

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2017

Public Authority: Daventry District Council
Address: Lodge Road
Daventry
Northamptonshire
NN11 4FP

Decision (including any steps ordered)

1. The complainant has requested detailed information about payments made to a contractor in respect of works carried out at Weedon churchyard. The complainant requires the costs of the works for a five year period, broken down to reflect individual jobs. The Council has determined that whilst it does hold a contract for groundwork and maintenance, including that carried out at Weedon, it does not hold any information to the detail which the complainant seeks.
2. The Commissioner has determined that Daventry District Council does not hold the information which the complainant has requested. The Commissioner has therefore decided that the Council has complied with section 1 of the FOIA.
3. No further action is required in this matter.

Request and response

4. On 11 May 2016, the complainant wrote to Daventry District Council and requested information in the following terms:

"I request DDC to log a Freedom of Information Request on my behalf for all detailed payments made in the last 5 years relating to the upkeep of the closed Churchyard in Weedon."
5. On 8 June the Council wrote to the complainant and informed her that the information she requires is held by a third party contractor.

6. On 29 June, the Council responded to the complainant's request, informing her that:

"We have examined the records of expenditure on the relevant cost centre from 1st April 2011, thus covering just over five years prior to your request. There have been no external payments made from the cost centre over that period. [...] The Council does not hold information on the costs incurred by the contractor working on the contract."
7. The complainant immediately replied to the Council, making clear that she expected to be given "the payments made to the contractor actually broken down into separate jobs and each cost of same".
8. On 30 June, the complainant asked the Council to conduct an internal review its handling of her information request.
9. On 13 July, following its internal review, the Council informed the complainant that:

"Daventry District Council maintains the churchyard as a special expense for Weedon and this is itemised on your Council tax bill. Weedon pays Daventry DC who arrange for the work to be done and the charge for that is the special expense. This has been calculated as the cost and this would include management charges as well as the cost of the work. The special expense is included in the monthly payments to the contractor who carries out our environmental services contract. The Council does not hold information on the costs incurred by the contractor."
10. On 13 July, the complainant wrote to the Council to complain about its response to her information request and the result of its internal review. In her email, the complainant stated that she required "an itemised breakdown of each job completed and each cost incurred for each job in the last five years". The complainant expressed her concern that the Council had agreed a contract where the contractor is not obliged to give a full breakdown of the works undertaken.

Scope of the case

11. The complainant contacted the Commissioner 11 August 2016 to complain about the way his request for information had been handled.
12. Based on the Council's responses to the complainant by the Council, the Commissioner has investigated whether the Council holds any recorded information which is relevant to the detail of the complainant's clarification of her request on 29 June and later in her email of 13 July 2016.

Background information

13. The Council has provided the Commissioner with a copy of its Environmental Services Contract (ESC). It is under this contract that the maintenance of Weedon churchyard is carried out. The sections of the contract which are specific to Grounds Maintenance and Cemeteries are contained in pages 1 -40.
14. There is an 'operational schedule' and 'grounds visit schedule' associated with the ESC and the Council has also provided the Commissioner with copies of these.
15. The ESC covers a wide range of services, including waste collection, cleansing and grounds maintenance. One aspect of grounds maintenance is the maintenance of closed churchyards for which the Council has responsibility.
16. The ESC does not specify particular tasks which its contractor is required to undertake.
17. The extent to which costs/prices are broken down reflects the 'outcome' focus of the contract: The outcomes are listed under broad headings which includes one for the maintenance of closed churchyards along with other grounds maintenance.
18. The costs/prices shown in the contract relate to Daventry District Council and Northampton Borough Council, which are the parties to the ESC.
19. The costs/prices are apportioned between the two councils under a separate agreement. Within Daventry District Council, the costs/prices are subsequently apportioned using an accounting model which makes reasonable assumptions about which costs fall to the Council's General Fund. The General Fund pays for services of general use to residents and special expenses which fund works of particular benefit to only one parish of the District.
20. The costs attributable to maintenance of Weedon churchyard fall to the Weedon special expenses account.
21. The Council has assured the Commissioner that this type of contractual arrangement and practice is not uncommon. It offers contractors the opportunity to deliver efficiencies through innovative ways of working. However, as a consequence, there are no detailed schedules of rates or prices, or individual prices for specific items of work.

22. The Council asserts that, for such a large contract, it would be very time consuming and inefficient for each item of work to be specified and individually priced.
23. The nature of the ESC lies behind the Council's position that it does not hold the information which the complainant seeks. The Council has advised the Commissioner that it would be happy to discuss any concerns the complainant has about the quality of the work which has been carried out at Weedon churchyard.

Reasons for decision

24. Section 1 of the FOIA states that
 - "(1) 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.
25. The Commissioner has sought to determine whether the Council holds information to the level of detail which the complainant made clear she required in her email of 29 June 2016.
26. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
27. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks. The Commissioner's investigation also included and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations to the Commissioner

28. The Council has advised the Commissioner that it was not necessary for its officers to search for the detailed information which the complainant had specified she requires. This is due to the nature of the contract it has for the relevant works and its officers knew that the Council did not hold that level of detail.

29. Nevertheless, the Council determined that it would be prudent to examine its contract file and a report produced from its main accounting system (MAS), known as 'Agresso'. This examination confirmed that no specific expenditure relating to Weedon churchyard was recorded covering the time period specified by the complainant.
30. The Council assures the Commissioner that the contract and the 'Agresso' report would be the sole documents which would likely contain the information required by the complainant.
31. It is the Council's information and communications technology policy that all information is held on the Council's networked servers. Searches were carried out on files on the Council's servers, even though the nature of the requested information made it unlikely that anything relevant to the request would be found.
32. The Council's position is that the detailed information sought by the complainant has never existed: The information has not been destroyed or deleted and has never been held by the Council.
33. The Council has assured the Commissioner that there is no business need for it to hold the information which the complainant seeks. This is due to the nature of the ESC which makes the detailed information required by the complainant irrelevant.
34. Likewise, the Council has advised the Commissioner that the contractor would have no reason to produce or hold this detailed information. The contractor has no business purpose requiring it to hold the requested information. It is likely to have records which relate to the overall resources it uses for ground maintenance generally, but these resources would be deployed to all areas of grounds maintenance across the two councils and would encompass all groundworks including Weedon churchyard.
35. There is no statutory requirement for the Council to hold information to the level of detail required by the complainant.
36. The contractor is not contractually obliged to hold the level of detail requested by the complainant.
37. It is the Council's position that it does not hold any financial information relating to the cost of the works carried out at Weedon churchyard. It has drawn the Commissioner's attention to its website,¹ where it has

¹ <https://www.daventrydc.gov.uk/living/environmental-services/environmental-services-objectives-and-outcomes/>

published the contractual specification for grounds maintenance services.

The Commissioner's conclusions

38. The terms of the complainant's request are clear: The complainant has specified that she seeks "the payments made to the contractor actually broken down into separate jobs and each cost of same", and "an itemised breakdown of each job completed and each cost incurred for each job in the last five years".
39. In the absence of evidence to the contrary, the Commissioner must accept the Council's position that it does not hold information to the level of detail required by the complainant. The Council's representations and explanations are plausible and likely to accurately reflect the information it actually holds.
40. It is clear to the Commissioner that the Council holds information which is relevant to groundworks and maintenance across two councils and information which it uses to apportion costs to the General Fund and for special expenses benefitting only one parish in its area, i.e. for the maintenance of Weedon churchyard.
41. The Commissioner is satisfied that the Council, on the balance of probabilities, does not hold the information which the complainant has requested.
42. It is the Commissioner's decision that the Council has complied with section 1 of the FOIA by advising the complainant that it does not hold the information she has asked for.

Right of appeal

43. 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

44. 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.
45. 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
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SK9 5AF