

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2012

Public Authority: Pembrokeshire County Council
Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant requested an exchange of emails between two councillors acting in their councillor role and an officer of Pembrokeshire County Council ('the Council'), acting in his official role on a matter of official business. The Council originally informed the complainant that as the exchange of emails would have taken place between Christmas and New Year when the Council was officially closed, they would have been sent from the personal computers of these individuals so would not therefore be subject to the Freedom of Information Act 2000 ('the Act'). However, following the Commissioner's intervention, the Council has subsequently confirmed that it holds no information falling within the scope of the request beyond that which is already in the hands of the complainant.
2. The Commissioner's decision is that Pembrokeshire County Council has complied with its obligations under section 1(1)(a) of the Freedom of Information Act 2000 ('the Act').

Request and response

3. On 17 January 2011, the complainant wrote to Pembrokeshire County Council and requested information in the following terms:
"There was communication between PCC's director of social services [named individual A], the cabinet member for adult services and care, [named individual B] and the chairman of the Older Persons, Health and Well-being Overview and Scrutiny Committee, [named individual C]."

Reference [named individual B'] email to the director [named individual A] dated 1 Jan 1[sic] 10.38; (two emails are mentioned, one for info, and one to follow); [named individual A's] reply of the same date, 4.08pm, [named individual C's] email to [named individual B] of 31 December 2010, 2.53pm...

I wish to see an audit trail of all correspondence; letters, emails; log of telephone calls and notes of telephone calls; and notes of personal conversations relating to this issue."

4. Named individual A provided the information he held falling within the scope of the request directly to the complainant. However, following some confusion, on 4 March 2011 the complainant contacted the Council to confirm whether her FOI request was proceeding. She further contacted the Council on 5 April 2011 to inform it that she had not received the information she had requested.

5. The Council responded on 6 April 2011. It stated that:

"Following consultation with [named individual A], I can confirm that there were no emails, meetings, telephone calls or exchanges apart from information you already possess."

6. On 7 April 2011 the complainant contacted the Council to clarify the chronology of the emails that originally started with one from her to named individual C. She also stated that whilst named individual A can answer for the exchanges he was involved in, she did not accept that he can answer for the exchanges between the two Councillors (i.e. named individuals B and C).

7. On 8 April 2011 the Council informed the complainant that:

"...if any exchanges were made between the two Councillors these exchanges would not be covered by a request to the Authority under the Freedom of Information Act.

Further if any exchanges were made at the time you state they would have been from the Councillors' home computers as County Hall was closed for the Christmas and New Year holiday."

8. Following an internal review the Council wrote to the complainant on 11 November 2011. It stated that:

"The Authority has provided you will all information it held. It is their opinion that there is no further information in respect of your request."

9. The complainant initially accepted this decision as she was not aware at the time that the Act covers all recorded information in any form.

However on 6 February 2012 she contacted the Council in response to the Commissioner's ruling on 28 January 2012 that all official correspondence is subject to the disclosure rules. She quoted from an article in the Daily Telegraph stating

"...Information held in private email accounts can be subject to Freedom of Information law if it relates to official business"

10. The complainant therefore asked the Council to look again at her request for a full disclosure of the correspondence, emails and telephone calls that occurred between the two councillors and an officer of the Council in view of this ruling.
11. The Council responded on 13 February 2012. It informed the complainant that an exchange between Members would not be information held by the authority as it would not be information held on behalf of the Council but the views, opinions and comments of private individuals.
12. The complainant responded on 17 February 2012 stating that the trail started with an email that she sent to named individual C in his role as chairman of the Older Persons, Health and Well Being Overview and Scrutiny Committee, and went on from there. She therefore maintained that it was official business.
13. The Council responded on 20 February 2012 stating that it is the Council that is caught by the FOI regime, not individuals. It added:

"...correspondence between councillors, even when acting as councillors, is not official business of the Council. The information must be held on behalf of the Council, not simply relating to their dealings with the Council in furtherance of their representative role."

Scope of the case

14. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She was particularly concerned with the Council's response that any information would not be official Council business. She stated that in her opinion they were all acting in their official capacity either as a member of the scrutiny committee, cabinet member or director of social services. The complainant also considered that the Council's argument that these transactions were carried out during the Christmas and New Year holidays on private computers as irrelevant.

15. During the course of the Commissioner's investigation of this complaint, he has pointed out to the Council that information on Council business sent or held on the personal computers of officials or members is subject to the Act. The Council appears to have accepted this.
16. The Commissioner has also pointed out to the Council that, given the respective roles of the parties to the correspondence, any information it held falling within the scope of the request, would be likely to be on official Council business. Similarly, the Council also appears to have accepted this.
17. However, the Council has stated that it holds no further information falling within the scope of this request. The issue for consideration in this notice is therefore limited to the Council's response that it held no further information within the scope of the request.
18. The Commissioner considers that, on the balance of probabilities, no further information falling within the scope of the request is held by the Council and the Council has therefore complied with its duties under section 1(1)(a) of the Act.

Reasons for decision

19. Under section 1(1) of the Act, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
20. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
21. The Commissioner's judgement in cases such as this therefore is based on the public authority's submissions and where relevant, details of any search undertaken. The Commissioner expects that the public authority should take a reasonable and proportionate search.
22. During the course of the Commissioner's investigation the Council has contacted the three individuals subject to the request for information to confirm that information held on personal computers is subject to the Act and that any information falling within the scope of the request is

likely to be official business. In view of this, the Council asked each individual to confirm whether or not it held any relevant information.

23. The Council has informed the Commissioner that named individual A has confirmed to the Council that he holds no further information relating to this case. Named individual B provided information which falls outside of the scope of the request but has confirmed that he holds no further information falling within its scope. Named individual C has confirmed that he holds no further information.
24. Given the nature of the information requested, the Commissioner considers that the Council has undertaken a reasonable and proportionate search. As the request focused on three named individuals he would not expect the Council to conduct a wider search and has no reason to question the responses of the three individuals. The Commissioner accepts that on the balance of probabilities, that the Council is unlikely to hold any further information relevant to the complainant's request. The Commissioner has therefore concluded that the Council's 'information not held' response is compliant with section 1(1) of the Act.

Right of appeal

25. 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

26. 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.
27. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF