

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2012

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant requested the minutes of a meeting that was reported to have taken place between senior officers at Wirral Metropolitan Borough Council ("the council") and a particular MP. The council said that it did not hold the information.
2. The Commissioner's decision is that the information was not held, on the balance of probabilities.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 23 October 2011, the complainant requested information from the council in the following terms:

"Please see the following article from the Wirral Globe

[link]

It details the MP Frank Field contacting the Serious Fraud Office regarding contract irregularities.

The Serious Fraud Office is the lead agency in England, Wales and Northern Ireland for investigation and prosecuting cases of domestic and overseas corruption.

Please disclose the minutes from the meeting of senior officers and Frank Field at the town hall on or around the 20th October 2011".

5. The council responded on 17 November 2011 and said that the information was not held.
6. The complainant requested an internal review on the same day.
7. The council did not respond.

Scope of the case

8. 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 had correctly said that the information was not held.

Reasons for decision

Section 1(1) – Was the information held?

9. Section 1 of the Freedom of Information Act 2000 ("the FOIA") provides a general right of access to information held by public authorities. It 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.
10. 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".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

11. The complainant has highlighted an article that was published on 21 October 2011 in The Globe newspaper. The article prompted this particular request for information. It states that Frank Field MP had asked the Serious Fraud Office to investigate allegations of "serious irregularities" at the council. It explained that the investigation agency was contacted following allegations made to the MP by a group of council staff. The article states that Mr Field had a meeting at the town hall with senior officers of the authority during which he discussed concerns about the circumstances surrounding the council's handling of a multi-million pound highways maintenance contract. In the article, Mr Field is quoted as follows:

"The seriousness of their claims was such that I immediately sought a meeting with the most senior officers of the council.

I spent the whole of an afternoon with them and, following this, I decided to refer the issues to the Serious Fraud Office".

12. The council said that it did not hold the information and believed that it had never held it. It said that there was no requirement for the council to hold the information. It maintained this position throughout the Commissioner's investigation. The council said that it had consulted current senior officers and personal assistants, as well as administrative staff of senior officers that were at the council at time of the alleged meeting including the personal assistant of the former Chief Executive who has since retired.
13. The council referred in particular to the response from the personal assistant of the former Chief Executive. She confirmed that she had searched through relevant files and could confirm that she had found no record of any minutes or notes being taken relating to the meeting in question. She explained that she had searched the former Chief Executive's paper office diary for any reference to a meeting with Frank Field MP involving the former Chief Executive or other officers from Monday 1 August 2011 to Friday 4 November 2011 inclusive. She confirmed that there was no entry showing that this meeting ever took place during that time period. She also confirmed that she had a folder on her personal drive entitled "Minutes of meetings" where she stores any minutes taken and this had been checked for any relevant information. She also confirmed that she had not typed any minutes relating to such a meeting. She commented that the former Chief Executive used to take handwritten notes at meetings in his own "personally bought notebooks". She said that the notebooks could not be located and had not been seen since the retirement of the former Chief Executive.
14. The council confirmed that all of the council's executive team had also been consulted about the request and their personal assistants had

searched electronic records of minutes that were held. The executive team confirmed that they were not even able to confirm whether or not the meeting had taken place. The council explained that a number of senior officers were no longer working at the authority and if a meeting had taken place involving senior officers, it seems likely that it would involve one or more of these officers, taking into account that the meeting was about a highways maintenance contract. The council confirmed that the personal assistants of those officers still worked at the authority and they had been consulted and had conducted searches of the electronic information that was held. It confirmed that there was no central database of minutes that could be searched.

15. The Commissioner highlighted the serious and unusual nature of the allegations and said that given the nature of the discussion and the fact that senior officers are reported to have attended for a whole afternoon, the meeting, if it did occur, seemed a formal one, which may suggest that a record would normally have been kept. The council said that there was no specific policy on whether or not a meeting such as this needs to be recorded although it accepted that given the nature of the meeting, it was disappointed that no record of the meeting could be found and it conceded that it would have been good practice to have kept a record. It said that the council was making improvements in its administration. It said that it was not aware of any information that would indicate that the information had been destroyed, deleted or mislaid.
16. Based on the above, the Commissioner understands why the complainant expected such a meeting to have been recorded in minutes. However, it nonetheless appears to be the case that no minutes of such a meeting were taken by the council on this occasion. The Commissioner is satisfied that the council has conducted appropriate searches to check that this was the case. The Commissioner accepts that on the balance of probabilities, the information was not held by the council.

Other matters

Records management and internal review

17. The Commissioner would like to recommend that the council considers the guidance available on good records management in the Code of Practice under section 46 of the FOIA.
18. The council failed to conduct an internal review on this occasion in accordance with the Code of Practice under section 45 of the FOIA. The Commissioner trusts that the council will in future ensure that it conducts internal reviews, and within the recommended time frame of 20 working days.
19. For ease of reference, the Codes can be accessed at the following link:
<http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/code-of-practice>

Right of appeal

20. 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

21. 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.
22. 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
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