

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2015

Public Authority: Guildford Borough Council

Address: Millmead House
Millmead
Guildford
GU2 4BB

Decision (including any steps ordered)

1. The complainant has made a request to Guildford Borough Council ("the council") for information relating to hospitality received by two councillors at an event. The council confirmed that no relevant information was held, which the complainant subsequently contested.
2. The Commissioner's decision is that no relevant information is held.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 15 September 2014 the complainant wrote to the council and requested the following:

"I note that in an email, [redacted name] confirms that [redacted names] attended at Lords Cricket Ground on 2/7/14 as guests of [redacted organisation] and that both councillors paid the full cost of their hospitality to their hosts and that [redacted name] had seen both Councillors' receipts in this regard.

Please provide the following:

- a. Details of the full cost of the hospitality received (e.g. costs of any corporate box/enclosure, costs of any and all food/drinks, any other cost aspects under the heading 'hospitality').*
- b. Receipts seen by [redacted name] to match the full cost in a. above.*

c. Confirmation of the dates when the re-payments were made to [redacted organisation]."

5. The council responded on 24 September 2014. It confirmed that no relevant information was held.
6. The complainant requested an internal review on 25 September 2014.
7. The council provided an internal review on 25 September 2014. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 25 September 2014 to contest the council's response. Specifically, he contested the council's position that no information was held that related to the request.
9. The Commissioner considers that the scope of this case is the determination of whether the council, on the balance of probabilities, is likely to hold any relevant information.

Reasons for decision

Section 1(1) – Duty to make information available on request

10. Section 1(1) of the Freedom of Information Act ("the 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 them. This is subject to any exemptions or exclusions that may apply.
11. The FOIA provides a right of access to information in recorded form, and only that which exists at the time of the information request. The FOIA does not require a public authority to generate new information, such as in the form of an explanation of opinion, in order to respond to a request.

The complainant's position

12. The complainant has requested information about hospitality that two councillors received during an event that they attended.
13. In submitting his complaint to the Commissioner, he has advised that he does not find the council's response, that no relevant information is held, to be credible. The complainant also considers that even should the receipts not be held, the council could take steps to contact the

relevant councillors, or the organisation itself, to retrieve the requested information. Alternatively, the complainant considers that Democratic Services Manager should be able to provide the information by memory, due to having viewed the original receipts.

The council's position

14. The council has confirmed to the Commissioner that the two councillors attended an event organised by a private body, and received hospitality as part of this. However, the two councillors paid for this hospitality privately, and did not seek reimbursement from the council. The council has confirmed to the Commissioner that its Democratic Services Manager had been shown the original receipts by the councillors, but did not need to retain these due to no reimbursement being sought.
15. As such, the council has confirmed that it does not hold the requested information, and that there is no business need to do so.

The Commissioner's conclusion

16. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether the requested information is likely to be held by the council.
17. As detailed in paragraph 11, the terms of the FOIA apply only to recorded information that is held by a public authority at the time of a request. The terms of the FOIA do not require the council to retrieve information that is held by individuals or other organisations unless it is held on behalf of the council.
18. Having therefore considered the council's position that the two councillors privately paid for the hospitality received, and did not submit receipts to the council for reimbursement, and in the absence of any contradictory evidence that suggests the council's position is incorrect, the Commissioner has come to the conclusion that it is unlikely the council holds the information sought by the complainant's request.

Right of appeal

19. 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

20. 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.
21. 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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