

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Decision (including any steps ordered)

1. The complainant made three separate requests for copies of correspondence between the Department for Transport and Devon County Council (the council). The council responded that the information was not held. The complainant was not satisfied with the council's response to two of the three requests.
2. The Commissioner's decision is that on the balance of probabilities the information is not held for those two requests.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 24 October 2014 the complainant made the following request to the council:

"Please can I have copies of the response to a letter sent to the Leader of the Council, Chief Executive was copied in. The letter was from [name redacted], Department for Transport, dated 21 February 2011, concerning Tackling Pavement Parking. The D for T reference is NB/0003/20/11 and the DCC reference is MM7155."

The council responded on the 13 November 2014 advising that the information could not be located and therefore not held.

On 12 December 2014 the council carried out an internal review on this request upholding its response but provided the complainant with further details of the searches it had carried out to try to locate the requested information.

5. On 17 February 2015 the complainant then requested:

"... a copy of DCC's response to a letter dated 18.2.2011 from Mr [name redacted] and also a letter dated 5.02.2012 from [name redacted], Department of Transport, concerning pavement parking. If this response is not available please could he have a copy of the e-mail traffic concerning the letters?"

6. The council responded on the 2 March 2015 stating that the information was not held.

7. On 14 July 2015 the complainant requested the following from the council:

"Could you please provide me with a copy of DCC's response letters dated 18th February 2011 and 5th March 2012 from the Department of Transport regarding pavement parking. If this information is not available please could you provide me with a copy of the e-mail traffic concerning the letters."

Scope of the case

8. The complainant contacted the Commissioner on 12 October 2015. He advised the Commissioner that he was satisfied with the explanations given for the searches carried out by the council regarding his 24 October 2014 request, but his complaint is that he is not satisfied with the council's responses to his 17 February and 14 July 2015 requests.
9. He has asked the Commissioner to establish what searches had been conducted by the council regarding his 17 February and 14 July 2015 requests as he did not consider it had carried out sufficient searches in determining the information was not held for these two requests.
10. During the Commissioner's initial investigations; she established that although attempts were made between the council and complainant, no internal review had been carried out.
11. The Commissioner therefore decided that the best course of action in this case, due to the time that had now elapsed, was to investigate the case without the internal review being carried out firstly.

12. The Commissioner therefore considers the scope of the case is to determine whether the council holds the requested information for the complainant's 17 February and 14 July 2015 requests.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

13. 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 communicated to him.
14. 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 must decide whether, on the civil standard of balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
15. The Commissioner has therefore asked the council to explain what searches it carried out in order to determine that it does not hold the requested information.
16. The council has told the Commissioner that it carried out electronic searches of its Customer Service System, which at the time, was used by the council's Highways Department to store all incoming correspondence from outside the council to that department.
17. The council has also advised the Commissioner that members of its Traffic Management Team were asked to search their inboxes to establish whether any such correspondence was held by them. Members of staff in this team included the team manager, traffic engineers, senior traffic technicians and technicians.
18. The complainant provided the Commissioner with the letters from the Department of Transport to pass on to the council, relating to this request, to see if that aided it in its searches. He also pointed out that the letters were sent to the council's chief executive and council leader and so considered that the council should search their email accounts also.
19. The council on review of this carried out searches on the chief executive and leaders email accounts but the searches returned no results. The council told the Commissioner that it also searched its paper archives to

establish whether these letters were also received in paper format and retained, but again no copies could be located.

20. The council has informed the Commissioner that it used search words such as 'pavement parking' and 'Department for Transport', 'Dft', 'DOT' 'Department of Transport' and the name of the minister mentioned in the request.
21. The council has also explained that all correspondence received around the date of these letters were read in an effort to locate the correspondence in question.
22. The council has stated to the Commissioner that its records and retention schedule, at the time of the request, did not make provisions for this type of correspondence. The council has explained that, at the time, it was common practice for correspondence of this type to be either logged on its Customer Service System or handled by the personal assistance of the senior manager who the correspondence was directed to. It would then be passed on to the relevant team for a response.
23. The council has said to the Commissioner that there is no statutory requirement for it to retain the requested correspondence and it does not consider there to be a legitimate business need for this correspondence to have been retained. This is because, subsequent to this correspondence being sent, further documentation was produced by the Department for Transport which superseded the advice contained in that correspondence. Therefore, the council does not consider there would have been a business need to have retained the requested correspondence.
24. Lastly, the council has told the Commissioner that whilst it does not deny the possibility of receiving these letters, it is minded given the searches undertaken, that the requested correspondence is no longer held by it.
25. Although the council is not denying that the information was ever held, the Commissioner needs to establish whether the information was held at the time the request was made.
26. The Commissioner appreciates why the complainant considers the information would be held by the council, as he holds correspondence from the Department for transport in support of this.

27. However, on review of the searches that the council has stated it has carried out and the explanations of its retention procedures for this type of information, the Commissioner is satisfied that relevant searches have been carried out by the council and finds that, on the balance of probabilities, the requested information is not held by the council.
28. The Commissioner does not require the council to take any steps.

Right of appeal

29. 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

30. 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.
31. 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