

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2017

Public Authority: Epping Forest District Council
Address: Civic Offices
High Street
Epping
Essex
CM16 4BZ

Decision (including any steps ordered)

1. The complainant has requested information relating to gender equality. The Commissioner's decision is that Epping Forest District Council provided its Equality Policy outside of the statutory time limit for responding to requests in breach of section 10(1) of the FOIA. She has also decided that information relating to the number of male and female heating engineers and plumbers is not held for the purposes of FOIA by virtue of section 3(2)(b). She does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

2. On 8 July 2016 the complainant made the following request for information as part of a step 1 complaint under Epping Forest District Council's ('the council') formal complaints procedure:

"If the Council has a Gender Equality Policy please would you Post a hard-copy to my home address."
3. The council explained that its Communities Directorate Customer Relationship Officer responded to the step 1 complaint by email on 11 July 2016 advising that she could not provide the documents asked for as part of her response to the complaint and stating that the information he was looking for should be on the council's website but if he was unable to find it he should make a FOIA request. The council said that

the FOIA request (IR03250) for the Gender Equality Policy, and other information, was logged on 2 August 2016.

4. On 30 August 2016, the council provided the complainant with a copy of its Equality Policy. It explained to the Commissioner that the policy was subsequently revised in 2016 and the complainant was sent a copy of the 2016 Equality and Diversity Policy on 7 February 2017.
5. On 1 September 2016, the complainant made the following requests for information:
 - "1) How many Female Heating Engineers and Female Plumbers do Gracelands currently employ?
 - 2) How many Male Heating Engineers and Male Plumbers do Gracelands currently employ?
 - 3) How many Female Heating Engineer Apprentices and Female Plumbing Apprentices do Gracelands currently have?
 - 4) How many Male Heating Engineer Apprentices and Male Plumbing Apprentices do Gracelands currently have?"
6. The council responded on 8 September 2016 as follows:

"This information is not produced or owned by the Council and as such is not the Council's responsibility to provide. You may contact Gracelands CMS directly if you wish to request the information from them."
7. On 8 September 2016 the complainant requested an internal review relating to these, and other, requests.
8. The council provided its internal review response on 29 September 2016. It said that it does not have a Gender Equality Policy as gender is dealt with in its Equality Policy. It also said that it does not hold the information relating to male and female Heating Engineers, Plumbers and Apprentices.
9. The Commissioner is aware that the complainant has made numerous requests for information, and complaints, to the council within the above, and additional correspondence. However, for clarity, only correspondence which is most relevant to this particular complaint is detailed above.

Scope of the case

10. The complainant contacted the Commissioner on 12 October 2016 to complain about the way these, and other, requests for information had been handled.
11. The Commissioner has only dealt with the requests relating to gender equality in this decision notice. The complainant's requests relating to health and safety at Gracelands CMS Ltd ('Gracelands') are being dealt with separately under case reference FS50671488.
12. The complainant said that he felt that the council took too long to provide the information he requested on 8 July 2016. Therefore the Commissioner has considered whether the council breached the statutory time for compliance at section 10(1) of the FOIA in relation to that request.
13. The complainant also said that he considers that information should be provided. Therefore the Commissioner has also considered whether the information relating to male and female heating engineers and plumbers employed by Gracelands CMS Ltd is held for the purposes of the FOIA under section 3(2)(b).

Reasons for decision

Section 10 – Time for compliance with request

14. Section 10(1) states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

15. The council received the request for the Gender Equality Policy on 8 July 2016 and provided its Equality Policy, which deals with gender, on 30 August 2016 which is after the twentieth working day following the date of receipt. Therefore, the council did not respond to the request within the statutory time limit in breach of section 10(1).

Section 3 – Public authorities

16. Section 3(2) states that –

"For the purposes of this Act, information is held by a public authority
if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

17. In this case, the council has confirmed that it does not hold the requested information. It explained to the complainant that it is bound by FOIA legislation but is only required to provide information it holds. It also explained that Gracelands are not a public authority and are not bound by the FOIA and are therefore not required to provide the requested information to the complainant.
18. The Commissioner therefore needs to decide whether or not the requested information is held by Gracelands on behalf of the council.
19. Where it is necessary for the Commissioner to determine whether information is held on behalf of a public authority she will usually need to refer to the terms of any relevant contractual provisions between the parties. The Commissioner therefore asked the council to confirm the nature of the relationship between it and Gracelands with respect to the requested information itself and to provide a copy of any contract between it and Gracelands in relation to this information.
20. The council explained that the relationship between it and Gracelands is contractual as Gracelands have been awarded a number of contracts with the council, all of which have followed a competitive tendering exercise in accordance with the council's procurement rules and in some cases, in accordance with EU procurement rules. It said that it currently has 10 contracts with Gracelands and because the visit that led to the complainant's request was in connection with his gas heating, it considered that the gas heating contract is the most appropriate in this case. Although the Commissioner was not provided with a copy of the entire contract, which the council has said runs to almost 300 pages, she was provided with relevant extracts for consideration.
21. The Commissioner considers that the focus of the contract is the provision of services relating to breakdown cover and emergency out of hours cover of gas systems in residential properties owned by the council. She notes that the contract contains clauses relating to the FOIA which in effect state that Gracelands will supply the council with necessary information required in connection with a request received by the council under the FOIA. However, the Commissioner does not consider that this means that Gracelands needs to supply the council with any information it holds in order for the council to answer a request made to it. Gracelands would only need to supply information it holds on the council's behalf. The Commissioner can envisage that some information may be held on behalf of the council as a result of the

contractual agreement, for example, information relating to work carried out by Gracelands under the terms of the contract. However, she needs to consider whether the specific information requested in this case is held by Gracelands on behalf of the council.

22. The Commissioner notes that the contract also contains an Equal Opportunities clause which provides that Gracelands shall comply with the council's equal opportunities policies and procedures. However, the Commissioner does not consider that it then follows that any information connected with equality, such as the number of male and female employees is held by Gracelands on behalf of the council. If the council requested the information for its own purposes, such as an investigation by the council into Graceland's equality practices or its compliance with the council's Equality policy, it may then be held on behalf of the council, but there has been no suggestion that this is the case in this instance.
23. In reaching her decision in this case the Commissioner has taken into account the nature of the information requested, her consideration of parts of the contract between the council and Gracelands, and the council's confirmation that it does not hold the requested information. She can appreciate that the council has no business need to hold the number of male and female employees requested, despite the fact that the contract states that Gracelands shall comply with council's equal opportunities policies and procedures. Nor has she been made aware of any contractual, or other, obligation on Gracelands to hold or provide the council with the requested information in order to ensure compliance with the contract or with the council's Equality Policy.
24. In conclusion, having considered all of the points above, the Commissioner is satisfied that, in this case, Gracelands does not hold the requested information on behalf of the council and therefore the council does not hold information relevant to the request made on 1 September 2016 for the purposes of FOIA.

Right of appeal

25. 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

26. 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.
27. 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
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF