

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 October 2011

**Public Authority:** Wigan Borough Council  
**Address:** Town Hall  
Library Street  
Wigan  
WN1 1YN

#### Decision (including any steps ordered)

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1. The complainant requested information from Wigan Borough Council ("the council") that had been referred to in a particular press article. The unauthorised disclosure of some documents had resulted in the dismissal of a council employee and the complainant wanted to see the information that contained the quoted comment in the newspaper article that the community should be "kept out of the decision-making process". The request was initially refused using an exemption under the Freedom of Information Act 2000 ("the FOIA"), however, when the council realised that the complainant's interest was limited only to the particular quoted comments, it said that this information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information was not held by the council.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 14 January 2011, the complainant wrote to the council and requested information in the following terms:  
  
"Under the FOI, please forward me the document which is related to [sic] in this case" (attached was a newspaper article dated 28 October 2009).
5. The council responded on 24 January 2011 and said that it was refusing the request on the basis that an exemption applied that related to

prejudice to the prevention or detection of crime. It said that the public interest favoured withholding the information.

6. Following a request to conduct an internal review by the complainant on 7 February 2011 the council wrote to the complainant on 11 March 2011. It said that the council wished to uphold its original position. The council referred specifically to the quotation that was referred to in the press article. It said that it believed that this represented an opinion rather than a direct statement that had been made in any of the documentation.

## Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council held information showing the quoted comment that appeared in the newspaper article. He explained that he was only interested in the document in which that statement appeared.

## Reasons for decision

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8. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
9. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".<sup>1</sup>

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

10. As background to this matter, the Commissioner understands that a bundle of documents containing sensitive information was found in a location where a particular council employee worked. The individual who found, and read, the documents, handed them into the council and expressed their opinion on the contents. As a result of this situation, the council employee concerned was dismissed from the council following a disciplinary procedure. At some point, the information was disclosed to the press and on 28 October 2009, an article was published on the story which contained the following wording:

*"It [the documentation] is said to be particularly sensitive and potentially embarrassing to the council because it undermined the Township Forum's most basic objectives, by stating that the community should be 'kept out of the decision-making process' wherever possible"*

11. When the Commissioner contacted the council about the complaint, the council said that it wished to maintain its position that the information was not held. It said that it had checked the bundle of documents that was found and could confirm that none of the information contained the wording shown in the press article. The council said that it knew that the quotation reflected the opinion of the person who had found the documents, and it suggested that the article had quoted that opinion and had been wrong to suggest that that particular wording appeared in the documentation that was found. The council confirmed that it had never held this information and it had therefore not been deleted, destroyed or mislaid.
12. The Commissioner contacted the complainant to explain that the information was not held and he invited the complainant to withdraw his complaint. At this point, the complainant supplied details of email contact he had with the journalist who wrote the original article. In this email, the complainant specifically asked the journalist to confirm whether there was a document that stated "as the article states". The journalist replied "Yes I wrote this story. Yes I saw the documentation". The complainant then asked "Do you know who wrote the statement that the community should be kept out of the decision-making process?" The journalist replied "it was a council officer...but I don't have a record of the name".
13. The complainant also alleged that he had contacted another individual who had seen the documents in question and that they had also confirmed that the documentation contained the quoted wording. This individual said that the document which contained the wording concerned the council's "Neighbourhood Teams".
14. Following receipt of the complainant's correspondence, the Commissioner wrote to the council again. He explained that the journalist who wrote the original article appears to have confirmed that

the document existed and also another individual had allegedly confirmed that to be the case. He invited the council to reconsider its position and to undertake further checks. The Commissioner also asked the council to provide him with copies of the documentation that was found so that he could inspect the wording.

15. The council and the Commissioner discussed the case during a number of telephone calls. The council confirmed that it had checked the documents again and was sure that no such statement was contained within them. It confirmed that it was willing to provide these documents to the Commissioner for inspection. The Commissioner and the council discussed the likelihood that a document had not been kept together as part of the bundle that was handed in. The council confirmed that this was very unlikely given the seriousness of the disciplinary process that took place. However, it confirmed that it had discussed the matter with the Neighbourhood Teams manager who had received the original documents when they were handed in. The council said that the manager was confident that she was able to recall the documents as she had read them when they were handed in. She confirmed that she could not recall the quoted statement and that there were no documents missing from the bundle as it appeared when it was first handed in. She also confirmed that in her view, such a statement was very unlikely to have ever been made in connection with Neighbourhood Teams as its remit is to keep the community involved regarding decisions.
16. The Commissioner appreciates that any evidence based on an individual's recollection is inherently imperfect, and this may increase the more time that has passed since the memory was formed. However, the press article refers to the statement as one that would be likely to cause the council embarrassment. In the Commissioner's view, it is likely that such an expression would stick in the memory for this reason if it had been written in the documents. The Commissioner also inspected the contents of the documents that the council said represented those handed in. There were documents which contained statements regarding the confidentiality of the information, however, the Commissioner was satisfied that they did not contain the wording quoted in the press article. On the balance of probabilities, based on the council's responses, the Commissioner is satisfied that the council undertook appropriate checks and does not hold the information requested.
17. The Commissioner cannot explain the conversation that the complainant alleges he had with an individual who had seen the documents although he notes that no direct evidence from that individual was presented to the Commissioner. The Commissioner also notes that the council was able to provide evidence that suggested that it was an opinion that the community should have been involved more in the council's decision-making. The Commissioner was also unable to account for the email

evidence that the complainant presented from the journalist who claims to have seen the documentation and written the original article however the Commissioner would observe that the email from the journalist and the details of an alleged conversation do not prove that a document ever existed that contained the wording in question.

## Right of appeal

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18. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**