

**OFFICE OF PUBLIC SECTOR INFORMATION
REPORT ON ITS INVESTIGATION
OF A COMPLAINT (SO 42/8/6)**

Zero-Now Ltd and Milton Keynes Council

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INVESTIGATION OF COMPLAINT (SO42/8/6)

Background Information

1. The Office of Public Sector Information (OPSI) received a complaint from Zero-Now Ltd (the Complainant) dated 1 March 2007 against Milton Keynes council (the PSIH). This complaint was submitted under the Re-use of Public Sector Information Regulations (PSI Regulations). OPSI has investigated the complaint, and makes recommendations as appropriate.

Office of Public Sector Information

2. The Re-Use of Public Sector Information Regulations (SI 2005 No. 1515) came into force on 1 July 2005. They implemented Directive 2003/98/ec of the European Parliament and of the Council of 17 November 2003 on the Re-use of Public Sector Information. The aim of the PSI Regulations is to maximise the re-use of information, and to ensure transparency and fairness across the public sector.

The OPSI role in Investigating Complaints

3. OPSI is responsible for investigating complaints under the PSI Regulations, for failure to comply with the Regulations. The procedure for investigating complaints under the PSI Regulations can be found on the OPSI website at www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/psi-complaints-procedure.doc

Summary of PSI Regulations

4. The main aim of the PSI Regulations is to maximise the re-use of public sector information and to stimulate the economy. Within the spirit of the PSI Regulations, a PSIH is expected to encourage re-use of its information. Although the PSI Regulations impose no obligation on a PSIH to allow re-use use of its information, the purpose of the Regulations is to establish a framework that provides for the effective re-use of public sector information. If re-use is allowed, a PSIH should:
 - Publish a list of the main documents available for re-use;
 - Respond promptly to requests for re-use;
 - Put in place copyright and licensing arrangements;
 - Ensure that any conditions on re-use do not unnecessarily restrict re-use or competition;
 - Ensure there is no discrimination between applicants. If a public sector body wishes to re-use a document for activities which fall outside its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes;

- Discourage exclusive arrangements; and
 - Set up appropriate internal complaints procedures. There is also the option of asking OPSI to investigate the PSIH's actions and this should be made clear in the internal procedures.
5. This report sets out the views of the Complainant; the response of the Public Sector Information Holder (PSIH); and OPSI's assessment and recommendations.

Summary

The Parties

The Complainant

6. Zero-Now Ltd (the Complainant) is a web design company based in Milton Keynes. It owns and hosts the website www.miltonkeynes.com, which provides information on various aspects of living, working and visiting Milton Keynes to the public.

The Public Sector Information Holder

7. Milton Keynes Council (the PSIH), is a local authority (www.miltonkeynes.gov.uk). The PSIH states that it owns 20% of a private company, MK Web (the Contractor), which owns a website describing itself as "the official website for Milton Keynes and North Bucks".

Background

8. The Complainant submitted a complaint to the Office of Fair Trading (OFT) on 3 October 2005. There is a Memorandum of Understanding (MoU) between OPSI and the OFT dated 26 August 2005. Paragraph 4 of the MoU states: "*Where the OFT receives a complaint raising issues over the re-use of information held by public sector bodies it may, in assessing its administrative priorities, consider whether the issue may be better addressed by OPSI acting under the Regulations.*"
9. Under the terms of this MoU, the OFT forwarded this complaint to OPSI. On 13 February 2007 OPSI met the Complainant to discuss the Complaint and to explain the scope of the PSI Regulations in some detail. The Complainant complained formally to OPSI on 1 March 2007 under the PSI Regulations. OPSI met representatives from the PSIH and the Contractor on 20 March 2007 as part of the investigation process.

Context of the Dispute

10. The Complainant launched its website www.miltonkeynes.com in 2003 and states that at that time it contacted the PSIH to request access and re-use of the PSIH's information, including the information contained within the Community Online Information Network (COIN) database, for

publication on this website. The Complainant provided a comprehensive list of the information requested, including information about benefits, births, council tax, health and medical advice etc. This predates the implementation of the PSI Regulations.

Does the Complaint concern the PSI Regulations?

Re-Use

11. Re-Use is defined in the Regulations as *“the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body’s public task for which the document was produced”* (Regulation 4(1)). OPSI considers that the Contractor is not re-using the documents requested because it is expressly publishing the documents under a contract on behalf of the PSIH for the purposes of fulfilling the PSIH’s public task. In effect, the company is acting as the PSIH’s contractor in making the material available. This is analogous to a PSIH appointing a commercial publisher to publish a specific piece of guidance on its behalf. The Contractor’s website is essentially an official website that is endorsed by the PSIH under an official agreement and does not constitute re-use. One of the tests applied by OPSI was to consider whether there would be any grounds for complaint if the PSIH had published the material itself on its own website. Our conclusion was that there would not. Provided that the PSIH went through a competitive tendering exercise, which it did, OPSI concluded that there can be no objections to any PSIH using a third party to present its information in pursuance of its public task.

12. The PSIH is currently developing a re-use policy and has discussed its plans with OPSI. It states that it has no record of receiving any request to re-use information from the Complainant under the PSI Regulations. Where a PSIH has not licensed a document for re-use, as is the case here, that PSIH is under no legal obligation to allow re-use of that document.

Overall Assessment

13. Having carefully considered the documentation supplied to us, and, having met both parties, **OPSI does not uphold the complaint in this case**. The Complainant asserts that it should have the right to re-use the same information as the Contractor and for the same purposes. The PSI Regulations establish the principle that the terms of re-use should be applied equally to all re-users for the same activity. The Contractor is however creating and hosting a website on the PSIH’s behalf as well as maintaining its own site. As stated earlier OPSI concludes that this activity does not constitute re-use: it is an activity that could reasonably be seen as falling within the scope of the PSIH’s public task. PSIHs would only be under an obligation to allow re-use in circumstances where

re-use had already taken place either by the PSIH itself or by a third party.

14. Whilst OPSI does not uphold the complaint for the reasons outlined above, we have considered the substance of the complaint as if re-use were taking place to provide constructive feedback to both the Complainant and the PSIH.

Issues raised in the Complaint and Recommendations

The Complainant

15. The Complainant claims that the Contractor's website is in direct competition with its own website and is therefore in breach of Regulation 13 of the PSI Regulations. The Complainant claims that it has on numerous occasions asked to be provided with the same information as the Contractor, but the Contractor continues to receive information that the Complainant is denied access to. The Complainant wishes to provide the public with alternative access to the information, which needs to be up-to-date and therefore wishes to receive amended information as appropriate.

The PSIH

16. The PSIH claims that it has not received any request for re-use or complaint pursuant to the PSI Regulations, although it acknowledges that the Complainant has made various verbal and public complaints over a period of 4 years.
17. The PSIH states that the Contractor was formed in 1998/1999 and provides web services to the PSIH and other organisations via a web portal. The originating service and support arrangement was formed following a competitive process. In 2005 – 2006, the PSIH put the contract for services (including help desk and server hosting services) in support of the development and maintenance of the PSIH's website (www.milton-keynes.gov.uk) out to an EU tender. The tender was the subject of an open tender which was won by the Contractor as part of a fair and open competition. The Complainant did not put in a bid for the contract.
18. The PSIH's policy on re-use was drafted some time ago and is currently undergoing internal consultation.
19. The Contractor explained that it developed and paid for the COIN database. Accordingly, the Contractor owns intellectual property rights (IPR) in the database.

OPSI

20. The Complaint was made under Regulation 13 of the PSI Regulations which states that:
 - (1) *Any conditions imposed under regulation 12(1) shall not discriminate between applicants who make a request for re-use for comparable purposes.*
 - (2) *If a public sector body which holds a document wishes to re-use the document for activities which fall outside the scope of its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes.*
21. As stated above, Regulation 13 does not apply where the activity in question does not constitute re-use. In this case the PSI Regulations do not apply where a Contractor is simply publishing the information on the PSIH's behalf in pursuance of the PSIH's public task. However, if re-use had been found to be taking place, in winning the tender under open competition the Contractor is essentially acting as the Official Publisher of the information on behalf of the PSIH. Regulation 14 states that "*A public sector body may, where necessary for the provision of a service in the public interest, enter into an exclusive arrangement.*"
22. Paragraph 4.22 of the Guide to the Regulations and Best Practice states that "*where a service in the public interest cannot be provided other than by means of granting an exclusive licence this is permitted.* OPSI recognises the importance of the PSIH having an official site to make its material available to the public. OPSI also acknowledges that the Contractor was awarded the contract under open competition. The PSIH would, however, be expected to publish details of this arrangement and review the validity every three years Regulation 14 states that:
 - (3) *The validity of the reason for granting the exclusive arrangement under paragraph (2) shall be reviewed at least once every three years.*
 - (4) *Any exclusive arrangement permitted under paragraph (2) and entered into on or after 31st December 2003 shall be published by the public sector body.*

Summary

23. The material originated by the PSIH appears as a sub-page of a larger portal website which contains other information about Milton Keynes which the PSIH does not originate.
24. Under the PSI Regulations, PSIHs are not under any obligation to allow the re-use of material. In deciding whether to allow re-use PSIHs may

take into account a number of factors. One of these factors is likely to be the integrity of the information in question and whether the form of re-use is actually adding value to information which is readily available to the public. In this case, it is difficult to see what value the Complainant has added given that it is simply representing large amounts of information verbatim. In terms of the integrity of the information much of the information is of a volatile nature and it is essential that any re-user maintains up to date and accurate information. It could be argued that the public interest would best be met by a re-user establishing links to the PSIH site, in the same way as MK Web has.

25. OPSI's understanding is that the PSIH does not object to any of the contents being re-used provided that a mirror image of the entire site is not taking place and that the information is kept current. OPSI concludes that the availability of a number of similar sites containing substantially the same information would not necessarily be in the public interest. The PSIH has established an arrangement following a competitive tendering exercise under which information is made available to the Contractor in order that information is made available to the public. The PSIH should not be under any obligation to provide essentially the same data to other re-users.
26. During the course of the investigation OPSI noted some areas where there is room for improvement and makes the following suggestions to ensure best practice :
 - **OPSI suggests that the PSIH should implement its draft re-use policy as soon as possible, and encourage the re-use of its information.**
 - **OPSI suggests that the PSIH considers undergoing the IFTS Online assessment process.**
 - **OPSI suggests that the PSIH publishes a standard licence on its website or considers mandating OPSI to license the PSIH's material through the PSI Click-Use Licence.**
 - **OPSI suggests that the PSIH should publish details of any exclusive licensing and publishing contracts on its website.**
 - **OPSI suggests that the PSIH should publish a statement of what constitutes its public task.**

Current Situation

27. During the meeting between OPSI and PSIH, OPSI questioned why the Contractor's website could not link through to the PSIH's website and queried the appropriateness of the copyright notices. OPSI notes that the

PSIH and Contractor have now amended their website links and copyright notices.

Conclusion

28. **OPSI finds that is no re-use occurring in this case and therefore the complaint is not upheld.** This is because the information being presented by the Contractor on behalf of the PSIH is not being re-used. The Contractor is acting as the official publisher for the PSIH and was appointed as such under open competition.
29. In accordance with Regulation 20 of the PSI Regulations, the PSIH and the Complainant have the right to apply to the Advisory Panel on Public Sector Information (APPSI) Review Board for review of the recommendations made under the PSI Regulations in this report.

Glossary

Document - Any content, including any part of such content, whether in writing or stored in electronic form as a sound, visual or audio-visual recording, other than a computer programme.

IFTS Online - IFTS Online is an assessment process that measures how effectively public sector organisations manage the re-use of their information. It is also a valuable tool for public sector organisations to demonstrate that they are meeting their legal responsibilities under the Regulations on the Re-use of Public Sector Information 2005. IFTS Online is available to all public sector organisations.

Material - Material is the subject of **copyright**, such as documents, photographs, music etc. It also includes raw information such as datasheets and spatial data.

OPSI - Office of Public Sector Information - Operating from within the National Archives, the Office of Public Sector Information (OPSI) is at the heart of information policy, setting standards, delivering access and encouraging the reuse of public sector information. OPSI provides a wide range of services to the public, information industry, government and the wider public sector relating to finding, using, sharing and trading information.

PSIH - Public Sector Information Holder. Any body which is part of central government, local government, the NHS, and other non-departmental bodies such as the National Parks Authority. Material produced by such organisations in the line of their work is known as **Public Sector Information**.

Public Task - An organisation's public task is the objectives which it is required to carry out and may be statutory or contained within a framework document. The organisation's main activity will be focused on meeting its obligations outlined in its public task. A PSIH may also carry out activities of a more commercial nature which are not part of its public task.

Re-use of Public Sector Information Regulations – These regulations outline a **PSIH's** obligations under EU law to trade fairly in **PSI**. They also outline the sources for appeal against a decision by a **PSIH**, and outline what type of licensing should be carried out. The aim of the Regulations is to encourage the **re-use** of **public sector information** by removing obstacles that stand in the way of **re-use**. The main themes are improving transparency, fairness and consistency. In doing so, it will help stimulate the development of innovative new information products and services across Europe, so boosting the information industry.

Use - When **material** is handled in the way it was intended, such as a map is used to locate a road that is called use. It does not include changing, improving, updating or copying information.