

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 January 2011

Public Authority: Isle of Wight Council
Address: County Hall
Newport
Isle of Wight
PO30 1UD

Summary

The complainant asked the Council to clarify under what authority it had rejected communications sent by residents of the Isle of Wight and for a statement of the legislation upon which it had based its decision to reject such communications. The Council stated that it had not taken an active decision to reject such correspondence and stated that it did not therefore hold information of the type requested. The Commissioner has investigated and finds that on the balance of probabilities the Council does not hold the requested information.

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.

Background

2. The Commissioner is not aware of the full history and context of the contact between the complainant and the Council but he is aware that in May 2009 the Council's Chief Executive wrote to the complainant to inform him that it had restricted his email contact with the Council. The Council stated that the complainant's emails "would be restricted to receipt by one officer who will review them on a weekly basis to see

whether any new issues have been raised. If not, you will not receive a response to those emails...".

The Request

3. In his complaint to the Commissioner, the complainant stated that he emailed the Council's Customer Services Department on 23 April 2010 because he had not received a reply to a complaint he had made to it about a matter unrelated to the complaint to which this Notice relates. In response, the complainant received an automated 'non delivery' report from the Council's email system.
4. Subsequently, later on 23 April 2010, the complainant emailed the Council with the following request:

"The information I wish to request is:

 - *Under what Authority is the Isle of Wight council rejecting communications sent by Island residents and Council Tax payers?*
 - *I also require a statement of the legislation upon which you are basing this decision to reject direct communications to the Isle of Wight Council."*
5. In response the complainant received an automated 'non delivery' report from the Council's email system. The report stated that the email had been "discarded" because the sender had been "blacklisted".
6. On 13 May 2010, the complainant submitted a complaint to the ICO. The complainant stated that he considered the rejection of his email to be a violation of his Human Rights and against his rights under the Act.
7. On 13 July 2010, the Commissioner contacted the Council and asked it to comment on the apparent rejection of the complainant's emails.
8. On 14 July 2010, the Council emailed the Commissioner to explain that it had introduced a new email filtering system in April 2010 that had resulted in the complainant's emails being rejected rather than redirected to a central point (as a result of the implication of the Council's restricted contact policy previously referred to in this Notice). The Council stated that it was not aware of the problem until the Commissioner brought the matter to its attention. The Council stated that because it was unaware that the complainant's or any other emails were being rejected, it held no information relevant to the request.
9. On 20 July 2010, the Commissioner asked the Council to provide a response to the complainant's request of 23 April 2010, which it did on

21 July 2010. The Council informed the complainant that it had not actively rejected his or any other communication and was not aware that its email system was rejecting his emails. The Council stated that it did not hold information of the type requested.

10. On 20 July 2010 the complainant contacted the Commissioner to complain that in response to a further email he had sent to the Council on that date, he had received a further automated 'non delivery' message. The request was also for information regarding the Council's decision to 'blacklist' the complainant's emails. The Commissioner contacted the Council on 28 July 2010 to make it aware of the issue. The Council responded on the same day to confirm that it had received the complainant's email of 20 July 2010. The Council stated that it was not sure why the automated message was still being issued by its email system and stated that it would look into this matter.
11. The Council wrote to the complainant on 29 July 2010 and clarified that it had not taken a decision to blacklist his emails. It also provided the email address of its Customer Services Department and asked the complainant to send all future emails to that address. The Council also confirmed that if the complainant wanted to access specific information about the Council's decision to restrict his own email contact in particular, he should exercise his rights under the Data Protection Act 1998 (the "DPA").

The Investigation

Scope of the case

12. On 14 August 2010, the complainant contacted the Commissioner to complain about the way his request for information of 23 April 2010 had been handled. The complainant stated that he had asked the Council to review its handling of his request but it had, on 9 August 2010, refused to do so. The Council had informed the complainant by email that, as it held no information relating to a decision to blacklist or discard emails, it was not appropriate to "carry out an internal review of this matter, under the Freedom of Information Act". The complainant specifically asked the Commissioner to consider the following points:
 - The Council claimed to have no knowledge of his request of 23 April 2010 but he had evidence that he had emailed the request to a Councillor from a different email address on the same date. The complainant claimed that the Council's statement that it had no knowledge of his request was therefore untrue.

- In order to submit requests for information to the Council, the complainant had been forced to change his IP address, open a new email account and only include his address on a "heavily disguised image file".
13. The Commissioner does not consider the complaint areas detailed above to be requirements of Part 1 of the Act and he has not therefore considered them further in the main body of this Notice. He has made reference to these issues in the 'Other Matters' section of this Notice.
14. During the course of the Commissioner's investigation the complainant also clarified that his complaint was about the Council's failure to deal with his request in accordance with the provisions of the Act and the Commissioner took this to mean that the complainant was not satisfied with the Council's view that it did not hold information relevant to the request, and he considers this to be the scope of his investigation.

Chronology

15. Following various email correspondence with the complainant between 10 and 12 November 2010 regarding the scope of his complaint, the Commissioner emailed the Council on 12 November 2010 to ask for further information to enable him to make a decision in this matter. The Council responded on 17 November 2010 and provided a further response on 18 November 2010.

Analysis

Substantive Procedural Matters

16. Section 1(1) of the Act creates a general right of access to information held by public authorities. Section 1(1) of the 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.'

17. The test which the Commissioner applies in determining whether a public authority holds any requested information is the balance of probabilities. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the IC's decision that the EA did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..." (paragraph 10) because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records" (paragraph 13).

18. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner may look at:
 - explanations offered as to why the information is not held; and
 - the scope, quality, thoroughness and results of any searches undertaken by the public authority
19. In this case the Commissioner considered the explanation provided by the Council to be the most relevant factor in arriving at his decision.
20. In correspondence with the complainant and the Commissioner, the Council stated that although it had restricted the complainant's email contact with the Council to one point of contact in line with its policy on such matters, it had not taken a conscious decision to block or 'blacklist' emails from the complainant. The Council explained that in April 2010 it had introduced a new email filtering system and that, during the migration to the new system, the new security settings resulted in the complainant's emails of 23 April 2010 being rejected. The Council stated that it was not aware of any other emails being rejected and took steps to reset the security settings.
21. The Council stated that, as it had not actively rejected the complainant's or any other communications, it did not hold information relevant to the request of 23 April 2010.
22. The Commissioner considers that this explanation is reasonable and does not think it necessary to consider the scope, quality and thoroughness of any searches conducted by the Council. The Commissioner's view is that if no conscious decision was made by the Council then it is clear that it would not hold information about any such decision. The Council clarified the circumstances that resulted in the automated responses being issued to the complainant and based on the

balance of probabilities the Commissioner has concluded that the Council does not hold the information requested.

The Decision

23. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

24. The Commissioner requires no steps to be taken.

Other matters

25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters:
26. Part of the complaint to the Commissioner was that the Council claimed to have no knowledge of the complainant's request of 23 April 2010. The complainant maintains that he has provided evidence to demonstrate that he had emailed the request to a Councillor (from a different email address to that he used in his original request) on 24 April 2010. The complainant claims that the Council's statement that it had no knowledge of his request until the Commissioner's involvement was therefore untrue.
27. Whether or not the request was received by the Councillor on 24 April 2010 is unclear. The complainant has provided what he states to be evidence that the Councillor received the email. However, the email is not an original email and has been copied by the complainant into a subsequent email he sent to the Commissioner. The complainant maintains that a copy of his request of 23 April 2010 was sent to the Councillor as an attachment to the email of 24 April 2010.
28. The Council searched for the same email of 24 April 2010 from the complainant to the Councillor and confirmed that it had a record of receipt. The Council stated that the email had been "caught as spam" and subsequently released to its Customer Services Department. This was in line with its decision to restrict the email contact of the complainant to one point of contact. The Council informed the Commissioner that since it implemented the policy of restricted contact for the complainant, his emails are only acted upon when they raise new issues or contain requests under the Act. The Council stated that the

email of 24 April 2010 did not contain a request but referred to an attachment that contained the request. The Council has no record of saving the attachment. In summary, the Council's view is that the Councillor in question did not receive the email as it was filtered and passed to the Council's Customer Services Department. However, the Council has no record of the attachment that contained the request for information.

29. It is clear to the Commissioner that the request of 23 April 2010 was not received by the Council because it was rejected for the reasons set out in paragraph 20, above. However, there is some confusion as to whether the Council could have been deemed to have received the request, via a Councillor, on 24 April 2010. The Commissioner does not consider it appropriate to consider this matter further. The Council is aware of the fundamental issue – i.e. the automated rejection of the complainant's emails – and has taken steps to address it. Any potential delay in responding to the request did not, in the Commissioner's view, disadvantage the complainant because the Council did not hold the information requested. The Commissioner considers that sufficient resources of both the Council and his own office have already been spent determining what at most would be a procedural breach of the Act.
30. The complainant also complained that in order to submit requests for information to the Council, the complainant had been forced to change his IP address, open a new email account and only include his address on a "heavily disguised image file".
31. The Commissioner raised with the Council the issue of the rejection of the complainant's emails in July 2010. The Council responded to this issue in July 2010 and the complainant was informed that the Council had taken steps to address the problem. There was an ongoing issue in that automated non delivery messages continued to be sent in response to the complainant's emails and requests but the Council explained to the Commissioner and the complainant that his emails were being received. The Council also provided the complainant with the email address of its Customer Services Department and asked the complainant to direct emails to that address to avoid future difficulties.
32. The Commissioner considers this issue to have been addressed by the Council and he will not be taking enforcement action on the basis of a 'one off' problem. The complainant was informed during the investigation process that it is the Commissioner's decision whether to take enforcement action and that there was no right of appeal. The complainant appeared not to accept the Commissioner's view and the Commissioner therefore thought it appropriate to restate the position in this Notice.

33. The Commissioner would like to point out that the Council did not undertake an internal review into its handling of the request of 23 April 2010. It stated in an email to the complainant of 9 August 2009 that, as it did not hold information relevant to the request, it did not consider it appropriate to carry out an internal review. Part VI of the Code of Practice issued under section 45 of the Act provides guidance on the handling of complaints to public authorities in relation to the way they handle information requests and the Commissioner considers that, in line with the guidance, the Council should have conducted an internal review.

Right of Appeal

34. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of January 2011

Signed

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(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."