

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 June 2016

Public Authority: South Oxfordshire District Council
Address: 135 Eastern Avenue
Milton Park
Milton
OX14 4SB

Decision (including any steps ordered)

1. The complainant requested information regarding a discussion which had taken place. South Oxfordshire District Council disclosed information to him and explained that it did not hold any further information. Subsequently, South Oxfordshire District Council found further information and disclosed it. The complainant also complained that South Oxfordshire District Council was late in responding to his request and had not advised him of his right to appeal to the Commissioner.
2. The Commissioner's decision is that on the balance of probabilities, South Oxfordshire District Council does not hold any further information. He also considers that the request was dealt with promptly for the purposes of section 10 the FOIA.
3. The Commissioner does not require South Oxfordshire District Council to take any further steps as a result of this decision.

Request and response

4. On 9 August 2015, the complainant wrote to South Oxfordshire District Council (SODC) and requested information in the following terms:

"I am making a request for information about 'a strategic discussion with South Oxfordshire Council earlier this year' that is mentioned in the attached letter of 10th July 2015 from Southern Housing Group. The reference is in the first paragraph of the second page.

I would like copies of any records of this discussion, as well as any records to do with setting up the discussion, or to do with the need for the discussion to take place at all. This should include documents, notes and any other form of record, whether originating from SODC or Southern Housing group. If Councillors have been involved, any records prepared for them or in their possession should also be provided."

5. SODC responded on 7 September 2015 providing the complainant with some information and also explaining that it did not hold any written minutes of the meeting.
6. Following an internal review SODC wrote to the complainant on 17 September 2015. It explained that it had found the details of the appointment to meet on 21 January 2015 and a member of staff's hand-written notes from the meeting.

Scope of the case

7. The complainant contacted the Commissioner on 24 September 2015 to complain about the way his request for information had been handled. He explained that he did not consider that SODC had addressed the strategic discussion but had fastened onto an initial meeting and that there was no reason to believe that the strategic discussion was limited to this initial meeting only.
8. The complainant also complained that SODC had denied holding any records of the initial meeting, but had passed on some "emollient hearsay assertions" from another interested party, including that no minutes were produced from that first meeting. He explained that it was only after an internal review had been carried out, that SODC had provided a note of the initial meeting. The complainant explained that this note had been written by a member of staff who had originally confirmed that she had searched files and computers and no such record existed.
9. Furthermore, the complainant also complained about a redaction which had been made in the information disclosed to him. He explained that he did not understand why a whole section had been redacted and why he had not been provided with an explanation about this.
10. The complainant also complained that the information provided by SODC was late and that formalities such as advising him of his right to complain to the Information Commissioner's Office were omitted.
11. Subsequently, during the Commissioner's investigation, the complainant explained that he considered that SODC held more information in

relation to information already disclosed to him by it. He explained that a disclosed email of 12 December 2014 regarding a proposed meeting on 16 January 2015 "to discuss the consent for Waltham Court" implied that there had been some previous communication about the need for the meeting to take place. The complainant also explained that as there had subsequently been a new date of 21 January 2015 for the proposed meeting, there must have been some correspondence about this new date. The Commissioner asked SODC whether it held any further information in relation to the above.

12. The Commissioner will consider whether SODC is correct to state that it does not hold any further information and the way in which it handled the request for information.

Reasons for decision

Section 1 – information held/not held

13. Section 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 the information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
15. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
16. The Commissioner enquired whether any further information had ever been held. He also enquired about the scope, quality, thoroughness and results of the searches carried out by SODC. The Commissioner also enquired whether any further information had ever been held but deleted and whether copies of any further information may have been made and held in other locations.
17. SODC explained that when it had received the request for an internal review, it had also searched its email archive for any messages sent prior to 15 January 2015. This revealed the calendar appointment which it had included in its response to the complainant. SODC explained that

its offices were destroyed by fire on 15 January 2015 and it had brought forward the implementation of a new email system. Emails prior to the date of the fire were therefore only available in its historic archive.

18. SODC also explained that it had asked the member of staff who had attended the meeting of 21 January 2015 whether she might have any handwritten notes of the meeting; SODC confirmed that this was the case.
19. SODC also explained that Network files and email accounts were searched using the term "Waltham Court". It confirmed that all its information is held on networked servers so it did not search any personal computers.
20. With regard to whether any further information had ever been held and subsequently destroyed, SODC explained that there had just been one meeting and that it had provided the contemporaneous notes of that meeting.
21. The Commissioner asked whether there was any legal or business purpose for which any further information would be held. SODC explained that it has no regulatory authority over housing associations and can only seek to influence them by persuasion. The meeting of 21 January 2015 was a discussion about the future of a housing scheme in which the SODC sought to put forward its views. There is no requirement for a formal record of the meeting and it had provided all the information that it holds in relation to the meeting.
22. With regard to whether SODC held any further information into the meeting of 21 January 2015, it explained that in relation to the first point regarding a proposed meeting on 16 January 2015 the complainant had provided it with a copy of a letter from Southern Housing Group (SHG) to John Howell MP which referred to SHG's intention to dispose of a number of empty units. Consent to this proposal was sought from SODC and the notes of the meeting provided to the complainant at internal review, provide a record of SODC's concern regarding the potential loss of a number of housing units.
23. Regarding the second point raised by the complainant, SODC explained that it had already provided the email correspondence regarding setting up a meeting on 21 January 2015. It explained that it did not hold any further correspondence on the matter and that it was possible the change of date had been arranged by telephone.
24. Taking everything into account, the Commissioner does not consider that there is any evidence that shows that SODC holds any additional recorded information in relation to the request.

25. Therefore, the Commissioner is satisfied that, on the balance of probabilities, SODC does not hold any further recorded information. Accordingly, he does not consider that there is a breach of section 1 of the FOIA.

Section 10 – time for compliance with a request

26. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and no later than 20 working days following receipt of the request.¹
27. For the purposes of section 10(1), public authorities must respond 'promptly' to a request. In this case, SODC responded to the complainant on the twentieth working day. Therefore, it is necessary to investigate SODC's actions in preparing its response, in order to determine whether the response was provided 'promptly'.
28. In the present complaint, the Commissioner notes that the request for information was submitted on 9 August 2015 which was a Sunday. Section 10(6) provides that the "date of receipt" is the day on which a public authority receives the request for information and "working day" is any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday.
29. The Commissioner therefore considers that the date of receipt by SODC would have been Monday 10 August 2015. He also notes that there was a bank holiday on Monday 31 August. Therefore he considers that the twentieth working day would have been 7 September 2015, which is the date SODC responded on.
30. The Commissioner asked SODC to explain why it had not responded to the complainant until the twentieth working day. SODC explained that it has 0.5 full-time staff available for work on information requests and that the request was received in August, a time of year when its already slim resources are stretched by holiday absence.

¹ Section 1(1) states that: ' 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 the information communicated to him.'

31. Furthermore, SODC explained that the request was about a meeting which had taken place six days after its offices had burnt down. It also explained that when it had received the request, it had not known the date of the meeting the complainant was interested in, or who had attended it. This meant that it had to search electronically through its archive records. SODC also explained that the manager who had attended the meeting had left SODC at the time of the request, so there was no ready access to her records.
32. Taking all of the above into account, the Commissioner is satisfied that SODC responded to the request 'promptly' for the purposes of section 10(1).

Other matters

33. The complainant complained that it was only after he had requested an internal review that SODC provided him with the note of the meeting of 21 January 2015.
34. The Commissioner notes the comments of the Information Tribunal in the case [of McIntyre v the Information Commissioner and the Ministry of Defence \(EA/2007/0068\)](#) regarding internal reviews, which was considered under FOIA.
"...the Act encourages or rather requires that an internal review must be requested before the Commissioner investigates a complaint under s50. Parliament clearly intended that a public authority should have the opportunity to review its refusal notice and if it got it wrong to be able to correct that decision before a complaint is made..."
35. Taking the above into account, the Commissioner is satisfied that it is acceptable for the SODC, having discovered that it did hold further information in relation to the request, to provide the complainant with that information in its internal review response.
36. The complainant also complained that SODC had not provided him with details of his right of appeal to the Commissioner.
37. Under section 17(7) (refusal of a request) a public authority is obliged to provide a requester with his right to appeal to the Commissioner when it is withholding requested information under an exemption. In this case, SODC did not withhold information. Furthermore, the Commissioner notes that SODC provided the complainant with the contact details of a member of staff if he had any concerns.
38. The complainant also complained about the fact that SODC had redacted some information in the handwritten notes it had provided him with. The

Commissioner notes that SODC had redacted two lines and wrote '(Private note redacted)'. SODC explained to the Commissioner that it considered the information in question fell outside the scope of the request. The Commissioner has seen the redacted information and is satisfied that it falls outside the scope of the request. However, he considers that SODC should have made it clear to the complainant that it considered the information fell outside the remit of his request and that was why it was redacted.

Right of appeal

39. 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

40. 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.
41. 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

Jon Manners
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