

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2017

Public Authority: Southwark Council

Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from Southwark Council ("the Council") relating to a question submitted to Council Assembly, the procedure when making a complaint against the Monitoring Officer and a decision made by the Standards Committee.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds that falls within the scope of requests 1 and 2.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 4 April 2016, the complainant wrote to the Council and requested information in the following terms:
 1. *Clearly you have not picked up on my original complaint about [redacted name] your records will show that I submitted a question to Council Assembly for which there is a procedure, unfortunately [redacted name] clearly did not consult with any Councillor when she refused to accept my question this is supported by the fact she never referred to the reason for rejection as listed in the constitution. If this is disputed please provide the relevant string of emails as a FOI request.*
 2. *FOI request Please provide a copy of the process/procedure when receiving a complaint about the Monitoring Officer.*
 3. *Please confirm that the decision made by the Standards Committee has been overturned.*

5. The Council responded on 29 September 2016 and provided the information sought in request 2. This consisted of a link to the Officer Employment Procedure Rules which details the procedure when making a complaint about the Monitoring Officer. For requests 1 and 3, the Council sought clarification.
6. The complainant clarified the information he was seeking on 30 September 2016. For request 1, the complainant referred the Council to the question he submitted in February 2016 and for request 3, the complainant provided the Council with the reference number of the decision made by the Standards Committee.
7. The Council responded on 15 November 2016. For request 1, the Council explained that *"on the basis of the information you have supplied, I have not been able to identify any relevant records held by the Council"*. For request 2, the Council referred the complainant to its previous response and for request 3 the Council explained that it was unable to confirm that the decision made by the Standards Committee had been overturned.
8. Following additional correspondence with the complainant, the Council stated on 1 December 2016 that it had nothing further to add.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant confirmed that his complaint concerned the Council's handling of requests 1 and 2.
11. The Commissioner has considered whether the Council holds any further information falling within the scope of requests 1 and 2.

Reasons for decision

12. Section 1(1) of the FOIA 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 that information communicated to him".

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

Request 1

15. The Council explained that the complainant has a single point of contact (SPOC) through whom all correspondence to and from the complainant is channelled. The Council explained that the complainant's SPOC left the Council in March 2016 and was replaced by a new complaints manager. The Council confirmed that although a handover of relevant material was carried out, this did not include the question referred to in request 1. The Council further stated that the constitutional team has confirmed that they have not received a question on that date, whether directly from the complainant or via his SPOC.
16. In order to determine whether the requested information is held, the Council contacted the deputy Monitoring Officer who carried out a search of his emails relating to the next Council Assembly meeting scheduled after the question was submitted. The search returned some correspondence between the complainant and his former SPOC.
17. The Council explained:

"In these emails, the SPOC informed [the complainant] that she would forward his request on to the constitutional team. Unfortunately, the manager of the constitutional team at that time has also since left the council and the current manager has no record of this emailing having been sent to her predecessor. The response from the SPOC to [the complainant] also said that she would seek the monitoring officer's advice on the matter but it has not been possible to establish whether or not this advice was sought or indeed whether the monitoring officer was involved in this particular issue".
18. Upon receipt of the Council's submissions, the Commissioner returned to the Council for further information as it was not clear whether the Monitoring Officer had been contacted directly to determine whether she held information falling within the scope of the request.
19. The Council responded and addressed the Commissioner's request for further information. The Council explained that it had spoken to the

Monitoring Officer about this request. However, due to the volume of correspondence and queries she has received from the complainant, she is not able to recall whether or not the complainant's former SPOC spoke to her when the request was received. However, the Monitoring Officer did confirm that she did not locate any emails falling within the scope of request 1.

20. From the information provided by the Council, the Commissioner is satisfied on the balance of probabilities that the Council does not hold the information sought in request 1.

Request 2

21. The Council confirmed that in its response to the complainant on 29 September 2016, it provided a link¹ to the Officer Employment Procedure Rules contained within the Council's Constitution. The Council explained that the relevant section is section 9 'Disciplinary action' which sets out the process to be followed when a complaint is made about the Monitoring Officer.

22. The Council also explained:

"As policies and procedures are held on the council's website and its intranet, I have used the search functionality on these to check for other reference to complaints about the monitoring officer."

23. The Council confirmed that no other policy had been identified.
24. The Council also confirmed that it had spoken to the deputy Monitoring Officer who confirmed that he is not aware of any other procedures which would deal with complaints about the Monitoring Officer.
25. From the information provided by the Council, the Commissioner is satisfied on the balance of probabilities that the Council has provided the complainant with all the information it holds that falls within the scope of request 2.

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http://modern.gov.southwark.gov.uk/documents/s63348/Officer%20employment%20procedure%20rules_July%202015.pdf

Right of appeal

26. 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

27. 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.
28. 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

Jack Harvey
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