

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2015

Public Authority: Kent County Council

Address: County Hall
Maidstone
Kent
ME14 1XQ

Decision (including any steps ordered)

1. The complainant has requested information relating to a road sign. Kent County Council disclosed some information and confirmed that no further relevant information was held.
2. The Commissioner's decision is that council correctly confirmed that the requested information is not held and complied with section 1(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 9 July 2015, the complainant wrote to Kent County Council (the "council") and requested information in the following terms:

"Recently a road sign on the A249 northbound, Detling Hill, adjacent to the Mill Cottage driveway was either changed or cleaned – the road sign was a 50mph speed limit sign, the last before national speed limit signs come into force – can you please let me know when this took place and the reason."

5. The council responded on 4 August 2015 and disclosed some information.

6. Following an internal review the council wrote to the complainant on 29 September 2015. It stated that it had disclosed all the relevant information that it holds.

Scope of the case

7. On 6 October 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant has argued that, during a given period, changes were made to the road sign identified in the request and that the council should hold information which records this event.
9. The Commissioner has, therefore, investigated whether the council has correctly confirmed that it does not hold a record of actions taken in relation to the sign in question.

Reasons for decision

Section 1 – duty to provide information held

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

"Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request , and

(b) if that is the case, to have that information communicated to him."

11. The council maintains that it did not authorise any work to be done to the sign identified in the request and that it does not, therefore, hold any information which records this.
12. The complainant maintains that, as they have photographic evidence that changes were made to the sign, the changes must have been authorised by the council and information documenting this should be held.
13. In scenarios where there is some dispute between a public authority's account of the information that it holds and a complainant's belief, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

14. In other words, in order to determine such complaints the ICO 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).
15. To assist with this determination the Commissioner approached the council with a range of standard questions he routinely uses in such scenarios. These, together with a summary of the council's responses are reproduced below.

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?

16. The council explained that all Highways works are ordered through their Works Asset Management System (WAMS). Every job is booked against a unique street reference number (USRN). It confirmed that, on receipt of the complainant's request for details of when a road sign on the A249 northbound, Detling Hill, was either changed or cleaned, it carried out a search of the system for a 12-month period from 23rd June 2014 to 23rd July 2015 against the road in question. The resulting report was provided to the complainant with its initial response to the request.

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.

17. The council confirmed that this is not applicable as all of its works orders and street history are held on a central network database system.

If searches included electronic data, which search terms were used?

18. The council confirmed that the search terms used were: Road Name, date range, USRN, work type, customer report and works orders.

If the information were held would it be held as manual or electronic records?

19. The council confirmed that the information would be held as an electronic record in WAMS.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

20. The council explained that all records are held in the WAMS system and that records cannot be deleted/ destroyed – they are only archived.

Is there a business purpose for which the requested information should be held? If so what is this purpose?

21. The council confirmed that, if it had instructed a contractor to carry out the work, then there would be a record included in the street history for asset management, a works order and a record of payment made. The council suggested that it was possible that a contractor cleaned the sign whilst undertaking other work in the vicinity that they had been instructed to do, but it had been unable to confirm this. The council also suggested that, as confirmed in its internal review, it is possible that other agencies may have undertaken or arranged the cleaning of the sign, but this is unlikely and it had been unable to gain confirmation of this.

Are there any statutory requirements upon the council to retain the requested information?

22. The council confirmed that there would be if the works had been ordered. In such a scenario a record would be held in WAMS, cost would have been applied for and payment processed.

23. In closing the council confirmed that it did not dispute the complainant's assertion that that the road sign was cleaned, however, no-one was instructed to carry out the work so no record is held.

24. The Commissioner is mindful of the complainant's concerns in this case and he notes that there is evidence that the sign in question was tampered with. It also appears curious that a contractor or other party would make changes to a road sign without being instructed to do so by the council in charge of the relevant highway.

25. However, it is not the Commissioner's role to establish who made changes to the sign but to determine, on the balance of probabilities whether recorded information of the description set out in the request is held. Whilst there is a link between the two it is not, in logical terms, a sufficient condition as it is entirely possible that some party not acting under the council's instruction tampered with the sign. In other words, a direct council instruction is not the only possible cause for the changes made to the sign.

26. Another possible scenario is that the council did authorise changes to the sign but that it has not made or kept a record of this. The Commissioner has no means by which to establish whether this is the case but, in any event, the council's confirmation that information is not held would support such a scenario.

27. In the absence of direct evidence which contradicts the council's position the Commissioner must reach a decision based on the balance of

probabilities with reference to the available evidence. Having considered the council's explanations and the details of the searches it conducted for the requested information, the Commissioner is satisfied that, on the balance of probabilities, it is likely that the council has correctly confirmed that it does not hold the requested information.

Other matters

28. Although they do not form part of this decision notice the Commissioner would like to note the following matter of concern.

Internal review

29. The code of practice issued under section 45 of the FOIA (the "code") sets out recommendations for the following of good practice in relation to the handling of requests for information.
30. Part VI of the code recommends that authorities should have a procedure in place for dealing with complaints in relation to their handling of requests for information. It goes on to advise that such procedures – "internal reviews", should encourage a "prompt determination" of complaints¹.
31. The Commissioner echoes the code's recommendations and considers that a prompt determination should, ordinarily, equate to 20 working days following the receipt of a complaint.
32. In this case the complainant requested an internal review on 27 August 2015 and the council provided its review outcome on 29 September 2015. As the council did not respond within 20 working days the Commissioner considers that it failed to comply with the code's recommendations in respect of internal reviews in this case.
33. In future the Commissioner expects that the council's handling of requests and complaints will conform to the recommendations of the code.

1

<http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

34. 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

35. 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.
36. 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