

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2013

Public Authority: Stoke-on-Trent City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent
ST14 1HH

Decision (including any steps ordered)

1. The complainant requested statistical information about social care provision from Stoke-on-Trent City Council (the 'Council') which was cited by one of its Councillors at a meeting. The Council stated that this information was not held for the purposes of FOIA under the provision of sections 3(2)(a) and (b).
2. After investigation, the Information Commissioner has found that the requested information is not held by the Council for the purposes of FOIA by virtue of section 3(2)(b). He requires no steps to be taken.

Request and response

3. On 15 July 2013 the complainant wrote to the Council and requested information in the following terms:

"Under the provisions of the Freedom of Information Act 2000 please provide a copy of the statistical information, relating to social care provision, that was cited by Cllr [name redacted] at the meeting at Longton Community Church Hall, Caroline Street Longton on the evening of Friday 12th Aug 2013 and the source from which they were derived."
4. The Council responded on 18 July 2013. It stated that as the named Councillor was acting as a member of the Labour Group and not an elected Councillor representing the Council, the request did not fall

under FOIA and, as such, the Council did not hold the requested information.

5. The complainant requested an internal review on 18 July 2013. That same day, the Council wrote to the complainant. It stated that as the request did not fall under the provisions of FOIA, it would not conduct an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 23 July 2013 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether, on the balance of probabilities, the Council holds information in scope of the request.

Reasons for decision

Section 1 General right of access

Section 3(2) – information held by a public authority

8. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
9. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

10. The issue for the Commissioner to determine is whether the Council holds the requested information and, if not, whether it is held by another person on its behalf.

Is the information or any part of it held by the Council?

11. The complainant explained that he had attended a Constituency Labour Party meeting on 12 July 2013, at which the named Councillor (the 'Councillor') delivered a report on the Council's social service provision

requested at a previous meeting. The Councillor quoted statistical information during the course of her report, which the complainant asked to see; he received a reply refusing to provide it on the basis that it "*was of a confidential and sensitive matter*".

12. He then submitted his request to the Council under FOIA which was refused. The complainant contended that "*The statistical information referred to by Councillor [name redacted] related to the service provided by the Council and was published by them and I would like you to instruct them to disclose it to me*".
13. The Council told the Commissioner the meeting of 12 July 2013 was a Stoke South Constituency Labour Party (CLP) meeting and that the Councillor had attended it as a Stoke South CLP member. It confirmed that members of the CLP had raised questions about the Council's social care provision at a previous CLP meeting, and had requested that one of the Councillors present answer these queries at a future CLP meeting. Subsequently the named Councillor answered the questions at the CLP meeting of 12 July 2013.
14. The Council confirmed that the requested information is not held on any of its systems or premises, explaining that it had been provided to the Councillor by Council officers following a number of discussions.
15. The Council added that the purpose of the information, which was recorded for a short time only, had been to provide the CLP members with an explanation of the social care issue raised at an earlier meeting

Is the information or any part of it held by another person on behalf of the Council?

16. In order to comply with the requirements of FOIA, public authorities clearly need to know what information they hold for the purposes of FOIA. This means, for example, that they need to be aware of information that is being held on their behalf by other persons.
17. Good records management is important in this context. Public authorities are advised to follow the good practice which is set out in the Lord Chancellor's Code of Practice under section 46 of FOIA. This includes, for example, a section on records that are shared with other bodies or held on their behalf by other bodies.
18. The Commissioner acknowledges that the Council recognises that information is held by a public authority for the purposes of FOIA if it is held by another person on behalf of that authority.

19. In this case, the Council provided confirmation that the requested information was not held by the Councillor in her capacity as a Councillor per se, but instead by her in her capacity as a Stoke South CLP member.
20. With respect to the requested information, the Council advised that it had been provided to the Councillor in person by Council officers following a number of discussions. It said that the Councillor had confirmed that she does not physically hold the information, explaining that she had made some notes on her iPad which she had deleted following the meeting as there was no need for her to keep them.
21. The Council confirmed that the recorded information was held by the Councillor for a short time on her iPad in order to assist with a discussion at a political party meeting, in her capacity as a CLP member and not in her capacity as a Councillor, adding that the information was not held for any Council purpose.
22. In addition, the Council stated:

"..the Council is satisfied that this information is not held for the purposes of the FOIA, as it is not held in the format specified in section 3(2)(a) (by the authority, otherwise than on behalf of another person) or (b) (by another person on behalf of the authority) of FOIA".
23. In reaching his decision in this case the Commissioner has taken into account the nature of the information requested, his consideration of the nature of the meeting attended by the Councillor, and the explanations provided by the Council. The Commissioner is satisfied, on the basis of the evidence in front of him, that the information held by the Councillor, albeit for a short period, was not held by her on behalf of the Council.
24. In conclusion, having considered all of the points above the Commissioner is satisfied that, in this case, the Councillor does not hold the requested information on behalf of the Council. Further, the Councillor has confirmed she no longer holds the briefly recorded information. Overall the Commissioner has therefore concluded that the Council does not hold information relevant to part (1) of the request for the purposes of FOIA.

Other matters

25. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the

Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.

26. In this case, the Commissioner has noted the Council's reason for not carrying out an internal review; however, given that the complainant had requested a review, the Commissioner considers that he was entitled to a reconsideration of his request to determine whether the Council had reached the correct decision.

Right of appeal

27. 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

28. 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.
29. 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

Jon Manners
Group Manager
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF