

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2014

Public Authority: Lincolnshire County Council

Address: County Offices
Newland
Lincoln
LN1 1YL

Decision (including any steps ordered)

1. The complainant has requested information relating to a report published in 2002. Lincolnshire County Council (the "council") refused the request on cost grounds, citing section 12 of the FOIA. It also deemed the request vexatious under section 14 of the FOIA. During the Commissioner's investigation the council disclosed information to the complainant. The complainant disputed the council's confirmation that no further information was held.
2. The Commissioner's decision is that the council:
 - provided the complainant with all the relevant information it holds and that it complied with section 1(1) of the FOIA;
 - that it failed to provide the information within 20 working days and breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 30 September 2013, the complainant wrote to Lincolnshire County Council (the "council") and requested information in the following terms:
(In relation to the Public Interest Report ("PIR") on Lincolnshire County Council, published by KPMG on 2 May 2002)

"I require to see all the correspondence, including emails, letters, invoices, etc. together with any handwritten or typed notes and contemporaneous records of all formal and informal meetings and telephone calls, exchanged between officers of LCC including the Chief Executive, Monitoring Officer (Hazel Salisbury) and KPMG.

This documentation will relate to the PIR and all issues leading up to its publication, having been referred to by the council to KPMG and investigated by them, to reach their conclusions."

5. The council responded on 21 October 2013. It stated that the cost of compliance would exceed the appropriate limit and issued a refusal under section 12 of the FOIA. The council stated that it also considered the request to be vexatious, citing section 14 of the FOIA.
6. Following an internal review the council wrote to the complainant on 18 November 2013. It stated that it was maintaining its position.

Scope of the case

7. On 29 October 2013 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner contacted the council and asked it to revisit the request and to consider revising its position. The council subsequently withdrew its reliance on section 12 and section 14 of the FOIA and disclosed the requested information to the complainant.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had disclosed all the relevant held information.

Reasons for decision

Section 1 – duty to provide information held and Section 10 – duty to provide information within 20 working days

10. Section 1 of the FOIA requires a public authority to confirm or deny whether the information specified in a request is held and, where it is, to provide it to a requester.
11. Section 10 of the FOIA requires a public authority to comply with section 1 within 20 working days of the date of receipt of the request.

12. In this case the council disclosed a small quantity of information to the complainant and confirmed that no further information is held. The complainant has disputed this and considers that more relevant information should be held by the council.
13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request). To assist with this determination the Commissioner approached the council with a number of standard questions used in such scenarios. The questions and summaries of the council's responses are reproduced below.

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?

15. The council explained that all members of its Corporate Management Board and other officers who were known to have had involvement in the matters at the time were contacted and asked to search their records for any information held that falls within the scope of the request. The council confirmed that members of staff listed within the complainant's request are no longer employed within the council but it was considered that if any information held by them were to have been passed to other officers, it would have been the current members of the Council's Corporate Management Board.

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

16. The council confirmed that the following search terms were used: "Speechley", "Public Interest Report", "Salisbury", "Jameson", "KPMG".

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

17. The council confirmed that if any information were held at this time it would be in manual form as opposed to electronic.

Was any recorded information ever held relevant to the complainant's request but deleted/destroyed?

18. The council confirmed that it was likely that both paper and electronic records were held at the time that the matter was live.

If recorded information was held but is no longer held, when did the Council cease to retain this information?

19. The council explained that it was not able to confirm when it ceased to retain information that may fall into the scope of the complainant's request. The council confirmed that it did not have a record of the destruction of any relevant documents.

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

20. The council explained that it considered that the information identified by the request would fall under the categories of 'General Correspondence' and 'Email'. The council explained that its Retention Policy identifies the following timeframes:

Record Type	Destruction
Correspondence (General)	Last action/entry + 5 years
Email (not subject to a request for information under FOI/EIR/DPA)	Last action/entry + 1 year

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

21. The council confirmed that it was confident that the information was not held in any other locations.

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

22. The council confirmed that there was no business purpose for holding the information.

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

23. The council stated that it was not aware of any statutory obligation to retain the information.

24. The council further confirmed that the Public Interest Report to which the request refers was issued in 2002. The information being sought would pre-date that as it is correspondence that would have been generated during the formulation of the report. The council stated that it was satisfied that it made every effort possible to locate the requested information.

Conclusions

25. The Commissioner is mindful that the complainant has a keen personal interest in accessing the requested information and, given the seriousness of the matters associated with the request, he understands why the complainant might be unwilling to accept that further information is not held by the council.
26. The Commissioner considers that it is for a public authority to decide what information should be recorded and retained in order to meet any statutory obligations or to carry out its public functions.
27. In this case, the council has confirmed that there are no statutory obligations for it to retain the information requested and that the information is not required for it to carry out any of its current functions.
28. Commissioner notes that the request relates to information which would have been generated over 10 years ago, a timeframe which exceeds that identified in the council's Retention Policy. In view of this and having considered the council's explanations of the searches it has conducted, the Commissioner is satisfied that, on the balance of probabilities, the council has correctly confirmed that no further relevant information is held.
29. The Commissioner has, therefore, concluded that the council complied with section 1(1) of the FOIA. However, as the information which was still held was provided to the complainant outside the 20 working day time limit, the council breached section 10(1) of the FOIA.

Right of appeal

30. 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

31. 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.
32. 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
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