

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2014

Public Authority: Norwich City Council
Address: City Hall
St. Peter's Street
Norwich
Norfolk
NR2 1NH

Decision

1. The complainant has requested information regarding the installation of payphone kiosks street furniture in Norwich. Norwich City Council maintains that it has released all requested information to the complainant. He disputes this.
2. Firstly, the Commissioner's decision is that where the complainant has requested his own personal data Norwich City Council, by virtue of section 40(5)(a), was not required to inform him whether it held this information.
3. Secondly, the Commissioner's decision is that Norwich City Council has, by the time of this notice, informed and released to the complainant the totality of the non-exempted requested information it holds.

Request and response

4. On 23 January 2013 the complainant requested, from Norwich City Council ("NCC"), information of the following description:
 - All documentation, including but not limited to all files regarding the proposed installation of the new BT payphone kiosks in Norwich including correspondence to and from the agents JCDecaux.

- A copy of all data held by the authority or relevant partners regarding myself... and my company, [name redacted]. To include, but not limited to, the planning application and process and the section 50 licence of the Highways.

He also requested the full contact details of;

- Your chief internal auditor,
 - the officer charged with leading on the operational delivery of your anti-fraud and corruption,
 - strategy or the Local Government anti-fraud strategy,
 - your complaints manager or person responsible for formal corporate complaints and;
 - the officer in charge of any whistle-blower procedure accessible by the public.
 - Finally, may I also have copies of your full complaints policy and procedure?
5. NCC responded, on 22 and 27 March 2013, by providing the complainant with the requested "contact details" and at least some of the further requested information via a compact disc. The complainant requested an internal review on 8 April 2013. It appears that this request went unheeded by NCC.

Scope of the case

6. The complainant contacted the Commissioner on, amongst other dates, 9 June 2013 to complain about the way his request for information had been handled.
7. NCC, on 6 November 2013, provided the Commissioner with a copy of the information it had or was about to release (on 8 November 2013) to the complainant.
8. On 8 November 2013, NCC provided the complainant with further information that fell within what he had requested. The Commissioner then proceeded to consider those aspects in which the complainant still considered further information to be held.
9. On 20 January 2014 the complainant confirmed to the Commissioner that "[name redacted]" was his trading name and not a limited company.

Reasons for decision

10. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
- the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.

Section 40(5)

"A copy of all data held by the authority or relevant partners regarding myself ... and my company, [name redacted]. To include, but not limited to, the planning application and process and the section 50 licence of the Highways."

11. As stated above "[name redacted]" is the complainant's trading name thus these "entities" are the same person; the complainant.
12. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted.
13. In addition, in relation to such information public authorities are not obliged to comply with section 1(1)(a) - confirming whether or not the requested information is held - by virtue of section 40(5)(a). In other words, if a person requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA whether it is held.
14. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. Having considered the wording of the request in this case the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because he has requested information - "a copy of all data held by the authority or relevant partners regarding the complainant" - that is, by its own definition, about or connected to the complainant.
16. The Commissioner therefore considers that NCC should have applied section 40(5)(a) to this part of the request.

Section 1

- All documentation, including but not limited to all files regarding the proposed installation of the new BT payphone kiosks in Norwich including correspondence to and from the agents JCDecaux.
17. NCC's position is that it has communicated all the requested information to the complainant. It communicated the information to the complainant on 22, 27 March and 8 November 2013. A copy of this information was provided to the Commissioner by NCC on 6 November 2013.
 18. When a complainant asserts that a public authority has not accounted for all the requested information it holds, the Commissioner will decide whether this is the case on the balance of probabilities. He will reach the decision based on the adequacy of the public authority's search for the information, any other reasons explaining why the information is not held and on matters raised by the complainant. In order to assist in this determination the Commissioner put a number of questions to NCC and these are viewable in the annex attached to this decision notice.
 19. In addition to the above the Commissioner considered the released information to see if it referred to other requested information that had not been identified by NCC as held information
 20. In reading and cross – referencing the already released information and having regard to NCC's answers to his queries (as laid in the attached annex) the Commissioner is satisfied that it holds no information that has not already been released to the complainant. This is because there is nothing to reasonably suggest in the released information that there is further unreleased information within the scope of request. Additionally, having regarded NCC's answers to his queries, the Commissioner is satisfied that it has undertaken sufficient steps to determine whether it held the requested information.

Section 10

21. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) and (b) requires a public authority in receipt of a request to confirm whether it holds the requested information and, if held, to communicate that information.

22. The Council complied with section 1(1)(a) by informing the complainant that the requested information was held. However the information was not provided until 27 March and 8 November 2013. The Commissioner therefore finds that the public authority has breached section 10(1) by failing to comply with section 1(1)(b) within the statutory time period.

Other Matters

Subject access rights

23. A public authority should not discuss the requester's personal data with the requester under the terms of the Freedom of Information Act. The Freedom of Information Act is "applicant blind" and any disclosure made to one requester should ordinarily be made to any other requester. A public authority should therefore refuse to confirm or deny whether it holds the requester's personal data under the Freedom of Information Act. However, as a practical next step, it should then consider the requester's subject access rights under the Data Protection Act 1998.
24. The public authority should satisfy itself that the requester is who they say they are (and not somebody impersonating them), it should clarify what personal data is being sought and it can charge a £10 administrative fee. It is not obliged to take forward a subject access request until these points have been satisfied.

Internal review

25. When a requester expresses dissatisfaction with a public authority's response to his request for information, this should trigger the authority's internal review procedure in accordance with the Code of Practice under section 45 of FOIA. While there is no statutory time frame relating to internal reviews, the Commissioner's position is that an internal review should not take longer than 20 working days unless exceptional circumstances are involved. In this case, the authority failed to conduct an internal review even when prompted to do so by the Commissioner. The Commissioner would like to remind the council of its responsibilities in this regard and trusts that it will make appropriate improvements in the future.

Right of appeal

26. 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

27. 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.
28. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

On 11 September 2013 the Commissioner wrote to NCC to, amongst other things, determine whether it had (where it was required to do so) informed and released to the complainant the totality of requested information it held. NCC provided its reply to the Commissioner on 6 November 2013. The Commissioner's queries (bulleted) and NCC's replies (non – bulleted), both directly transposed, are laid out below.

In order to assist with this determination please answer the following questions:

- What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

The complainant's request was processed in the same manner as all other requests we receive. The relevant officers were contacted and asked to provide any information they held relating to this request concerning the installation of phone kiosks. By contacting the officers who were involved in this application, they are best able to respond as they know their level of involvement and are able to provide all relevant information they hold.

- If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

The search was for any information held and did involve electronic data. It included the system of networked shared folders the council uses to store data and the email accounts of individual officers. It is not the council's policy to store information locally on personal computers.

- If searches included electronic data, which search terms were used?

The search terms included the application reference number, the nature of the enquiry, the date or dates and the name of the person making the request.

- If the information were held would it be held as manual or electronic records?

The information would be held as electronic records.

- Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
- If recorded information was held but is no longer held, when did NCC cease to retain this information?

This may be the case; emails will have been held but later deleted once the matter was complete. Officers will routinely delete emails as part of the process of managing their email account. Each officer's account has a limit and once this is reached it is not possible to send any further emails. Housekeeping is therefore necessary to ensure officers can continue to work.

- Does NCC have a record of the document's destruction?

It is not possible to give a precise date for the reasons above.

- What does NCC's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the NCC describe the way in which it has handled comparable records of a similar age?

The council's records management policy sets out the retention period for records across specific service areas of the council but the deletion of emails rests with the officer in managing their own personal email account.

- If the information is electronic data which has been deleted, might copies have been made and held in other locations?

Copies of emails would be retained within the council's back-up regime, but this would only be for a limited period. There would be no reason to retain them for such a long period of time.

- Is there a business purpose for which the requested information should be held? If so what is this purpose?

There would be no business purpose for retaining emails once the matter was concluded. The council is unable to retain all the information we receive for an indefinite period and would not want to retain information if there were no purpose in so doing. Planning application information is retained.

- Are there any statutory requirements upon NCC to retain the requested information?

There is a statutory require for the council to retain planning application information, but this would not include all the information the complainant lists.