

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 4 December 2012

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
Shropshire
SY2 6ND

Decision (including any steps ordered)

1. The complainant has requested information regarding the amount of money spent on a raid and legal action in relation to a named individual and her daughter. The Commissioner's decision is that Shropshire Council has provided the information it holds within the statutory timeframe and therefore no further action is required.

Request and response

2. On 24 March 2012 Shropshire Council ('the council') received the following request for information from the complainant:
 1. How much public money was spent by Shropshire Council in respect of the illegal raid the Council instigated and assisted in on the home of [2 named individuals] on 3rd June 2010? This question relates only to the day of the raid itself.
 2. How much public money, since the raid to-date, has been spent via public servant man-hours and other administrative duties & operations, as a result of the raid? This question requires an 'up-to-date' figure, which we know and accept is ongoing.
 3. How much public money has been spent so far in relation to the Council's legal action through the Courts to take [named individual] into care and away from her mother, [named individual]? This question relates to the Council's entire time addressing this specific

point, including man-hours and other financially accountable operations.

3. The council responded on 25 April 2012 and provided information in relation to questions 1 and 3 and stated that information in relation to question 2 was not held.
4. The complainant requested an internal review on 30 April 2012 as he believed that both the figures for question 1 and 3 were understated and that further information must therefore be held. In relation to question 3 he requested a full and complete breakdown of the figure quoted or failing that, that the council revisit the figure and provide an accurate statement that clearly reflects those involved.
5. The council provided an internal review on 18 May 2012 in which it maintained its original position and provided further explanations including stating that the exact information requested is not held.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He alleged that the council had lied to the public and failed to amend the lie in a timely manner and requested that the council be made to comply with their legal requirements with immediate effect.
7. As the complainant stated that he accepted the response to question 2, the Commissioner has considered the council's response to questions 1 and 3 only.

Reasons for decision

Section 1 – Is the information held?

8. Sections 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
9. 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 or whether the information is accurate. He is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

10. In relation to question 1, the complainant has asserted that the figure of £40 does not account for the length of time spent at the property by two council officers even if they were both on the national minimum wage.
11. The council informed the complainant that staff time is not allocated to individual cases so it is not possible to provide details of staff time involved and that the only information it holds is that recorded on the job allocation system which is £40.
12. In relation to question 3, the complainant has stated that the overall legal costs for this case, so far, must far exceed those stated in the answer provided. He stated that the council is known to have used three barristers, one of whom being the Official Solicitor employed by the council, who is the tenth highest paid barrister in the land.
13. The council informed the complainant that the Official Solicitor is not employed by the council. It stated that the Official Solicitor acts independently of the council and is responsible, through legal aid, for meetings the costs of its solicitors and barristers and that no additional cost information is held other than the amount of £21,287 in relation to the costs of legal action.
14. During the investigation, the Commissioner asked the council to consider that it could still hold the information in response to question 3 even though the Official Solicitor is not employed by the council and the costs are not covered by the council. It provided an up to date figure as to the costs of legal action as follows:

Travel: £1,757.70

Accommodation: £133.00

Professional Fees: £24,496.38 – this is predominantly counsel's fees

Miscellaneous: £458.18

Total: £26,845.26

The council explained that these costs do not include the costs of the council's legal and other officers' time in conducting the proceedings because these are not recorded. It also explained that whilst Legal Services does have a system for recording time spent carrying out its legal functions, it is not allocated to specific matters.

15. In reaching a decision as to whether the requested information is held, the Commissioner has considered whether there was any legal requirement or business need for the council to hold the information.
16. The council stated that there would arguably be a business purpose in recording the requested information so as to establish the precise costs of any proceedings taken by it but it is not considered to be necessary to do so for the time being in either this case or any others. It also confirmed that there are no statutory requirements upon the council to retain the requested information. The Commissioner is satisfied that there is no current business need or legal requirement to hold the information.
17. The Commissioner also enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, and what the council's record management policy says about records of this type.
18. The council explained that as the information has never been recorded it has never been deleted or destroyed and that therefore copies are not held in other locations either manually or in electronic form. It stated that no searches were undertaken as it is known that this information is not recorded or held and that the council's formal records management policy or retention schedule does not make reference to Legal Services needing to keep time recording records for the work it carries out.
19. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information that that provided to the complainant in this case. The Commissioner is therefore satisfied that on the balance of probabilities, the information provided is that which is held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Procedural requirements

20. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
21. Taking into account that the request was sent on a Saturday and there were two bank holidays in the period, the Commissioner is satisfied that the response was sent on the 20th working day which is within the statutory time for compliance.

Right of appeal

22. 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

23. 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.
24. 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