

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2014

Public Authority: Mid Suffolk District Council
Address: 131 High Street
Needham Market
Ipswich
Suffolk
IP6 8DL

Decision (including any steps ordered)

1. The complainant has requested a copy of a contract which he believes the council entered into with a contractor, SLM, to provide leisure services in October 2006. The council states that no contract was entered into in October 2006 and has provided the complainant with a contract which started in October 2005. The complainant however disputes that this is the correct contract and believes that the council holds a different, second contract which it has not been provided to him.
2. The Commissioner's decision is that on a balance of probabilities the council does not hold information falling within the scope of the complainant's request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 6 November 2013, the complainant wrote to the council and requested information in the following terms:

"In line with the Freedom of Information Act would you please provide me with a copy of the contract entered into between MSDC and SLM in October 2006 which is referred to in the Explanatory Forward of the Council's Statement of Accounts 2012/13."

5. The council responded to the complainant stating that the complainant had been deemed to be a persistent complainant, however on 4 February 2014 it responded under FOIA and stated that section 14 (vexatious request) applied.
6. Following an internal review the council wrote to the complainant on 9 June 2014. It stated that it overturned the application of section 14 and provided the complainant with a redacted copy of a contract which had a start date in 2005.
7. The complainant wrote back to the council stating that this was not the contract he had asked for. He said that he wanted the contract which was signed in October 2006. The council said that there was only one contract and that this was the one he had been provided with.

Scope of the case

8. The complainant initially contacted the Commissioner on 1 February 2014 to complain about the way his request for information had been handled. Through subsequent correspondence he has now reached a point where he disputes that the council has provided him with a copy of the correct contract, and believes that the council holds a further contract dated October 2006.
9. The Commissioner considers that the complaint is that the council has not provided the complainant with a copy of a contract dated October 2006.

Reasons for decision

10. Section 1(1) of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
13. During the investigation in this case, the Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.
14. He also asked the council to confirm whether there had been any secondary contracts or variation orders to the initial contract which were entered into in October 2006 or in 2006 at all.
15. The council provided a detailed response indicating the searches which it had carried out to ascertain whether any relevant information was held falling within the scope of the complainant's request.
16. It confirmed that there was only one contract with SLM, and that this had been agreed before 30 September 2005. This was the contract which it had provided a redacted copy of to the complainant.
17. The council statement of accounts does refer to a contract being entered into with SLM in 2006. However the council has confirmed that this is a typographical error from a previous set of accounts which has unfortunately never been amended. Unfortunately it is this evidence which has led to the complainant disbelieving the council's response to his requests.

18. The council confirmed that it had asked relevant officers if a second contract existed, and that this was not the case. It also confirmed that there were no variation orders signed in October 2006 (or at all). An extension to the contract was agreed in 2011 but otherwise no further contractual agreements or variation orders have been agreed between the parties. No documentation therefore falls within the scope of the complainant's request for a contract agreed in October 2006.
19. The Commissioner is therefore satisfied that on a balance of probabilities no second contract exists, and that the council holds no information falling within the scope of the complainant's request.

Right of appeal

20. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

21. 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.
22. 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