

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2013

Public Authority: Hampshire County Council

Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested a copy of an email and its attachments which he believes is held by Hampshire County Council.
2. The Information Commissioner's decision is that, on the balance of probabilities, Hampshire County Council does not hold the information sought by the complainant.
3. The Commissioner requires the public authority to take no further steps in this matter.

Request and response

4. On 20 March 2013, the complainant wrote to Hampshire County Council and requested information in the following terms:

"I would like a copy of or be sent the email and attachments sent to [a named councillor] on or around the 20 May 2009 by Hampshire County Council's Environment Department. The letter was sent in reply to [a named councillor's] request for information regarding certain aspects of Hampshire County Council's expenditure. The letter was entitled Environment Department, Response to [a named councillor's] Questions 20 May 2009."
5. The Council sent its' response to the complainant on 9 May 2013. It stated that, 'we have carried out extensive searches for the information requested. The search has entailed both electronic and manual

searches; unfortunately we have not been able to locate the requested information'.

6. On 17 May 2013 the complainant wrote to the Council to request an internal review of its handling of his information request.
7. On 23 May the complainant wrote again to the Council and provided information he believed would assist it in locating the email and attachments which he seeks. The complainant provided the Council with the name of the purported author of the letter and the name of his personal assistant; he suggested that the Council should search for the specified correspondence with these names being used for reference and with the date of 'around May 2009'. The complainant also referred to the Council's document management system – Hantsfile, and suggested that the search should use "contains" in the left-hand field and that the title should use relevant wildcards.
8. The Council completed its internal review and wrote to the complainant on 31 July. The Council advised the complainant that it had commissioned a further search of its Hantsfile system and that this was conducted by a senior IT consultant – a 'SuperUser'. The Council reported that it had again been unable to track down the letter referred to in the complainant's request. The Council also informed the complainant that it has asked its Corporate Risk Manager to check the emails held by the letter's author and those held by his secretary. The Corporate Risk Manager confirmed that the email which the complainant seeks was not held on either person's email account.

Scope of the case

9. The complainant contacted the Commissioner on 8 August 2013 to complain about the way his request for information had been handled.
10. The complainant asserted that the document is known to exist as it has been copied on to other documents. He provided the Commissioner with what he believes is the document's unique reference number for the Council's Hantsfile system - 000000701518.
11. The Commissioner's investigation of this complaint concerned whether the Council held the information sought by the complainant at the time of his request.

Reasons for decision

Section 1 – Is the information held?

12. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

13. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information sought by the complainant.

14. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

15. The Commissioner investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction. The Commissioner also provided the Council with the reference number which the complainant had supplied when making his complaint.

16. The Council’s submissions to the Commissioner contained detailed descriptions of the searches and enquiries it had made in respect of the requested information.

17. The Council informed the Commissioner that it had asked the recipient of the email – a named councillor, whether the email could be retrieved from him. It was found that the named councillor had forwarded all of his emails to a personal email account and that he no longer holds emails dating back to before 2010. The Council confirmed that it no longer held the named councillor’s emails.

18. Enquiries were also made of the Chief Executive’s Office staff to determine whether the requested email had been copied or forwarded to them. This enquiry was made because staff in this office may sometimes retain hard copies of some correspondence with Councillors. This enquiry led to a search of both electronic and paper records. The Council reported that the requested information was not found.

19. The Council’s Internal Audit team conducted further searches of its paper and electronic records, particularly those records which relate to an investigation of allegations made by the complainant in this case.

Again the Council informed the Commissioner that the requested information was not found.

20. The information provided by the complainant at the time of its internal review was used by the Council to carry out further searches. The individuals named by the complainant (at paragraph 7) both searched their email accounts under the supervision of the Council's Corporate Risk Manager. These searches did not find the requested information. The individuals also confirmed that they did not hold any paper records nor did they have any recollection of the email sought by the complainant. Additionally, the two individuals confirmed that they do not hold the email on personal email accounts or use laptops for County Council work.
21. The Council explained that its Hantsfile system is the designated location for the storage of documents. It has been used by its Environment Department for this purpose since early 2009. An Email can be stored on the Hantsfile system if it is considered that it should be retained. The Council advised the Commissioner that a search of the Hantsfile system was undertaken by a "SuperUser". This person is a senior IT consultant and experienced in using and searching the system. He was unable to locate the information.
22. Following its receipt of the Commissioner's enquiry letter, a new search was carried using the reference number supplied by the complainant. Again the Council advised the Commissioner that its search had failed to retrieve the requested information.
23. The Council confirmed to the Commissioner that it does not hold any information to suggest that recorded information has been deleted or destroyed.
24. In the circumstances of this case the Commissioner is satisfied that, on the balance of probabilities, the information sought by the complainant is not held by the Council.
25. The Commissioner has not seen any evidence that would question the Council's assurance that it does not hold the information sought by the complainant.
26. The Commissioner's decision is that the Council has complied with the provisions of section 1 of the FOIA.

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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF