

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2012

Public Authority: East Riding of Yorkshire Council
Address: County Hall
Beverley
East Riding of Yorkshire
HU17 9BA

Decision (including any steps ordered)

1. The complainant requested information held by East Riding of Yorkshire Council' (the 'council') concerning its awareness of a former employee's share ownership of a particular company.
2. The Information Commissioner's decision is that the council holds no additional information within the scope of his request, other than that which has been provided to the complainant. However, the council breached sections 1 and 10 of the FOIA by not informing the complainant within the statutory time period that it did not hold any additional information and it failed to provide adequate advice and assistance to the complainant under section 16 of the FOIA.
3. The Information Commissioner (the 'Commissioner') requires no steps to be taken.

Request and response

4. On 10 December 2010, the complainant wrote to the council and requested information in the following terms:

"My request concerns Ms Susan Lockwood AKA Mrs Darryl Stephenson the former East Riding of Yorkshire Council's Director of Corporate Resources who took early retirement from the Authority in accordance with the Council's Early retirement Policy with effect from 11 July 2010.

It is my understanding that on 7th February 2010 Susan Stephenson was listed as a shareholder in a company known as Hardmoor Associates Ltd,

together with Professor Daryl Stephenson her husband, with the companies Office shown as Hardmoor Grange...

..(a) Is my information correct? Or are there two Susan Stephenson's (nee Lockwood)

(b) Were the east Riding of Yorkshire Council made aware of this Officer undertaking additional employment or being engaged in any other business without the express consent of the Council

(c) If indeed consent was required I wish to learn the authority by which consent was granted and by whom.

(d) If documents exist which would help in my understanding of the matter I wish to be provided with them."

5. The council responded on 31 January 2011, addressing the complainant's points in turn.
6. The council did not consider (a) to (c) to be requests for recorded information. In respect of (a) it directed the complainant to Companies House for information and in respect of (c) it advised him that '*Council officers owning shares in a company is not something in itself that any employee would need to notify the Council of.*
7. In respect of (d), the council claimed an exemption under section 21 of the FOIA as the information was available to the complainant by other means. It suggested that he look at the council's constitution which includes information on council officer employment and is available from its website, Customer Service Centres and libraries.
8. Following an internal review the council wrote to the complainant on 22 February 2011. It stated again that (a) to (c) were not requests for information as defined in the FOIA. However, it also informed the complainant that being aware of its duty to assist applicants, it would interpret his questions as being such requests.
9. In regard to (a), the council stated that it held no record of Ms Lockwood being a shareholder in Hardmoor Associates Ltd ('HAL'). It also advised that it has no records of an employee named Susan Stephenson.
10. In relation to (b) the council provided a copy of the "Code of Conduct for Employees" from the council's constitution. It highlighted paragraph 17 which stated that employees above scale point 28 must gain written approval from their Director before undertaking any private work and that having a shareholding was not regarded as such additional employment or private work. It explained that there would therefore be

no need for the employee to make the council aware of any additional employment in such circumstances as there would be nothing to declare. The council also stated that having a shareholding did not amount to being engaged in other business.

11. In addressing (c) the council explained that consent would not be required because holding shares would not amount to undertaking employment or a business.
12. Regarding (d) the council provided the complainant with a copy of its employee code of conduct.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically he complained that the council had not handled his request for information in compliance with its duties under the FOIA.
14. The Commissioner's investigation focused on what relevant information was held by the council at the time of the request and what information was provided in order to comply with that request.

Reasons for decision

15. 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.
16. Where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the actions the public authority took to check that the information was not held and if it can explain why it 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."¹

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

Scope, quality, thoroughness and results of search

17. The Commissioner made enquiries into the searches the council had carried out. The Council explained that it had searched the register of declared interests and declarations of secondary employment for officers known as the "East Riding of Yorkshire Council Register of Declarable Interests" (the 'register').
18. It explained that the rationale for its search was that any declaration by the officer that was required under the council's constitution would be contained there. The search revealed declarations of interest submitted by Ms Lockwood. These declared that her husband and son were directors of HAL *'but did not reveal any share ownership by that officer'*.
19. During the course of the Commissioner's investigation, the council provided him with information in respect of (d) that it had not provided to the complainant. This consisted of extracts from the register dated 28 March 2007, 23 April 2008, 3 April 2009 and 19 April 2010. With the council's consent, the Commissioner passed this information to the complainant.
20. On receipt of this information the complainant asked whether there was such an extract from the register for 2006. After the Commissioner made further enquiries, the council sent him a further extract from the register signed by Ms Lockwood and dated 1 May 2006. The Commissioner passed this to the complainant.
21. The council explained that it had not previously located the 2006 extract because it had searched the file that is designated to hold original copies of the registers and it found no extract for 2006. However, it later searched the file which held copies of the register entries and found that the original extract for 2006 had been placed in the copy file rather than in the originals file.
22. The extracts contain information that Ms Lockwood declared the roles of her family members in HAL to the council. However, they contain no information about any share ownership by Ms Lockwood.
23. The Commissioner considers that, in the round, the scope, quality and rigour of the councils' searches were sufficient in this case. This is because the council searched the specific records designed to capture declarations of financial and non-financial interests.

Reasons for holding/not holding the information

24. The council has argued that it would not hold the requested information as it does not regard a shareholding as additional employment or private

work and would not therefore expect related information to be disclosed to it.

25. The complainant submitted a number of arguments to the Commissioner as to why the requested information should be held and disclosed. He drew the Commissioner's attention to paragraph 2.1 of the "East Riding of Yorkshire Council Officer's Rules" which stated that undertaking additional employment or being engaged in any other business without the express consent of the Council, where such consent is required, would indicate gross misconduct on the part of the employee.
26. The complainant argued that Ms Lockwood held a one third voting entitlement in HAL and that this was not therefore merely part of a general investment portfolio.
27. The complainant further argued that the nature of the business of HAL required disclosure of the information. This argument related to a press extract from the Nottingham Evening News dated 3 June 2009, which stated that HAL had been commissioned by the council to assess its "inner workings".
28. The complainant further referenced section 5A (2) of The Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001. The complainant stated that this was relevant as Ms Lockwood had at one time been the monitoring officer for the council.
29. The Commissioner has considered both the council's and complainant's arguments. The complainant's arguments amount to an assertion that the council should have a record of the share ownership because it should have been informed of that ownership. However, it is not within the Commissioner's jurisdiction to make judgments on the administration of public authorities (outside of records management). The Commissioner can only consider this issue as far as it sheds light on the probability of the council holding information.
30. The council has stated that it would not expect to be informed about share ownership, such as that in this case. The Commissioner considers that it is also relevant that a public authority is generally reliant on the individual involved providing information to it in terms of declarable interests.
31. Therefore, in respect of whether it is likely on the balance of probabilities that the council holds further relevant information, the Commissioner considers that there are credible reasons as to why information would not be held.

32. The Commissioner is therefore of the view that, on the balance of probabilities and on the basis of the evidence in front of him, the council holds no further relevant information.
33. Section 1(1)(a) of the FOIA requires a public authority in receipt of a request to confirm whether it holds the information requested. Section 10(1) of the FOIA provides that a public authority should comply with section 1(1) of the FOIA within 20 working days.
34. The request was submitted on 10 December 2010. The council did not inform the complainant within 20 working days whether it held the requested information. The Commissioner therefore finds that the council failed to comply with section 1(1)(a) and breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Advice and assistance

35. In its initial response the council stated that the questions posed by the complainant were not requests for recorded information. In the internal review it explained that mindful of its duty to assist applicants it would interpret them as such under its duty to provide advice and assistance.
36. As long as a request meets the requirements of section 8 of the FOIA, then technically any written question put to a public authority is a FOIA request. Therefore a response should have been provided to the applicant under section 1 FOIA irrespective of the duty to provide advice and assistance.
37. It is section 16(1) of the FOIA that obliges a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with this duty if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
38. Paragraphs 8 to 12 of the code specify what advice and assistance may mean in clarifying requests for information. Paragraph 8 of the code states that public authorities should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.
39. Whilst in respect of (d) in the complainant's request the council provided him with its Employee Code of Conduct, the Commissioner considers it reasonable for the council to have sought to clarify his request to establish what type of information he was seeking that would help his understanding of the matter. This is particularly so as what may help one person's understanding of a matter may not help that of another.

Reference: FS50371787



However, considering the information disclosed to the complainant during the Commissioner's investigation, the Commissioner is satisfied that no further action is required.

Right of appeal

40. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

41. 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.
42. 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

Faye Spencer
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