

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2011

**Public Authority:** Northumberland County Council  
**Address:** County Hall  
Morpeth  
NE61 2EF

### Decision (including any steps ordered)

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1. The complainant requested from Northumberland County Council (the 'Council') information relating to the future operation of a bus service during a specified time period. The Council responded and provided the information it held. The complainant maintained that the Council held further information about the bus service and provided the Information Commissioner with copies of correspondence falling in scope which the Council had failed to disclose.
2. The Information Commissioner has investigated and has decided that the Council did at one time hold information relevant to the request which it failed to disclose to the complainant. He is satisfied that the Council no longer holds this information and his reasons are set out in this notice. The Information Commissioner has concluded, on the balance of probabilities, that the Council did not hold any further information beyond information which it provided to the complainant and the documentation which it failed to disclose but which no longer exists.
3. The Council did, however, breach FOIA by responding to the request late and must ensure that this delay is not repeated in future.

### Request and response

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4. On 14 November 2010, the complainant wrote to the Council and requested information in the following terms:

*"What records and documents does the Council hold regarding the 681 bus service between 14 May 2010 and 14 November 2010?"*

*That includes all internal and external e-mails, letters, memos, agendas of meetings, minutes of meetings, hand-written or computerised notes, invitations to tender, offers to tender and any other record in any form concerning in any way the 681 bus service.*

***Please provide me with copies of all of the above records and documents on paper.***

*What records and documents does the Council hold regarding the 680 bus service and liaison with Cumbria County Council regarding the provision of bus services including connections with the 681 bus service between 14 May 2010 and 14 November 2010?*

*That includes all internal and external e-mails, letters, memos, agendas of meetings, minutes of meetings, hand-written or computerised notes, invitations to tender, offers to tender and any other record in any form concerning in any way the 680 bus service and interaction of any kind with Cumbria County Council.*

***Please provide me with copies of all of the above records and documents on paper.***

*Please note that the Council has a statutory obligation under Section 16 of the Act to be "helpful" and "provide assistance" in dealing with this Freedom of Information request.*

*Please ensure that all the above information is sent to me within the statutory period of 20 working days."*

5. The Council responded on 20 December 2010 enclosing copies of the information it held relevant to the complainant's request.
6. Following an internal review the Council wrote to the complainant on 26 January 2011. It stated that "*all reasonable attempts were made to identify all relevant documentation in line with your request*" and upheld the original decision that all the information held by the Council about the bus service had been provided to the complainant.

## **Scope of the case**

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7. On 31 March 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He raised the following issues with the Information Commissioner:
  - the Council had not provided him with copies of all the information it held relevant to his request;

- there was correspondence regarding the bus service written by his MP to the Council and vice versa falling within the scope of his request, which had not been provided to him as part of the Council's response;
  - he had specifically asked the Council for records about invitations and offers to tender for the bus services but no such information had been included in the Council's responses.
8. The focus of the Information Commissioner's investigation was to consider whether, on the balance of probabilities, the Council held any additional information which fell into the scope of the request other than what had been disclosed to the complainant.

### Reasons for decision

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9. Section 1(1) of FOIA 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."*

10. The Information Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)*. It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Information Commissioner will apply in this case.
11. The balance of probabilities test in the above case established that a number of factors should be considered, including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis, and the rigour and efficiency with which the search was then conducted. This Tribunal also established that other matters may affect its assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. It concluded that the Information Commissioner's task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed. The Information Commissioner has therefore taken this into

account in determining whether or not any additional requested information is held on the balance of probabilities.

12. During the investigation the Council confirmed that it did not hold any further information falling within the scope of the request, advising that it had no record of any correspondence from the complainant's MP either received or responded to during the relevant period. The Council offered to undertake further searches of its systems if the complainant could provide dates and names of individuals he believed had corresponded with the Council about the bus service during the timeframe. The Council advised the Information Commissioner that the bus service tender information related to a different time period such that any information held fell outside the scope of the complainant's request.
13. The Information Commissioner contacted the complainant to determine whether he could provide any further details about the correspondence he believed had been sent by other individuals to the Council about the bus service. To date, the complainant has not provided the Information Commissioner with any additional details and the Council has therefore not undertaken a further search of its systems in relation to this aspect.
14. The Information Commissioner asked the Council about the searches it had undertaken when it had received the complainant's request. The Council explained that it had sent an email to all members of its Integrated Transport Unit with an instruction to provide copies of emails or correspondence relevant to bus service 681. At a later point in the Information Commissioner's investigation the Council also confirmed that the information it had provided to the complainant on 20 December 2010 also included references to the 680 bus service, which it explained is a service supported by Cumbria County Council.
15. On receipt of the complainant's request, the Council explained to the Information Commissioner that additional searches were made of its CRM system which it uses to log such contacts as external customer enquiries and complaints, with the original correspondence and replies. It also advised that its former Head of Transport, to whom the complainant's request and the MP's correspondence had been addressed, had left the Council in March 2011 and that, in accordance with the Council's policy, his hard drive had been wiped. The Council also confirmed that it had no record of the exact date of wiping the hard drive.
16. In addition, the Council confirmed that there had only been one email (dated 29 October 2010) about the bus service between it and Cumbria County Council during the time period specified in the request, which it had already provided to the complainant. It advised that it had given the complainant copies of the agenda, handwritten notes and minuted notes in relation to the meeting of 4 November 2010 held to discuss the bus

service, and that there were no other external meetings held during the time specified in the request.

17. The Council also confirmed that no formal meetings, internal or external, were held during the time period, explaining that the complainant had already been provided with the relevant email correspondence which covered the following topics: connections with the 685 service; requests for survey work on the 681; a spreadsheet containing the survey data, together with a summary which established the needs to be met; and emails relevant to setting up the meeting with parishes and other bodies.
18. The Council clarified that it held no other agendas or minutes other than the emails referred to above and the documentation associated with the meeting of 4 November 2010, all of which it had provided to the complainant with its original response.
19. The Information Commissioner also established that the Council had undertaken a search of its CRM software for complaints from the complainant about the bus service in the relevant time period, and had only located his freedom of information requests.
20. Having undertaken his investigation, the Information Commissioner formed a preliminary view that the Council had provided the complainant with all the information it held relevant to his request and wrote to the complainant in these terms.
21. The complainant responded by providing copies of correspondence about the bus service which fell in the scope of his request; two were letters to him from his MP dated 14 October 2010 and 1 November 2010, one of which referenced that the MP had written to the former Head of Transport at the Council and the other which enclosed a copy of the previous Head of Transport's response to the MP. The complainant also provided the Information Commissioner with a copy of the Council's reply letter to the MP dated 21 October 2010, which acknowledged receipt of the MP's letter of 14 October 2010, and a letter from the complainant dated 10 October 2010. In addition, the complainant enclosed a response from Cumbria County Council to himself, dated 4 November 2010, which was copied to a number of individuals including the former Head of Transport at the Council. He confirmed that none of this correspondence about the bus service had been provided to him by the Council in response to his request or at the internal review stage.
22. The complainant expressed a number of concerns which included the wiping of the former Head of Transport's hard drive after he had left the Council, together with the possible "*suppression of information*" by the Council. He explained that, because the Council had not provided him with the four letters he had now given to the Information Commissioner,

this raised doubts in his mind as to the legitimacy of the Council's response, in that he believes it is far more likely that *"the Council has withheld or destroyed correspondence which confirms the depth of public opposition to its highly unpopular bus cuts."*

23. The Information Commissioner wrote again to the Council on 12 September 2011 seeking clarification on a number of points, which included asking how it deals with correspondence from MPs and for a copy of its policy detailing what happens to former employees' hard drives. The Information Commissioner highlighted that, as the former Head of Transport had not left the Council's employ until March 2011, his hard drive would still have been intact both at the time of the request and the internal review, and he asked the Council to explain why it had not provided the complainant with copies of the correspondence he had submitted to the Information Commissioner.
24. In response, the Council forwarded a copy of its information security policy, explaining that business-critical information is stored on its network drives and that no assessment is undertaken of information stored on local hard drives before deletion, because the Council's policy requires that business-critical information is saved onto the network. It explained that the former Head of Transport's hard drive would have been wiped *"shortly after his departure [in March 2011] in line with common practice in the Council"*, confirming that it does not have a record of the precise date.
25. The Information Commissioner sought to understand how the Council handles correspondence it receives, particularly MPs' letters. In reply, the Council advised that initial incoming correspondence is processed through its CRM system and is then allocated to a manager for action, stating that the MP's correspondence may not have been allocated to the former Head of Transport. It explained that the CRM software only holds correspondence for three months.
26. The Council explained that it had initially invited quotes for tender from certain companies in February and March 2011, confirming that it held no tender related information for the period requested by the complainant.
27. The Information Commissioner found it necessary to contact the Council again because it had not fully explained why it had failed to provide the complainant with the four pieces of correspondence which fell within the scope of his request. The Council confirmed that its former Head of Transport would have been included in the email sent on receipt of the complainant's request asking for copies of emails or correspondence; however, it was unable to confirm whether it received any response from this individual, given that he had left the Council's employ in March 2011 and his hard drive had been wiped.

28. The Information Commissioner highlighted that the MPs' letters would still have been 'live' on the Council's CRM system at the time of its response to the complainant and asked the Council why it had not provided copies of these letters with its response to the complainant. In reply the Council confirmed that *"omitting this correspondence was an oversight on its part"*.
29. In addition the Information Commissioner asked the Council to explain why it had failed to provide the complainant with copies of the four pieces of correspondence either with its initial response to the request or following the internal review. The Council told the Information Commissioner that *"it would appear to be an oversight"* and that it had *"missed this documentation in responding to the request"*.
30. He also asked the Council whether it could categorically confirm that no other information is held relevant to the request other than: what had been provided; and, the four pieces of correspondence which it had once held but failed to disclose to the complainant, and which it no longer holds due to the former Head of Transport's hard drive having been wiped on his departure. In reply the Council categorically confirmed that no further information is held.
31. The Information Commissioner has carefully considered the view of the complainant and the Council's explanations in reaching his decision in this case; however, he is satisfied, on the balance of probabilities, that there was no intention to withhold information in the Council's failure to disclose the four pieces of correspondence. Instead, the Information Commissioner has accepted the Council's explanation that it missed the documentation during its search process. The Information Commissioner can see no gain in the Council claiming that it does not hold these four pieces of correspondence if in fact it does, given its explanation that it failed to disclose them due to an oversight. Further, the Council is aware that the complainant has his own copies of the four letters in question, such that there is nothing to be gained by it withholding them at this stage. Given his thorough investigation, together with the wiping of the relevant former manager's hard drive and the fact that correspondence is only held on its CRM system for a period of three months, the Information Commissioner is satisfied that the Council did hold these four letters at the time of the request but has since deleted them from its systems and no longer holds them.
32. The Information Commissioner is mindful that the Council's failure to provide the complainant with copies of these four letters does cast some doubt as to whether it holds other relevant information about the bus service which it has also missed; however, he has specifically questioned the Council about this and received its categorical confirmation that it does not hold any further information.

33. On the balance of probabilities, the Information Commissioner has concluded that the Council does not hold any further information relevant to the complainant's request; however, he would remind the Council of the need to undertake a thorough and rigorous search in response to future information requests.

### **Other matters**

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34. The complainant raised concerns about the quality of the Council's internal review in that he considered it too brief and that it did not address all the issues raised. While acknowledging that the internal review is not a statutory requirement, the Information Commissioner invited the Council to respond to the complainant's concerns; however, it declined.
35. The Information Commissioner has registered the complainant's concerns about the internal review with his Enforcement department, which monitors public authorities' compliance with the FOIA.



## Right of appeal

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36. 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)

37. 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.
38. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**