

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 12th December 2005

Name of Public Authority: Oadby and Wigston Borough Council

**Address of Public Authority: Council Offices
Station Road
Wigston
Leicestershire
LE18 2DR**

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint from which states that on 14th April 2005 the complainant requested the following information from Oadby and Wigston Borough Council ("the Council") under section 1 of the Freedom of Information Act 2000 (the "Act"):

Information concerning "Planning Application 05/00046/TPO: Removal of two apple trees and a privet hedge, including

"How many councillors voted against the proposal?"

"How many councillors abstained from voting?"

Further, on 19th May 2005 the complainant posed the following question:

"Please advise why five Councillors did not vote or abstain".

The complainant reiterated this question in a letter to the Council, dated 26th May 2005, and asked for the names of the Councillors in question.

It is alleged that the Council did not supply the information requested by the complainant.

Section 1(1) of Act states:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

On 22nd April 2005, the Council wrote to the complainant, providing information in response to his request and directing him to where he could obtain that information which was already publicly available. The complainant was advised that the number of Councillors who voted against the proposal was nil, and that no abstentions were recorded.

On 24th May 2005, in response to the complainant's letter dated 19th May 2005, the Council's Planning Officer responded on behalf of the council, stating:

"I'm afraid I cannot speak for members as to why give councillors did not vote or record their abstention."

On 27th May 2005, the Chief Executive of the Council confirmed that the information the complainant requested was "not available".

The Commissioner asked the Council to provide its procedure for registering votes cast in meetings where planning applications are decided. The Council supplied a copy of the minutes recording the decision made in respect of Planning Application 05/00046/TPO. The minutes showed "four votes to nil against the motion". Also the Council supplied a copy of Article 16 of Part IV of the Council's Approved Constitution which details their voting procedure. The Council's Approved Constitution confirmed that the names of Councillors who voted "for and against the motion or amendment or abstaining from voting" would only be recorded if "six members or one quarter of those present at the meeting, whichever is the fewer, demand it". The minutes in respect of Planning Application 05/00046/TPO demonstrated that the recording of how each Councillor voted was not demanded at the relevant meeting. Consequently, the information relating to the abstentions is not held.

The Commissioner is satisfied that the information requested on the 19th May 2005 and 26th May 2005 is not held by the Council.

Action Required

In view of the fact that the information requested was not held by the Council, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by Oadby and Wigston Borough Council.

Reference: FS50078267

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Dated the 12th day of December 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF