

## **Freedom of Information Act 2000 ('FOIA')**

### **Decision notice**

**Date:** 25 June 2013

**Public Authority:** Portsmouth City Council  
**Address:** Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

#### **Decision (including any steps ordered)**

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1. The complainant has requested the names of panel members who sat on various Standards Committees. Portsmouth City Council ('the council') initially responded by applying the exemption for law enforcement at section 31 of the FOIA. However, during the Commissioner's investigation, the council confirmed it did not hold the requested information. The Commissioner's decision is that, on the balance of probabilities, the council does not hold the requested information. He does not require any steps to be taken.

#### **Request and response**

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2. On 16 April 2012 the complainant wrote to the council and requested information in the following terms:

"1/ For all Copie's, of the name's, of the Portsmouth City Council, Panel member's, Who Sat on the Following, Standard's Committee's (I have listed,) below. In to my Complaint's against Councillor, [named councillor], and Councillor, [named councillor].

A/ Standard's (Assessment) Sub Committee. Held, on Monday 20<sup>th</sup> December 2010. (Complaint, against, City Councillor, [named councillor]).

B/ Standard's (Assessment) Sub Committee.Held, on Thursday 20<sup>th</sup> January 2011. (Complaint, against, City Councillor, [named councillor]).

C/ Standard's (Assessment) Sub Committee. Held, on Tuesday the 1<sup>st</sup> March 2011. (Complaint, against, City Councillor, [named councillor])

D/ Standard's (Assessment) Sub Committee.Held, on Tuesday the 1<sup>st</sup> March 2011. (Complaint, against, City Councillor, [named councillor])

2/ For all copie's, of the Portsmouth City Council (Notice OF Meeting) on the above Standard's Committee's, on my Complaint's. Where the name's, of these Panel member's, are Stated." [sic]

3. The council responded on 14 May 2012 and refused to provide the requested information citing the exemption at section 31(1)(g) of the FOIA by virtue of section 31(2)(b) where disclosure would or would be likely to prejudice the exercise by any public authority of its functions for the purpose of ascertaining whether any person is responsible for any conduct which is improper.
4. The complainant requested an internal review on 25 June 2012. The council responded on 20 July 2012 and maintained its original position.

### **Scope of the case**

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5. The complainant initially contacted the Commissioner on 17 May 2012 to complain that he hadn't received the information he had requested. After having exhausted the council's internal review procedure, he then contacted the Commissioner on 7 August 2012 to complain that he had still not received the requested information.
6. During the investigation the council informed the Commissioner that the information at point 1 A-D is no longer held. He has therefore not considered the exemption at section 31(1)(g) but has instead considered whether this information is held by the council.
7. The Commissioner asked the council how it had interpreted part 2 of the request and was informed that that part of the request was overlooked when responding to the complainant. As the letters of complaint to the Commissioner only focus on the provision of the names of the panel

members, the Commissioner has not deemed it necessary to consider part 2 of the request in this decision notice. <sup>1</sup>

## **Reasons for decision**

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### **Does the Council hold the information?**

8. Section 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. The complaint referred to a previous decision notice (FS50418600 dated 28 March 2012) as evidence that the information is held. The request in that case was for any notes or minutes taken at two committee hearings that were held to consider the standards complaints which are also the subject of this decision notice. As it is reported in that decision notice that the council confirmed it 'only recorded the date, time, the names of the panel members and the decisions that were reached for each meeting that was held' (paragraph 15), the complainant believes that the information must be held.
10. The council informed the Commissioner that, at the time of the request, an informal hand written note detailing the names of the panel members was still held by the clerk of the hearings. It explained that there was no requirement for this to be retained once a complaint had been concluded and it has since been destroyed. It stated that it is the council's practice for the City Solicitor/Monitoring Officer to maintain a central file containing records of all such complaints consisting of the original complaint form and the decision notice only. The council informed the Commissioner that the panel would have been selected at random from the 12-strong Standards Committee (whose names are published on the

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<sup>1</sup> However, he acknowledges that the council informed him that it would interpret part 2 as a request for copies of the public notice given in advance of each of the hearings and confirmed that it does not hold the information. It explained the case referred to was dealt with under the provisions of the Local Government Act 2000 and that, unlike meetings of other committees, the guidance provided by the Standards Board for England stated that no public notice should be given of these compliant hearings. It further explained that the Local Government Act 2000 has now been repealed and that when dealing with standards complaints it now applies the provisions of the Localism Act 2011 which does not have the same restrictions imposed in respect of the production of notices/agendas. Under the new provisions the agendas are now published and the meeting takes place in public.

council's website) with representation from each of the three political parties plus one independent member.

11. The Commissioner enquired whether the names of the panel members would be on the decision notice and was informed that only the name of the chair would be recorded on the decision notice which the complainant would be aware of, having received copies of the decision notices.
12. The Commissioner also enquired as to when the information was destroyed, whether a record of its destruction exists, and what the council's records management policy says about such records.
13. The council informed the Commissioner that there is no record of destruction of the information but that it was destroyed sometime between closure of the request (i.e. after completion of the internal review) and before the council received notification of the Commissioner's investigation.
14. A copy of the council's 'Corporate Retention Schedule' was provided to the Commissioner and he notes that the first paragraph of the document states "For example, did you know that draft minutes and notes of meetings can be destroyed once the formal copy has been signed and approved?"
15. The Commissioner has considered the matter and is mindful of the fact that the council does not have a formal record of when the information was destroyed. However, he understands that the hand written notes made were essentially only made as an aide memoire to assist to clerk rather than being created in order to form part of the official or formal record of the hearings. He also accepts that as the information was only recorded in the form of hand written notes kept locally by the clerk, the information would not be located elsewhere within the council and there would be no back-up copies.
16. The Commissioner is satisfied that on the balance of probabilities the council no longer holds the requested information. He has reviewed the council's 'Corporate Retention Schedule' and is satisfied that the information has been destroyed in accordance with the retention policy for this type of information. He is also satisfied that there is no evidence available to suggest that this information should be held or could be held elsewhere within the council.

## Other matters

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17. The Commissioner would like to draw the council's attention to his guidance on 'Retention and destruction of requested information'<sup>2</sup> which states that;

"If information is held when a request under FOIA is received, a public authority may lawfully be able to say that it does not hold it if it would normally be destroyed before the deadline for responding. However, the authority should, if possible, and as a matter of good practice, suspend any planned destruction and consider the request as usual."

18. The guidance refers to section 46 Code of Practice<sup>3</sup> and states that;

"Paragraph 12.3 of the section 46 Code states that where information is known to be the subject of a request for information, destruction should be delayed until all relevant complaint and appeal provisions have been exhausted. This will include internal reviews, any complaint made to the Information Commissioner, and any appeals from decision notices. The refusal notice should set out the time limit for requesting an internal review; the Commissioner would then expect complaints to be made within two months of the internal review decision; and, following the issuing of a decision notice, there are rights of appeal to the Information Rights Tribunal and then to the courts. Given the various time limits involved, it is recommended that a public authority retain the requested information for a period of at least six months from the date of the last communication about the request, or related appeals, to allow for the appeal process."

19. Although the council in this case has not breached the FOIA, as it destroyed the requested information in line with its retention policy, it has not followed best practice, as set out in the section 46 Code, and should endeavour to do so in future.

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Practical\\_application/retention-and-destruction-of-requested-information.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/retention-and-destruction-of-requested-information.ashx)

<sup>3</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

## Right of appeal

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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](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)

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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**