

## Freedom of Information Act 2000

### Decision notice

**Date:** 9 June 2014

**Public Authority:** Royal Borough of Greenwich  
**Address:** The Woolwich Centre  
Wellington Street  
Woolwich  
SE18 6HQ

#### Decision (including any steps ordered)

---

1. The complainant requested a copy of a proposed bullying strategy from the Royal Borough of Greenwich (the Council). The Commissioner's decision is that the Council is correct to state that it does not hold the information under the terms of the Freedom of Act 2000 (the Act).
2. The Council did breach section 10 of the Act as it did not respond to the complainant's request within 20 working days. However as the response has been issued no further action is required.

#### Request and response

---

3. On 30 September 2013, the complainant wrote to the Council and requested information in the following terms:

*"I understand that between May and August 2012, a councillor submitted a proposed strategy for dealing with bullying among members and/or officers.*

*Could you please:*

- a) Send me this strategy.*
- b) Explain what action has been taken since - whether it has been rejected, whether it has been implemented, or whether nothing has been done."*

4. The Council responded to item a) of the complainant's request on 13 December 2013. It stated that there was a document of that nature in its records from May 2013 rather than May 2012. However, it considered that this document was not held under the terms of the Act.
5. On 23 January 2014 the Council issued its internal review. This stated that the document was not held as per section 3(2)(a) of the Act, which states that a public authority does not hold information if the information is held on another person's behalf.
6. During the course of the Commissioner's investigation the Council also wrote to the complainant and informed him that whilst it still considered that the document was not held under the terms of the Act, it confirmed in response to item b) of the request that no action had taken place regarding the proposed bullying strategy.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 23 January 2014 to appeal against the decision reached by the Council in its internal review.
8. The Commissioner considers the scope of the case to be whether the Council holds the requested document under the terms of the Act.

### **Reasons for decision**

---

#### **Section 10 – time for compliance with request**

9. Section 10 of the Act states that a public authority's response to a request must be issued within 20 working days of receipt of the request. For this request the Council was required to respond by 28 October 2013. As it failed to issue a response by this date it breached section 10 of the Act. The Commissioner asks that the Council ensure its responses are issued in accordance with the legislation.

#### **Section 3(2)(a) – information held on behalf of another person**

10. Under the terms of the Act, information is not held by a public authority if it can demonstrate that the information is solely being held on another person's behalf. In this context the term "person" does not necessarily refer to an individual, and can apply to an organisation such as the Council.
11. In basic terms the document is held by the Council. It was emailed by a local councillor to a Council member of staff and this document is still retained in said employee's email account. However, in order to reach a

decision on whether the information is held on behalf of the Council the Commissioner needs to consider other factors, such as whether the Council has any use or purpose for the information, or whether it is required to hold it for a specific reason.

12. In its submissions to the Commissioner the Council explained that the document was emailed to a member of the Council due to developments within its Standards Committee. Under section 27 of the Localism Act 2011 the Council is obligated to adopt a code of conduct for its members and co-opted members and the Council discharged this obligation through its Standards Committee. This Committee is comprised of three councillors, three independent members – one of whom chairs the Committee – and a further independent person to attend meetings. It was devising a new code of conduct for councillors that the Council would adopt.
13. Whilst the Standards Committee was discussing this policy, another councillor devised his own proposal for a bullying strategy and emailed this document to some members of the Committee as well as a member of Council staff. The strategy was not devised by the Committee and it was not discussed at its meetings. The Council stated that this strategy was drawn up by the councillor outside the course of his official duties whilst acting in a political capacity, and that this was reflected in the content of the document. Local councillors have a number of different roles, and information can only be held by a councillor on behalf of the Council under the terms of the Act if that councillor is working in a capacity for the Council or in a way that relates to a function of the Council. If a councillor is working in a political capacity – as put forward by the Council in this case – then the information would fall outside of the scope of the Act and the information would not be held on the Council's behalf.<sup>1</sup>
14. The Council confirmed that it has no purpose for this document. The employee who holds the email with this document as an attachment had deleted the email by the time the request was received and the email will be removed from the Council's systems in line with its retention policy. So whilst the information is still retained within the Council's records, it is not being used for its work nor does it provide any value to

---

<sup>1</sup> For more information please see paragraph 29 of the Commissioner's guidance:

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx#page=9](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx#page=9)

the Council. The Council further confirmed that it provided no secretarial or administrative support in the production of the document, and other than the deleted email it has not recorded or filed the document anywhere in its systems. Finally, the Council stated that no further action has been taken in relation to this document and that there is no intention to.

15. The Commissioner considers that under the terms of the Act the information is not held on the Council's behalf. Whilst it does retain the information and can access it, it has no business purpose for accessing or holding the information and only holds it on its systems as a result of a councillor opting to forward it to a council officer. This was done in the councillor's capacity as an elected representative and not as a member of the council. In the Commissioner's view this makes the information party political and therefore not within the scope of the Act, so the Council is correct to state that it does not hold the information for the purposes of the Act. The Commissioner's decision is that the Council does not have to provide the document in response to a request. No further action is required.

## Right of appeal

---

16. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

17. 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.
18. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**