

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2014

Public Authority: Kent County Council

Address: Kent County Council, Sessions House,
County Road, Maidstone, ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the costs incurred by Kent County Council (KCC) during an investigation into a complaint.
2. The Commissioner's decision is that KCC has complied with its duties under section 1 of the FOIA in so far as it has confirmed that it does not hold the requested information.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 9 November 2013, the complainant wrote to KCC and requested information in the following terms:

"I am making a formal FOI request to find out the cost of the investigation into the complaint from the six governors Sherwood Park School It took place between 17th January and 19th April."

5. KCC responded on 27 November 2013. It stated that:

"The Head of Internal Audit confirms that she spent 13.5 days on the investigation between 17th January and 19th April. However as other senior officers and officers who assisted had not recorded their time in the same way, it was not possible to estimate the number of man-hours spent on the investigation in total and consequently, it could not calculate even an approximate cost."

6. Following an internal review KCC wrote to the complainant on 20 December 2013. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 2 January 2014 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if KCC holds any further information within the scope of the request.

Reasons for decision

9. Section 1 of the Act provides that a public authority must respond to a request and confirm or deny whether the relevant information is held. If there is no reason why the information is exempt from disclosure then the public authority must provide the information to the requester.
10. In this instance KCC has denied that it holds any further relevant information. However, the complainant considers that KCC does hold further relevant information and that it should be provided to him.
11. 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 might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner 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).
13. In order to assist with this determination the Commissioner asked KCC the following questions:
 - a. 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?
 - b. 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.
 - c. If searches included electronic data, which search terms were used?

- d. If the information were held would it be held as manual or electronic records?
 - e. Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed? Only limited information was held and this was provided to Mr Mills.
 - f. If recorded information was held but is no longer held, when did KCC cease to retain this information?
 - g. Does KCC have a record of the document's destruction?
 - h. What does KCC formal records management policy say about the retention and deletion of records of this type? Can KCC describe the way in which it has handled comparable records of a similar age?
 - i. If the information is electronic data which has been deleted, might copies have been made and held in other locations?
 - j. Is there a business purpose for which the requested information should be held?
 - k. Are there any statutory requirements upon KCC to retain the requested information?
14. KCC provided submissions to the Commissioner explaining why it does not hold the requested information.
15. It explained that when it first received the request for "*the cost of the investigation into the complaint from the six governors Sherwood Park School It took place between 17th January and 19th April*", it approached all officers who had involvement with the internal investigation.
16. Only one officer, the Head of Audit, had kept any record of the time spent dealing with the investigation and subsequent complaints, which it duly provided to the complainant in its response.
17. It went on to explain that most KCC officers, and certainly those involved with investigating the issue in question, do not have a business need to record time spent on specific tasks/projects. In fact, there were no additional costs incurred in dealing with either the investigation or the complaints from the governors since all KCC officers are salaried, and would be paid regardless of whether they were working on this particular matter or something else within the remit of their duties.

18. A search of individuals' time sheets would only reveal their hours of attendance and would not give an idea as to how that time was actually spent. KCC stated it had asked the officers who it knew to have been involved with the Sherwood Park investigation if they had recorded the time they had spent on this matter.
19. KCC stated that the only recorded information falling within the scope of the request was provided to the complainant. However, the Commissioner stated that the response stated the hours spent, not the cost. Therefore KCC stated that the Head of Audit had advised that:
20. *"For the 13.5 days of my time, I have calculated an approximate cost of £5,020 assuming the hours that I work on average in a week. Please note that this includes on [sic] costs.*

As we discussed this cost information is not normally held, hence I have had to calculate specially for this purpose. This is because we do not bill for my time normally.

The duration of the investigation was due to the number of complaints received and the changes in scope as the review progressed due to additional information being provided, requested or further complaints."

21. With regard to b), c), and f) to i) KCC stated that it was not applicable as the information was not held.
22. KCC confirmed that there is no business purpose for which the requested information should be held and there are no statutory requirements to retain it if it was held. It also confirmed that if the requested information was held, it could be held electronically or manually.
23. KCC considered that, clearly, as a public authority, if it suspects impropriety with regard to the misuse of public funds, it has a duty to investigate these allegations regardless as to whether the projected time/costs of any investigation may exceed the value of the infringement. Any argument that suggests there should be a monetary limit on investigating such matters is not a valid one.
24. On the balance of probabilities the Commissioner is therefore satisfied that KCC does not hold the requested information. The Commissioner makes this finding based on the responses provided by KCC to his questions and the searches undertaken.

Other matters

25. During the Commissioner's investigation he advised KCC that although they had responded to the request, it had not actually answered the question for the "cost", it had provided the number of hours instead. KCC were requested to disclose the actual cost for the number of hours, which it has done in paragraph 20 above.

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

Pamela Clements
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