The council therefore, contended that as the complainant had the information there was no longer any need to proceed with the Commissioner's investigation and the case should be closed.
23. However, the complainant refuted the council's claim that it was in possession of the outstanding information and the newspaper has not to this date, published the detail of the information in question. The Commissioner therefore, has no evidence to suggest that the complainant is in possession of the information requested.
24. In addition, if information is leaked it does not necessarily absolve the public authority from the obligation to respond to a request for that information.

25. During the course of the Commissioner's investigation the District Auditor concluded his investigation into the sale of the land and wrote to the Chief Executive of the council on 20 July 2006 with the findings of the investigation. In his letter to the council, the Auditor did not publish details of the valuations or the agreement. The information requested, therefore, has not been released to the public by either the Auditor or the newspaper.
26. The District Auditor's letter was reported to the Audit and Governance Committee of the council on 29 September 2006. The Auditor was satisfied that the council had met its statutory obligation to obtain best value for the land. Both the Auditor's letter and the report of the Chief Executive to the Audit and Governance Committee are available on the council's website.
27. Communication and discussion between the Commissioner and the council, through telephone calls and emails, culminated in a further response from the council dated 9 November 2006, maintaining its reliance on sections 41 and 43 and withdrawing section 22.

## Analysis

---

### Procedural matters

28. The complainant's request was received by the council on 11 February 2005. It is a requirement under section 10 of the Act that a public authority respond to a request for information promptly and within 20 working days. The only circumstances where the applicant may not receive either the information requested or a final refusal notice within twenty working days are if the public authority are awaiting a fee from the applicant, or, when assessing the application of a qualified exemption, it needs additional time in order to consider the public interest.
29. In the council's initial response to the complainant dated 9 March 2005 (the eighteenth day), it provided some of the information requested. However, it stated that, 'As it has been necessary for the council to seek consent from third parties to release information, the requirement under the Freedom of Information Act to provide you the information within 20 working days is suspended.'
30. There is no provision in the Act for a public authority to extend the 20 working day time limit in order to consult with third parties. The council provided the complainant with a further refusal notice for the outstanding information requested on 11 July 2005. Therefore, the council took a total of 102 working days to provide a full response to the complainant's request.
31. The Act specifies in section 17 that when an authority issues a refusal notice, it must state the exemption that it is relying upon and explain why it applies. Although the authority very briefly mentioned a reason for its refusal to supply some of the information requested, it did not specifically mention which section of the Act it was referring to in its refusal notice or provide an adequate explanation.

## Exemptions

32. Originally, the council claimed that releasing the information would 'materially prejudice the council's position' as it would 'leave us open to legal actions against us for breach of contract'. Although not explicitly mentioned in this letter, this indicates reliance upon section 41 of the Act, information provided in confidence, where information is exempt if its release would result in an actionable breach of confidence. In this case, the council believes that there would be an actionable breach because of the confidentiality clauses within the agreement and the valuations. This is an absolute exemption, which does not require consideration of the statutory public interest test.
33. In the letter stating the result of the internal review the council also referred to section 43, which exempts information if its release would prejudice the commercial interests of either the authority or a third party. This is a qualified exemption, which requires the authority to weigh up the prejudice caused, against the public interest in release, with a presumption in favour of disclosure.
34. During the course of the Commissioner's investigation, the authority also referred to section 22, which exempts information if it is held with the intention of publishing it in the future. However, as it later withdrew reliance on this exemption it will not be addressed in this notice.

## Section 41

35. This section constitutes the main argument put forward by the council in justification of withholding the information requested. The council provided the Commissioner with photocopies, which enabled him to confirm both the confidentiality clauses within the agreement and the valuations, as well as the refusal of third parties to consent to release of those documents.
36. In assessing the application of section 41 to the information requested, the Commissioner has considered whether an obligation of confidence has arisen. To assess this, he has taken into account the circumstances under which the information was provided to the authority, and the nature of that information.
37. In the wording of section 41, information is exempt if 'it was obtained by the public authority from any other person'. Although the sale agreement contains a confidentiality clause, it has not been 'obtained by the public authority from any other person' as the council itself is a party to that agreement. Therefore, the Commissioner does not accept that section 41 can apply to the agreement. This is consistent with the Information Tribunal's decision in *Derry City Council v the Information Commissioner, Appeal Number: EA/2006/0014*. Therefore, section 41 is not engaged in respect of the agreement.
38. However, the Commissioner accepts that the valuations were clearly supplied to the authority by third parties and that contractual confidentiality clauses were agreed, therefore, satisfying the first aspect of establishing an obligation of confidence.

39. In addition to the circumstances under which the information was obtained, it is also necessary to assess whether the information demonstrates the necessary quality of confidence and whether disclosure would constitute an 'actionable breach' of confidence. The Commissioner must make a judgement as to whether the information is worthy of protection and whether disclosure would have a detrimental impact on the provider of the information.
40. The Commissioner took into account the length of time involved between the time the valuations were undertaken and the request. The valuations were carried out in October 1999. The Commissioner believes that as the sale took place over six years ago the valuations would be irrelevant to any subsequent negotiations or future sale. The valuation of the land would have changed considerably in this time and it is unlikely that any buyer or seller would rely on a valuation that was over six years old without seeking a present day valuation report.
41. The sale also involved payments to Thames Water in return for lifting restrictive covenants, and the condition that the football stadium's construction be completed. This means that the valuations are not an accurate reflection of the final amount agreed by the parties and that the eventual sum paid in relation to the sale was unique and incomparable to any subsequent negotiations or future sale.
42. The District Auditor, in his letter to the council, found that, *'Two separate valuations were obtained on different bases, neither of which were wholly relevant to the proposed transaction. The Council acknowledges that the exact methodology and reasoning which resulted in the approach taken by the valuers is now a little unclear, but has presented its argument using the existing valuations, and then taking into account various encumbrances and restrictions on the land.'* The District Auditor was satisfied that the planning requirement would have devalued the land and that the key consideration for whether the council had obtained best value was whether the *'...constraints upon the land should be taken into account...'* The Commissioner finds this persuasive in demonstrating that there would be little or no detriment if the valuations were to be disclosed.
43. When the council contacted the valuers to ask for their consent to release the information requested they presented no additional reasoning as to why the information should not be disclosed other than the existence of the confidentiality clauses.
44. After the District Auditor had concluded his investigation, in a telephone call on 10 August 2006, the Commissioner asked the council whether the Auditor's findings had affected their decision to withhold the information. The council expressed the opinion that the third parties may be willing to reconsider and suggested that it could ask again for their consent. The Commissioner has received no indication that such contact was ever made.
45. The Commissioner acknowledges the inherent public interest test within the common law concept of confidentiality and recognises the importance of preserving confidence. However, it is the Commissioner's view that the council have failed to establish that the information demonstrates the quality confidence

necessary to engage the exemption and therefore, does not consider that, in this case, there would exist an actionable breach of confidence.

46. The Commissioner can therefore, not accept that the council can rely upon section 41 to withhold the agreement or the valuations.

### **Section 43**

47. The council also cited reliance on section 43 of the Act, which exempts information if its disclosure would, or would be likely to prejudice the commercial interests of any person.

48. However, the council provided no evidence that its or any other persons commercial interests would be adversely affected by release of the information requested. The only argument consistently presented being the existence of confidentiality clauses and the belief that the council would be sued for breach of confidence.

49. In a letter dated 9 November 2006, the council indicated that having seen articles in local newspapers, it believed that the present owner of the land is currently negotiating a sale of some or all of the land in question. However, the Commissioner has been given no evidence other than this stated rumour that this is in fact the case. Furthermore, as stated above, it is far from clear that disclosure of the information would have any effect on current negotiations.

50. When contacted about the disclosure of their information, none of the third parties involved presented any arguments to demonstrate that their commercial interests would be affected by releasing the information. Likewise, the council have not been able to demonstrate how commercial interests would be detrimentally affected. Consequently, the Commissioner has been unable to establish any likelihood of prejudice.

51. The Commissioner can therefore, not accept that section 43 is engaged in this instance, for either the agreement or the valuations. As the exemption is not engaged, there is no need for the Commissioner to consider any public interest arguments.

### **The Decision**

---

52. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- A. The final amount of the sale was communicated to the complainant, as was the fact that the freehold of the Priory Pub is still owned by the council.
  - C. The council provided the information in relation to the amount paid to Thames Water in costs and compensation and the information regarding Oxford United.

- D. The council told the complainant that the named MP was not involved or consulted.
53. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- A. The council have not communicated the terms of the sale of the land known as Minchery Farm as contained within the agreement.
  - B. The council have not supplied details of the valuations as requested.
54. In addition, the council did not supply the information requested or issue its final refusal notice within the 20 working day period specified in the Act.

### **Steps Required**

---

55. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

The council is to supply the agreement and the valuations pertaining to the sale of land at Minchery Farm, which took place on 4 February 2000.

56. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

---

57. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

---

58. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 1<sup>st</sup> day of February 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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