

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

20 May 2009

**Public Authority:** The Commission for Local Administration in England  
**Address:** 10<sup>th</sup> Floor,  
Millbank Tower  
London  
SW1P 4QP

### Summary

---

The complainant requested information regarding whether the Commission for Local Administration in England ran an email archiving system. The public authority (PA) responded by advising the complainant that they do not have such an email archiving system. The complainant requested an internal review stating that he was of the opinion that the “public body may be in breach of the Human Rights Act, the Data Protection Act, the Regulation of Investigatory Powers Act and the Freedom of Information Act...by not having a verifiable and reliable Records Management and Retention Policy for email”. The PA responded by stating that a retention policy and an archive system were two separate things. The PA subsequently provided a copy of the former but stated that it did not have a searchable archive system. The complainant stated that the policy provided was not what he requested and that it contradicted other information provided. The Commissioner investigated the complainant’s assertion and is satisfied that on the balance of probabilities the Commission for Local Administration in England does not hold any further information covered by the scope of the request and therefore that it complied with its obligations under section 1(1) of the Act.

### The Commissioner’s Role

---

1. The Commissioner’s 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 16 January 2008 the complainant submitted a request for information to the Commission for Local Administration in England (CLAE) for information it held relating to its email archiving system. The complainant specifically asked:

*Since what date has your public body's e-mail archiving system recorded every single e-mail ever generated by or sent to your public body's e-mail addresses?*

*Does your public body's e-mail archiving system have a Google –like search facility to track e-mails? If not please provide me with details of your current facility, time scale and cost it takes, to track e-mails.*

*Does your e-mail archiving system create a tamper evident audit trail so an authorised administrator cannot look at members, officers, stake holders and contractors e-mail information without creating an audit trail that is automatically sent to three or more "data guardians"?*

*Does your e-mail archiving system have the ability, in cases of dispute with your public body, to provide compelling evidence in a Court of Law that e-mails do not exist as well as evidence for those that do exist?*

3. On 18 January 2008 the CLAE replied to the complainant advising that it did not hold any of the information covered by the scope of his request. Specifically it stated:

*We do not run an email archiving system. We hold one month's worth of backups on tape and we can recover email for up to one month after its deletion but some considerable effort is required to retrieve lost email.*

*We do not have any Google-type search facility to look through an email archive.*

*We do not run an email archiving system.*

*We do not run an email archiving system.*

4. On 21 January 2008 the complainant responded stating that he was unhappy with the initial response to his request and that he was "of the opinion that [the] public body may (sic) in breach of the Human Rights Act, the Data Protection Act, the Regulation of Investigatory Powers Act and the Freedom of Information Act ... by not having a verifiable and reliable Records Management and Retention Policy for email."
5. On 28 January 2008 the CLAE contacted the complainant advising that they did indeed have a Records Management Policy and Retention Policy but that was not in fact what was requested. They provided the complainant with a copy of the "policy on the retention and disposal of complaint casework records" and the

“policy on the management of complaint casework email and electronic documents”.

## The Investigation

---

### Scope of the case

6. On 1 February 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the information provided to him was not what he requested. The complainant's basis for this position was the following:
  - It was his understanding that CLAE held case files for a period of 14 years.
  - However, the information provided to him in response to his request of 16 January 2008 stated that the CLAE only held such files for a period of 14 months.
  - It was on the basis of this discrepancy in his understanding against that set out in the response from the CLAE that the complainant argued the information that had been provided to him was not what he requested.
7. Furthermore, the complainant implied that the CLAE needed to have an email archiving system in order to comply with the various pieces of legislation, as stated above i.e., the Human Rights Act, the Data Protection Act, the Regulatory of Investigatory Powers Act and the Freedom of Information Act. Thus it failed to provide the information which it had a statutory duty to hold.

### Chronology

8. The Commissioner wrote to the CLAE on 15 October 2008 in order to clarify whether it held any information falling within the scope of the complainant's request. The Commissioner specifically asked the CLAE for clarification regarding the retention period given the complainant's assertion and to request that they comment and clarify their archiving and retention policy.
9. The Commissioner received a response from the CLAE on 28 October 2008. In that response CLAE explained its archiving and retention policy in more detail and enclosed a copy of the Local Government Ombudsmen retention schedule. The Commissioner understands that the Local Government Ombudsmen forms part of the CLAE and therefore this retention schedule applies to both bodies.
10. On 2 February 2009 the Commissioner corresponded with the complainant to ask why he believed the CLAE to have a retention period of 14 years when none of the correspondence provided, by either the complainant or the CLAE, suggested such a period. The complainant accepted that his assumption was incorrect and the longest period suggested by any correspondence was 10 years.

11. The Commissioner wrote to the CLAE on 4 February 2009 to clarify some points at issue, namely; a more detailed explanation of the possibility and process of searching for a piece of electronic communication during a retention period.
12. The CLAE responded on 17 February 2009 providing further explanations of how the backup system could be searched and confirming that emails received and issued that are not placed within a complaint file are not held within a searchable archive system.
13. The Commissioner wrote to the complainant on 13 March 2009 to request confirmation of whether the request made concerned the ability to search the automatic backup system or whether the complainant was requesting information regarding the Retention Schedule and the retention of electronic records; including emails.
14. The complainant responded on the 18 March 2009 confirming that he was not interested in the ability to search the backup system and that his request was for, "the retention of electronic records...held specifically in their Complaint Files".
15. The Commissioner wrote to the CLAE on the 25 March 2009 requesting details of how a search of the electronic information held within the complaint files would be undertaken and whether that process is written down or is available in a recordable format.
16. The CLAE responded on 2 April 2009 confirming the process for locating electronic information held within complaint files.

## Analysis

---

### Section 1(1) – General right of access to information held by public authorities

17. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) states that:

“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.”
18. Set out at section 84, the right of access under the Act is defined as the right to access recorded information held by a public authority. A public authority is under no obligation to create new information, provide general explanations or opinions.
19. The Commissioner understands that although the CLAE initially appeared to interpret the request quite narrowly, merely refuting the existence of a specific 'email archiving system' it did eventually interpret the request more generally and

therefore provided details of the storage and retention policies behind the treatment of complaint files. The Commissioner agrees that it is right not to adopt too narrow an interpretation of the request and to objectively read it to be a more general request pertaining to the storage and treatment of complaint file documents, including electronic methods of communication. The Commissioner notes that further information in respect of the storage and retention of such documents was provided to the complainant on 28 January 2008 as detailed at paragraph 5 above.

20. In considering complaints of this nature – i.e. where there is some dispute as to the level of information that a public authority actually holds – the normal standard of proof that the Commissioner applies is civil standard of the balance of probabilities. In deciding where the balance lies the Commissioner's general approach is to consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering where appropriate any other reasons offered by the public authority to explain why the information is not held.
21. In the particular circumstances of this case, in investigating whether the CLAE holds any further recorded information which falls within the scope of the complainant's request of 16 January 2008 (in addition to that provided to him on 28 January 2008) the Commissioner has considered three issues. Firstly, the Commissioner has considered whether the CLAE has answered the specific question put to it in this instance concerning an email archiving system. Secondly, the Commissioner has considered whether there is any evidence to suggest that the CLAE would have a reason to have an email archiving system of the type described by the complainant. Thirdly, the Commissioner has considered whether the complainant's allegation that the information provided to him is inaccurate is relevant to the assessment as to whether the CLAE has fulfilled its duties under section 1(1) of the Act.
22. With regard to the first question, the Commissioner is satisfied that the CLAE addressed the particular question put to them in this instance. The complainant initially requested information pertaining to a searchable email archiving system. The CLAE has clearly explained that it does not operate such a system and the Commissioner can see no reason why this should be disputed. The Act refers to recorded information and does not require the public body to create the information requested. On the basis that the CLAE does not have an email archiving system, the Commissioner accepts that it is logical to argue that the CLAE would not hold any recorded information in relation to such a system.
23. With regard to the second question, the Commissioner acknowledges that the complainant has argued that the failure of the CLAE to have such a system would be in breach of the Act; amongst other pieces of legislation i.e. the Human Right Act, the Data Protection Act and the Regulatory of Investigatory Powers Act. The Code of Practice issued under section 46 of the Fol Act, which relates to records management issues, outlines policies and procedures which it would be good practice for public authorities to follow in order to fulfil the duties placed on them by the Act itself, neither the Act nor the Code of Practice place a mandatory requirement on public authorities to have an 'email archiving system'.

24. Similarly, the Commissioner understands that none of the other pieces of legislation quoted by the complainant place a statutory duty on public authorities to operate an email archive system. Consequently, the Commissioner is satisfied that the complainant's assertion that the CLAE must operate an email archiving system, and thus hold recorded information of the nature he requested, is not supported by the above facts.
25. Furthermore, as is clear from the above, the CLAE has provided the complainant with its 'Policy on the retention and disposal of complaint casework records' and 'Policy on the management of complaint casework email and electronic documents'. Having reviewed these documents, it is clear to the Commissioner that these documents sufficiently detail how the CLAE would deal with emails that it received in relation to complaints. On this basis the Commissioner is further satisfied that the CLAE would not need to hold further information (i.e. information not already provided to the complainant) about its retention of complaint related emails.
26. The Commission for Local Administration in England is the formal title of the Local Government Ombudsman service and as such the Commissioner understands that both bodies are covered by the policy documents provided to the complainant.
27. With regard to accuracy, the Commissioner notes the complainant's concern regarding the apparent discrepancy in the retention of information for either 14 months or 14 years. The complainant has since acknowledged that he was mistaken in believing CLAE had a retention period of 14 years. The complainant actually misread a suggested archive date of 10 years as 14 years.
28. The CLAE has advised that it maintains a computerised complaint database called Comtrac. This system logs complaints and allocates them a reference number. It is then used to record the progress of the investigation and any final decision made. This system does not hold any documents or emails about the complaint. Such correspondence would be held in hard copy in the actual complaint file, though some material could also be stored manually in a separate computer folder.
29. Any electronic documents held by the CLAE are destroyed at the same time as the hard copy paper file. The Comtrac record is retained for 10 years. After 5 years (previously 7 years) personal details such as name, address and other contact details will have been deleted.
30. When the Comtrac system was installed it was intended to include a facility whereby records could be 'archived' after 10 years, so that they were retained but were not on the 'live' database. However, this system is not, in fact, in operation and records are destroyed at the 10 year point. Thus the 'archive date' is the date at which the Comtrac record will be destroyed, rather than the complaint file.

31. With regards to the hard copy complaint file, this would normally be destroyed 12 months (previously 14 months) “after date of last action on [the] case” as is clearly indicated in the Retention Schedule provided.
32. The Commissioner is satisfied with the explanation provided by the CLAE that the archive date shown on some of the records already provided to the complainant is actually a date of destruction. The term ‘archive’ merely being automatically used by the computer system used.
33. The Commissioner has questioned the CLAE regarding its electronic backup system and whether this can be accurately searched and, if so whether it a verifiable audit trail of any such search is produced. The Commissioner is satisfied that this system is merely an automated back-up system in the event of an unforeseen system wide malfunction. The CLAE has confirmed that if required; and if the requester has specific details of a given email; its’ IT team may be able to locate an email within 4 weeks of its receipt or issue. No audit trail is produced and the Commissioner is satisfied that this level of retention is not the level sought by the complainant.
34. As set out above, the Commissioner has corresponded with the complainant regarding the retention and recollection of electronic information from the backup system and he has confirmed that this was not within the scope of the request.
35. The Commissioner noted that the retention policies provided to the complainant on 28 January 2008 refer solely to correspondence received and issued in relation to specific complaints and therefore asked the CLAE to consider how a search of other emails received and issued would be undertaken.
36. The CLAE confirmed that only emails received in respect of complaints are stored and these are held either in hard-copy format or in an electronic file linked to the complaint. The CLAE has the ability to search for complaint files and therefore their contents, which may include emails. In particular, the CLAE stated that to search for a particular email from a party a search using the complaint file reference number could be undertaken. Where the reference number is not known CLAE would find a document by conducting a search on Comtrac its electronic complaint tracking system – by searching on the complainant’s name and identifying what complaint(s) they had made. Then CLAE would simply look through either the electronic or hard copy file in order to locate the relevant document. However, the CLAE explained that this process is not recorded. Further the CLAE explained that there is no process for searching for individual emails that are not filed on a complaints file. Consequently the CLAE does not hold recorded information as to how such a search would be undertaken. The Commissioner considers that, on the evidence presented, this position is reasonable.
37. The Commissioner notes that the CLAE has different retention periods depending on the type of information concerned. The differing retention periods are clearly set out in the retention policy provided to the complainant on 28 January 2008. In the Commissioner’s opinion the fact that the CLAE retains information regarding numbers and types of complaint received does not necessarily mean that it will

retain all emails received or sent for the longer period referred to by the complainant.

38. In view of the above the Commissioner is satisfied that on the balance of probabilities the CLAE has provided the complainant with all of the recorded information it holds which could reasonably be considered to fall within the scope of his request of 16 January 2008 and has therefore complied with its duties under section 1(1) of the Act. Furthermore, by provision of the documents referenced in paragraph 5 above the Commissioner is satisfied that the CLAE has provided the complainant with the relevant recorded information that most closely fits a more general objective interpretation of the complainant's request made on 16 January 2008.
39. As set out above, the Commissioner has established that the CLAE has the ability to undertake a search for particular emails and/ or electronic communications when that communication forms part of a complaint and is therefore placed within a traceable complaints file. However, this information is not recorded. Section 84 of the Act defines information as "information recorded in any form". A public authority is only under an obligation to provide recorded information under the Act. As such a public authority is not under an obligation to create new information, provide general explanations or give opinions. In this case the Commissioner is satisfied that CLAE does not have recorded information illustrating how such searches would be undertaken, and therefore that all the information it holds falling within the scope of the request has been provided.

## **The Decision**

---

40. The Commissioner's decision is that the CLAE dealt with the request for information in accordance with section 1(1) of the Act.

## **Steps Required**

---

41. The Commissioner requires no steps to be taken.



## Right of Appeal

---

42. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 20<sup>th</sup> day of May 2009**

**Signed .....**

**Nicole Duncan  
Head of FOI Complaints**

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

## **Legal Annex**

---

### **Freedom of Information Act 2000**

**Section 1** provides that –

“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.

### **Section 84 Interpretation**

In this Act, unless the context otherwise requires—

“information” (subject to sections 51(8) and 75(2)) means information recorded in any form;