

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2013

Public Authority: North East Lincolnshire Council

Address: Municipal Offices
Town Hall Square
Grimsby
South Humberside
DN31 1HU

Decision (including any steps ordered)

1. The complainant has requested information in relation to the costs of issuing a Council Tax summons. The Commissioner's decision is that North East Lincolnshire Council ('the council'), on the balance of probabilities, does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 2 May 2013, the complainant wrote to the council and requested information in the following terms:

"With reference to regulation 34(5) of SI 1992/613

In circumstances where payment is made in accordance with (5)(a) and (b) on the day of issue,

What cost would the council have incurred in respect of the issue of that summons.

Either;

in actual pounds and pence

-or-

as percentage of overall costs incurred in respect of an

application where the liability order is obtained

Note: The authority will have accepted payment and the application halted, therefore no costs can be included in respect of agreeing or setting-up payment arrangements, monitoring payment arrangements, telephone communications or correspondence entered into outside those automatically triggered."

3. The council responded on 14 May 2013 stating that it does not hold the requested information in relation to the issue of a summons for an individual account. It confirmed that the costs applied for the issue of a Council tax summons is £70.00.
4. The complainant requested an internal review on 15 May 2013 stating that there is a business need and legal obligation to hold a breakdown of the costs requested.
5. The council provided its internal review response on 13 June 2013 in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 26 June 2013 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether the council holds the requested information.

Reasons for decision

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. 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 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.

10. The complainant alleges that there is a business need for the requested information to be held. He pointed out that a previous decision notice dated 13 February 2012 (FS50400874) dealt with similarly requested information from the same council which was considered by the Information Tribunal¹. He stated that the appeal was struck out, not necessarily because the Judge deemed there was no business need for the council to hold the information, but rather because of the way the request was phrased. He said that the judgement details that, on the balance of probability, information would be deemed held if there was a strong business reason for it to be and quoted paragraph 7 of that judgement:

"In cases where there are arguments as to whether a public body holds information, this is considered on the basis of whether on the balance of probability the information is held. Often, a party might argue that the information is on the balance of probability held because the body has a strong business reason why it would be held."

11. He said that Department of Communities and Local Government ('DCLG') released a report entitled "Guidance to local councils on good practice in the collection of Council Tax arrears", which makes for a very strong argument why the council would have a business reason to hold the information. In particular, he quoted paragraph 3.4 of the guidance as follows:

"3.4 Local Authorities are reminded that they are only permitted to charge reasonable costs for the court summons and liability order. In the interests of transparency, Local Authorities should be able to provide a breakdown, on request, showing how these costs are calculated."

12. The complainant also provided the Commissioner with a letter from the council's Income and Collection Manager to Grimsby Magistrates Court, which stated that the council had decided to increase the costs to be charged for a summons for Council Tax and National Non Domestic Rates to £70, and a reply from the court noting the contents of that letter. He said that such letters indicate that a person at the local authority responsible for reviewing costs must have needed to make an assessment to state a sum to the Deputy Clerk to the Justices.

¹ Gilliatt v Information Commissioner EA/2012/0050

13. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.
14. The council said that no searches were undertaken as the requested information was not held. It explained that on receiving the request in May 2013, discussions took place between Local Taxation & Benefits Shared Service Manager, Strategic Lead - Revenues, Court Enforcement Officer and Accountancy, and it was noted through discussion, that with regards to 34 (5) of SI 1992/613 the council had no legal obligation to hold the information requested. As there was no legal obligation to hold the information, it was confirmed that no breakdown of the required amounts was held on the councils systems, or had been produced.
15. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. He requested that the council consider the complainants reference to paragraph 3.4 of aforementioned DCLG report and the following comments made by the complainant in his correspondence to the council:
 - "Expenditure incurred by the council in applying for liability orders can be added as costs to debtor's accounts as an amount equal to a sum reasonably incurred. As this is laid out in SI 1992/613 – therefore law – it must be possible for the authority claiming these costs to be able to support them".
 - " ...I would appreciate it being explained to me how NELC could possibly operate within the law without holding this information. Being unable to provide this means NELC could potentially be defrauding millions of pounds from its residents."
16. The council explained that at the time of responding to the request and the subsequent internal review response, the aforementioned DCLG guidance had not been published, as it was published on 17 June 2013. It pointed out that the guidance states that Local Authorities should be able to provide a breakdown, not that they must. It considers that the documentation is guidance and that there is no legal obligation on it to hold the requested information.
17. It pointed out that the legislative provision the complainant refers to, regulation 34(5) of SI 1992/613, only refers to 'costs reasonably incurred by the authority', and explained that it considers it is only charging costs reasonably incurred in making the application which include:

- Direct Payment to Her Majesty's Courts and Tribunal Service
 - Staff Time
 - ICT Software
 - Postage & Printing
 - Stationary
18. The council acknowledged that it would be reasonable to state that costs per individual case may vary, however it said that it, and all other Local Authorities around the country, do not have the necessary resources to calculate the costs incurred on a case by case basis and set a prescribed cost which is applied to all cases.
19. The council also said that there are no further statutory provisions in either the Local Government Finance Act 1992, The Council Tax (Administration and Enforcement) Regulations 1992 or the Magistrates Court Act 1980 that make reference to being able to provide a breakdown of the reasonable costs incurred.
20. Given the above explanations, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it did not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information was not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.
21. However, the Commissioner notes that in its correspondence to him, the council confirmed that since the applicant's request, it has entered in to consultation with District Audit with regards to publishing a document it has since created which details a breakdown of the reasonable costs incurred for the court summons and liability order. In the interests of transparency, it is the council's intention that, once consultation has concluded with District Audit, the spreadsheet will be made available on the Councils website and will be updated annually in adherence with DCLG's best practice guidance.

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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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