

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2016

Public Authority: City of York Council
Address: West Offices, Station Rise
York YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested all emails between an individual councillor and Labour Group members of City of York Council ('the Council'), sent on a specific day. The Council says that it does not hold this information for the purposes of the FOIA.
2. The Commissioner's decision is that the Council is correct and that it does not hold the requested information for the purposes of the FOIA. The Commissioner does not require the Council to take any steps.

Request and response

3. On 25 April 2016, the complainant wrote to the Council and requested information in the following terms:
"Please will you provide copies of all emails between Cllr David Levine [sic] from his @york.gov.uk account and other Labour Group members on City of York council on the 18th April 2016."
4. The Council responded on 25 April 2016. It said it does not hold the requested information for the purposes of the FOIA because individual elected members of the Council are not subject to the Act.
5. Following an internal review the Council wrote to the complainant on 16 May 2016. It maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 16 May 2016 to complain about the way her request for information had been handled.
7. The Commissioner's investigation has focussed on whether the Council can be said to hold the requested information under section 1(1)(a) of the FOIA.

Reasons for decision

8. Section 1(1) of the FOIA says that anyone who makes a request for information to a public authority is entitled (a) to be told whether the authority holds the information and, if it does, (b) to have that information communicated to him or her.
9. Section 3(2)(a) says that, for the purposes of the FOIA, information is held by an authority unless it holds it on behalf of another person.
10. In this case, the Council says that the email correspondence in question does not concern Council business. As such, its position is that it holds the requested information on behalf of another person (Councillor David Levene) and so does not hold the information itself for the purposes of the FOIA.
11. The Commissioner has not seen the correspondence in question. This is because the Council was reluctant to request a copy of it from the named councillor because it says the correspondence concerns that councillor's own political business and not Council business. However, the Council has told the Commissioner that the councillor in question has confirmed to it that the correspondence, which comprises one email, does not concern Council business. In addition, the request itself – which refers to Labour Party Group members – suggests to the Commissioner that the correspondence concerns political business. The Commissioner is therefore prepared to accept that the correspondence does not concern Council business.

12. Because this correspondence does not concern Council business, this information must be considered to be held by the Council on behalf of another person ie the councillor, solely by virtue of being hosted on the Council's email system.
13. The Commissioner has noted her decision in a separate, but similar case: FS50422800¹. As in that case, her position is that, unless the emails relate to Council business, it is not held by the Council in its own right and there is no right of access to it under the FOIA.
14. An explanation of the different roles of elected councillors is provided at paragraph 13 of FS50422800. The crux of the matter here is that although, once elected, councillors become members of a local council, this does not mean that everything a councillor does is council business and therefore covered by the FOIA. This is similar to the position of Members of Parliament.
15. It is also consistent with the position under the Data Protection Act, where elected members have to notify as a separate data controller when acting as a representative of the residents of their ward.
16. The Commissioner notes that, in the present case, the complainant asked the Council whether any individual referred to in the email correspondence in question would be able to access the correspondence by submitting a subject access request (SAR) under the Data Protection Act. The Council confirmed to the complainant that York Labour Party, individual councillors and City of York Council are all registered individually as data controllers and obliged to respond to any SARs they receive.
17. Having considered the circumstances of this case, the Commissioner is satisfied that the Council does not hold the requested information for the purposes of the FOIA, because the information does not concern Council business and is held on behalf of another person.

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2012/713050/fs_50422800.pdf

Right of appeal

18. 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

19. 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.
20. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF