

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 July 2012

**Public Authority:** Basingstoke and Deane Borough Council

**Address:** Civic Offices  
London Road  
Basingstoke  
Hampshire  
RG21 4AH

#### Decision (including any steps ordered)

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1. The complainant requested information relating to remittances made by a particular firm of bailiffs. The council's position was that it did not hold the information requested, although it did provide a response to one of the requests by obtaining information from the firm involved.
2. The Commissioner's decision is that the council did not hold the information requested.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 5 December 2011, the complainant requested information from the council in the following terms:

*"BDBC have advised me that a firm called Ross and Roberts, Civil Enforcement Agents (R & R), remit money directly into the above account relating to their work as bailiffs. Their registered Office is in Somerton.*

*Over several years remittances were made from their account with [bank details]*

*Will you please provide me with the precise date R & R last used that account to remit money to BDBC?*

*R & R very recently moved their account with [bank details] – which I understand is a clearing bank code – [name of bank] have themselves confirmed that R & R's account is presently held at [bank details].*

*Will you please provide me with the precise date R & R first used that account to remit money to BDBC?"*

5. The council responded to the request on 9 December 2011. It provided the information requested, having obtained it from the firm of bailiffs. It was not actually held by the council when the request was made.
6. The complainant made another request for information to the council on 9 December 2011 in the following terms:

*"As requested in our telephone conversation earlier today I wish to have written confirmation not from Ross and Roberts but the Bank Statements provided to BDBC by their Bank, HSBC. Will you please forward either the letter of email sent to you by Ross and Roberts.*

*Please consider this email as an application to BDBD under the Freedom of Information Act...*

*Specifically I require a copy of the original HSBC Bank Statement(s), which will be quite properly heavily redacted by BDBC, the information needs to be emphatically displayed and the dates clearly identifiable so that it will help the court".*

7. The council responded on 16 December 2011. It provided a copy of a recent bank statement, heavily redacted, to show that the information which appears on the council's bank statements does not identify the specific account from which the payment was made. The council explained that as the payment is made via BACS transfer, the account or bank making a credit to the council is not identified on the statement. In relation to correspondence from the bailiffs, the council said that the information had been obtained from the firm over the telephone and therefore, this information was not held.
8. On the same day, the complainant wrote to the council again and said that the information he requested must be held.
9. In response, the council said that it wished to maintain its position that the requested information was not held.
10. As the complainant continued to express dissatisfaction about the handling of his requests for information by the council, the council wrote to the complainant on 20 January 2012 and said that it was satisfied that it had met its obligations under the FOIA.

## Scope of the case

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11. In a letter of complaint to the Commissioner, the complainant said that he wished to complain about the council's refusal to provide "information they are under a statutory duty to provide". He alleged that the information provided to him on 9 December 2011 was inaccurate and had been "fabricated" by the council acting in collusion with the bailiffs. The complainant also said that he considered that the council had incorrectly claimed that there was no other way, aside from relying on the information obtained from the bailiffs, to identify the specific bank accounts from which the money came.
12. For clarity, the fact that the complainant believes that he was provided with inaccurate information that the council had obtained from the firm of bailiffs is not relevant to the Commissioner's considerations under the FOIA. The Commissioner is only concerned with recorded information that was held by a public authority. The Commissioner considerations below focus only on the issue of whether the council held information that would identify the specific bank account that the money came from, aside from the information obtained from the bailiffs firm that was provided in response to the initial request.

## Reasons for decision

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### Section 1(1) – General right of access

13. 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.
14. 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>

15. During the Commissioner's investigation, the council maintained that its bank statements did not show the information requested by the complainant. The council provided a copy of the relevant bank statement to the Commissioner to demonstrate that the statements did not contain any information that would allow for the identification of the specific bank accounts referred to by the complainant in his request. The council also confirmed that this information would not be held in any other form other than on the bank statements. Therefore, further searches were not necessary and no relevant information had been deleted, destroyed or mislaid.
16. In the complainant's initial letter of complaint to the Commissioner of 11 February 2012, it is clear that the complainant disputes the council's position that the bank statements do not contain enough detail to identify the specific bank accounts referred to in the request. He says the following:

*"...the council fabricate and concoct a claim 'we have checked with various officers within the Finance Team and the Local Tax Manager and can confirm that the council does not hold information which would identify from which bank money was remitted to the council from the bailiffs'".*
17. During a telephone conversation with the Commissioner, the complainant explained that he considered that the bank statements would contain some way of identifying the specific bank account. He said that the bank could be contacted to confirm the account if there was some sort of code. In the Commissioner's view, the information would not be held by the authority if it could only be obtained by contacting the bank. Having inspected the bank statement provided by the council, the Commissioner was satisfied that the information required by the complainant was not held because that information is not recorded in the bank statements. The bank statements do record a slight change in the description provided in the column for "payment type and details" where the payment relates to the bailiffs. This corresponds with the dates upon which the bailiffs have said their account details changed. However this information by itself does not identify the specific accounts used. In an effort to assist, the council agreed to disclose this information to the complainant during the Commissioner's investigation.

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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

## 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**  
**Cheshire**  
**SK9 5AF**