

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2017

Public Authority: Babergh District Council
Address: Council Offices
Corks Lane
Hadleigh
Ipswich
IP7 6SJ

Decision (including any steps ordered)

1. The complainant has requested information relating to two previous requests he had made about the status of some land and recording of telephone calls. Babergh District Council (the council) responded that the information is not held.
2. The Commissioner's decision is that the information is not held.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 6 May 2016, the complainant made an information request to the council which related to two previous information requests that he had made to the council in 2012 and 2015. These two requests had been recorded by the council under references BF1090 and BF1005. The complainant's 6 May 2016 requested:

In relation to previous request BF1090

"1. what is the council's policy on the phone calls associated with complaints?"

"2. Do you have a policy documenting conversations or recording conversations of phone calls?"

In relation to previous request BF1055 – the status of a garden
[address redacted]

"1. Is it still classified as an allotment garden as when it was first built?

2. If it is now classified as a residential garden when was the status changed?"

5. The complainant contacted the Commissioner on the 14 June 2016 as he had not received a response from the council to his request. The Commissioner contacted the Council and, after checking its correspondence, provided a response on the 4 August 2016.
6. The council's response in relation to recording of phone calls explained that, if a member of public makes a complaint during a telephone call, they are asked to send their complaint in writing, but there are no further policies on calls associated with complaints. It also stated that there is no written policy on documenting conversations or recording conversations of phone calls.
7. With regards to [address redacted], the council responded by advising that it is unlikely that the garden was ever classified as an "allotment garden" and that there is no information held that would indicate that the property has ever been anything other than a home and residential garden since it was built.
8. The complainant requested an internal review on the 16 and 17 August 2016 because he considered that the council does record calls and he wanted evidence that the garden is not classified as an allotment garden.
9. The council provided its internal review on 27 October 2016 upholding its initial response.

Scope of the case

10. The complainant contacted the Commissioner further as he is not satisfied with the council's response that the information is not held.
 11. The Commissioner considers the scope of the case is to determine whether the council holds information within the scope of the request,
-

Reasons for decision

Section 1 of the FOIA – Information Held/ Not Held

12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be information 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.
13. 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).
14. The Commissioner has therefore asked the council to explain the searches it has carried out to determine that it does not hold the requested information.
15. The council has explained that its Information Management Specialist (legal) undertook the investigation to try and locate the requested information and advised that any information, if held, would be held manually although policies are made available on the council website.
16. The council has confirmed that as far as it is aware, no information relevant to the scope of the request has been deleted or destroyed.

Searches regarding telephone calls (BF1090):

17. The council has told the Commissioner that there is no system in place at the council to enable telephone calls to be electronically or digitally recorded. Also, there is no reference to the requirement to record telephone calls in any policy held by the council and searches of committee reports have not produced any reference to a requirement to record calls.
18. It further explained that, if there were council policies on this, they would have been agreed by a committee and a search of minutes failed to produce any such policy. Also if a policy were held in relation to recording calls, it would also be held by the council's customer services team and centrally so that all officers are made aware of it.
19. The council has told the Commissioner that there are no statutory requirements for it to hold such policies.

Searches regarding the status of the garden (BF1055):

20. The council has advised the Commissioner that a search has been undertaken of the property file, the property repairs file, a bill of quantities held in relation to the original building in the 1940's, the title deeds and the land terrier¹.
21. The title deeds and all other records relating to the property are held centrally in the custody of the Assistant Director Law and Governance.
22. The council has explained to the Commissioner that if the status of the garden was held then it would be included within the title deeds.

Conclusion

23. The council has confirmed that it has not located any information relevant to the scope of the request following these searches.
24. On review of the council's response to the Commissioner's enquiries, she is satisfied that it has carried out relevant searches in appropriate places for the requested information.
25. The complainant has raised concerns with the Commissioner stating that if the council do not record calls, their content and who made the call then this could be open to abuse by the council's employees.
26. The Commissioner notes these concerns but cannot offer a view as it is not in the Commissioner's remit to determine if calls should be recorded. Her remit is to determine if the requested information is held and if so whether it can be released, if it has been refused under an exemption.
27. On this basis the Commissioner finds in this case that, on the balance of probabilities, the requested information is not held by the council.

¹ A land terrier dataset is a record system for an institution's land and property holdings. It differs from a land registry in that it is maintained for the organisation's own needs. (Source - <https://data.gov.uk/dataset/land-terrier-areas>)

Right of appeal

28. 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

29. 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.
30. 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