

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 July 2015

**Public Authority:** East Devon District Council

**Address:** Knowle  
Sidmouth  
Devon  
EX10 8HL

#### Decision (including any steps ordered)

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1. The complainant has requested information with regards to a police investigation that was carried out in relation to alleged corruption concerning an ex-councillor. Following East Devon District Council (the council) response, the complainant considered that the council held more information than that provided and was not satisfied with the time it took to provide the information it has.
2. The Commissioner's decision is that the council has provided all the information it holds within the scope of the request. He has also found that the council has breached section 10(1) of the FOIA in not providing all of the information it held within the required 20 working days from receipt of the request.
3. As the council has now provided all the information it holds, he does not require it to take any steps.

#### Request and response

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4. On 14 November 2014 the complainant requested information of the following description:

*"In his (open) letter to Councillors earlier this week regarding Devon & Cornwall Police dropping their investigation into alleged corruption by ex-Cllr [name redacted], [council Chief Executive] stated that both Cllr [name redacted] and the East Devon Alliance had been in correspondence with the police. Since this*

*information was not part of the official announcement by Devon & Cornwall Police it must therefore have been part of a direct communication from D&CP to EDDC.*

*Now that the police investigation is officially complete, can you please provide copies of all correspondence relating to [name redacted] between:*

*1. EDDC (including [council Chief Executive]) and Devon and Cornwall Police;*

*2. EDDC and Action Fraud."*

5. The council responded on the 27 November 2014. For part 1 of the request, it advised that it held one letter, but it was exempt from disclosure under section 40(2) of the FOIA – third party personal data. For the second part of the request, the council advised that no correspondence was held as the referral to Action Fraud was made online/ by phone and continued to be pursued that way.
6. On 27 November 2014, the complainant advised the council that he was satisfied with the response and happy for it to be closed. However he made a further request that day in relation to the response received for the second part of his 14 November 2014 request, requesting:

*"If there was no other correspondence received from D&CP other than the request for information referred to in your answer, can you please provide details of how [council's Chief Executive] gained the information that both Cllr [name redacted] and the East Devon Alliance had been in correspondence with the police."*

7. The complainant clarified on the 28 November 2014:

*"Also, for the avoidance of any doubt, my use of the word correspondence in this question is intended to mean "communications" and to include notes etc. made by any officers of phone calls etc.*

*So please include the dates and details of any phone calls to or from D&CP or Action Fraud.*

*If you are unable to provide copies of the contents of communications or notes, please provide details of who the communications were between, the dates / times and the means of communication."*

8. The council responded on the 2 December 2014. It advised that the minutes of the Overview and Scrutiny Committee of the 13 November provides some clarity on the matter. It provided a link to the meeting minutes referring him to Forward Plan Item 11.
9. On the 2 December 2014, the complainant told the council that these minutes do not provide the answer to his request. He stated that at the Overview and Scrutiny meeting and in a previous email that the council's Chief Executive stated that both councillor [name redacted] and the East Devon Alliance (EDA) had been in correspondence with the police. He considered that the council must know how it got that information, even if that knowledge is only held by the Chief Executive.
10. On the 3 December 2014, the council advised that this would be forwarded to a Freedom of Information Officer to respond.
11. The complainant contacted the council on 6 January 2015 asking that it conduct an internal review as its response was overdue. His review set out the following points for consideration:
  - I. *"An answer to my original question - how did the CEO know that the police had been in correspondence with EDA and [name redacted]? Please provide copies of all correspondence (inc. emails) which may be redacted to remove personal information if necessary to comply with the DPA.*
  - II. *Why was this information not provided in the first answer?*
  - III. *Why have you still not provided this information within the 20 working day period allowed by law?"*
12. The council responded on the 20 January 2015. It provided its referral log which outlines the council's communication with the police and Action Fraud over the allegations about councillor [name redacted]. Redactions under section 40(2) of the FOIA had been made to the log.
13. On 4 March 2015 the complainant advised the council that the notes made by [name redacted] partially answers the request, but does not address the specific concerns raised with regards any further communications with Devon and Cornwall Police. He asked that the council:
  - i. Provide the list of relevant information held by the council
  - ii. Provide copies of that information unless it is exempt, stating any exemption relied on.
  - iii. Undertake an internal review as previously requested.

14. The council responded on the 10 March 2015. In response to the complainant's 4 March 2015 correspondence it advised that the referral log is the record of contact between the council and the Cornwall police and Action Fraud. It also advised that the letter sent to Devon and Cornwall Police is also held, but has been withheld from disclosure under section 40(2) of the FOIA.
15. With regards to the internal review request, the council advised that this has now been done.
16. The complainant considered that further information must be held. The council advised the complainant on the 11 March 2015 that no further information is held and referred him to the Commissioner if he is not satisfied with its response.

### **Scope of the case**

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17. The complainant contacted the Commissioner on the 13 March 2015 as he does not consider that he has received all the information to his 27 November 2014 request, and that the council took too long to provide him with its full response to this request.
18. The Commissioner considers the scope of the case is to determine whether the council has provided the complainant with all the recorded information held within the scope of his 27 November request, and whether its final response was provided outside the required working days breaching section 10 of the FOIA.
19. The Commissioner will not be considering the council's application of section 40(2) of the FOIA in this decision notice, as it was not part of the complainant's complaint to him.

### **Reasons for decision**

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#### **Section 1 of the FOIA – Information held/ not held**

20. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communication to him.
21. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of

the balance of probabilities to decide whether the council holds any further information which falls within the scope of the request (or was held at the time of the request).

22. The complainant has explained to the Commissioner what other information he considers may be held by the council.
23. He has advised that the information provided was communication from the council to Devon and Cornwall Police but no correspondence was provided from Devon and Cornwall Police to the council. He therefore does not see how the council's Chief Executive could have known that the EDA or Councillor [name redacted] had written to Devon and Cornwall Police.
24. The complainant therefore considers that there may be further communication between Devon and Cornwall Police and the council, presumably to the Chief Executive directly, that has not been disclosed.
25. The Commissioner has brought this to the council to consider whether it or its Chief Executive holds any further information to this effect.
26. In response to the Commissioner's enquiries the council has explained that it has directly contacted its Chief Executive, Interim Monitoring Officer and its Head of Legal, Licencing and Democratic Services and has searched the relevant files and email accounts.
27. The council has advised that its Chief Executive has explained that the complainant may have misunderstood what he had said. He stated that he had very limited involvement with the police investigation and what involvement he did have was done over the phone. He also stated that he did not know whether the police had spoken to EDA or former councillor [name redacted] as part of their investigation but suggested to the police that, as interested parties, they may have a view on the investigation. But he does not know whether the police actually followed up this suggestion.
28. The council has told the Commissioner that no other person or department would hold any other information falling within the scope of the request as the matter was treated in confidence and only a small number of senior officers were involved.
29. The council has explained that all communication was done either over the phone or by email, so considers it unlikely that any manual records were held but it still made searches for both electronic and manually held information. Electronic searches were carried out on council hardware such as laptops and smart phones.

30. With regards to the actual investigation, the council has advised the Commissioner that this was carried out externally, by Action Fraud, so the council's involvement was fairly limited. The Monitoring Officer kept a referral log which recorded all actions taken. Any other contact, not specifically referred to in the log, was by phone.
31. The council has confirmed to the Commissioner that no information relevant to the scope of the request has been deleted or destroyed.
32. The council are quite adamant that its Chief Executive's involvement was very limited resulting in one phone conversation, early on in the investigation, with a detective looking into the matter. This conversation was not recorded and the Chief Executive had no further involvement with the investigation.
33. The complainant has also provided the Commissioner with an email that he considers the council should have provided him as part of its response to his request. This email's subject title is "*Police Investigation - UNCLASSIFIED*" created on 12 November 2014 at 10:00.
34. The Commissioner provided the council with a copy of this email to consider whether it should have provided a copy as part of its response.
35. The council has told the Commissioner that it held this email at the time of the request. But as the complainant specifically referred to its content in his request (quoting directly from it) the council assumed that he already held a copy of it. Also, the council has stated to the Commissioner that it does not consider that this email falls within the scope of the request which asked specifically for correspondence and communications (in his first request) between the council and the Police/ Action Fraud, which this email is not.
36. The Commissioner has reviewed this email, and on considering the complainant's second request that this decision notice is with regards to, he is satisfied that it does not fall within the scope of the 27 November 2014 request. This is because it is addressed to councillors not the Police or Action Fraud. Also the Commissioner does not consider it to be correspondence that explains how the Chief Executive "*gained the information that both Cllr [name redacted] and the East Devon Alliance had been in correspondence with the police*" which was what was requested. It appears to the Commissioner that this email was rather a catalyst to the request being made.
37. On review of the above, the Commissioner sees why the complainant has reason to consider that other correspondence might also be held, as you could expect correspondence that has gone from one public authority to another to have generated a response back in some

circumstances. But on considering the council's explanations that its Chief Executive only corresponded to initial enquiries to the investigation over the phone and that the council's involvement was very limited, then this goes some way to explain why not as much correspondence, in recorded form, is held by the council than what the complainant expects.

38. He is also satisfied that the council has carried out relevant searches and approached the most likely people at the council to try and determine whether any further information is held.
39. The Commissioner is therefore satisfied that the council has provided the complainant with all the information it holds within the scope of the request.

### **Section 10 of the FOIA**

40. Section 10(1) of the FOIA states:

*"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

41. In this case, the complainant made his request on the 27 November 2014 and clarified it on the 28 November 2014. Although the council initially responded on the 2 December 2014 it did not provide all the information it held relevant to the request until the 20 January 2015. This being outside the required 20 working days to respond.

42. Therefore the Commissioner finds that the council breached section 10(1) of the FOIA.

43. On this issue the council has stated to the Commissioner:

*"Following criticism from the ICO recently, the council is looking to increase the resources allocated to dealing with FOI requests in order to address the problem of deadlines occasionally being missed. In view of greater demands on increasingly tight budgets, we have refrained from directing resources to increasing staffing in support services but the sheer volume and complexity of some of the requests the council is receiving mean that increasing resources may be the only realistic action in the circumstances"*

44. The Commissioner sees from this statement that the council recognises its responsibilities in responding to information requests in a timely manner and appears to be putting steps in place, which the Commissioner hopes will help address these issues.

## Right of appeal

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. 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.
47. 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**  
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**SK9 5AF**