

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

### **Decision notice**

**Date:** 18 November 2013

**Public Authority:** Huntingdonshire District Council  
**Address:** Pathfinder House  
St Mary's Street  
Huntingdon  
Cambridgeshire PE29 3TN

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

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1. The complainant has requested information from Huntingdonshire District Council (the council) relating to what he has referred to as its 'Lying Policy'. The council responded stating that it did not hold any information that would relate to such a policy.
2. The Commissioner's decision is that the public authority has complied with its obligations under section 1(1) of the FOIA but has breached section 10(1) of the FOIA by failing to respond within the statutory time limit of 20 working days.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 22 December 2012 the complainant wrote to the council and requested information in the following terms:

*"Q.1. In regards HDC's bailiff contractor, whose responsibility within the council is it to decide policy requiring staff dealing with queries and complaints to refute allegations of maladministration without first making preliminary investigations into their validity?"*

*Q.2. If it is nobody's responsibility within HDC to decide policy detailed in Q1, is this decided by central government? i.e., is the council given guidelines?"*

*Q.3. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating, before council's policy allowed staff to consider that a complaint may be investigated, rather than dismissed?*

*Q.4. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating before council's policy allowed staff to uphold a complaint?"*

6. The council responded on 25 January 2013. It stated that it did not hold any information relating to any policy that was relevant to the request that had been made. This is because no such policy existed.
7. Following an internal review the council wrote to the complainant on 3 May 2013. It stated that it was satisfied that the request had been responded to correctly.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 10 May 2013 to complain about the way his request for information had been handled. The Commissioner has therefore considered whether the council holds information within the scope of the request and whether its response is compliant with section 1(1) of the FOIA and section 10 (1) of the FOIA.

### **Reasons for decision**

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9. 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. It is not required to create new information in order to respond to a request.
10. Section 10 (1) of the FOIA states that the response should be supplied within 20 working days.
11. 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 is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.

12. The complainant, when requesting an internal review, put forward a question relating to a scenario where a householder is being pursued by a council's bailiff contractor for payment. The council stated in response that:

*'Upon reviewing the complaint it seems evident that it centres around the bailiff service and not about the information which was supplied in response to the Freedom of Information request'.*

The council then explained how to make a complaint about its services. It informed the complainant that it was satisfied that the original request had been responded to correctly.

13. The complainant believes that a 'Lying Policy' exists. He states that he has conducted research which indicates this and that this leads council staff to lie to complainants when dealing with certain issues. The complainant also states that his experiences with another council have led him to believe that on the balance of probabilities a lying policy will exist.
14. The Council explained to our office that there is no statutory requirement to have such a policy and that no such policy exists.
15. 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 information relevant to this request. He does not find it difficult to accept that the council does not have a written policy requiring staff to lie. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.
16. The council did respond to the request one day after the 20 working days and therefore failed to comply with its obligations under section 10 (1) of the FOIA.

## **Other matters**

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17. As he has made clear in his published guidance on internal reviews, the Commissioner considers that internal reviews should be completed as

promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review. In this case the Commissioner notes that complainant first requested an internal review on 11 February 2013 but the council did not provide an internal review response until 3 May 2013, some 12 weeks later. The council should ensure that internal reviews are carried out promptly in future.

## 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**