

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2017

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of the Band C Council Tax exemption and the inspection of properties. This was following a previous request in relation to the Council's policy on the same subject matter, which resulted in two previous decision notices being issued, (FS50472358 and FS50546033) and subsequently appealed to First-tier Tribunal. The first of which [EA/2013/0183], whilst accepting that there was no formal policy, maintained that the Council must hold some information within its records somewhere, with the second [EA/2014/0318] upholding the Commissioner's decision notice that section 12 of the FOIA was engaged in respect of complying with the request.
2. In respect of this request, the Council relied on section 12 for some of the information, and confirmed that it did not hold relevant information in respect of item four of the request. The Commissioner's decision is that Cardiff Council has correctly relied on section 12 of the FOIA in respect of items one to three of the request. However, its failure to locate and provide information falling within the scope of the request until the Commissioner's involvement represents a breach of section 1(1) of the FOIA. Since the information has now been provided to the complainant however, the Commissioner does not require the public authority to take any steps.

Request and response

3. On 14 June 2016, the complainant wrote to the Council and requested the following information in respect of a policy of inspecting properties in relation to an application for a Class C exemption from Council Tax:

"1. When Council staff invoke the policy referred to what training documentation or referenced documentation or checklists are they provided to ensure that they are conforming with the policy?"

2) What documented review processes are in place to ensure staff confirm with the policy/processes?"

3) A specific individual [named Council officer], made explicit reference to this policy in his email to me of 27 February 2012. This email, amongst others, has been provided by Cardiff Council as evidence to the Valuation Tribunal for Wales. Please can you inform me how I can gain access to the policy /process documents that he would have made reference to when confirming the policy to me?"

4) Since it is a matter of record, and of evidence submitted to the VT-W that his specific individual twice made reference to this policy around February 2012, and since my request to search for all e-mails for references to this policy was considered too broad, I very specifically ask: please provide a copy of all emails sent from or to this particular individual Council Officer during the period of January to March 2012 which make reference to the Council policy/process of inspecting properties in relation to a discount/exemption from Council Tax."

4. The Council responded on 2 July 2016. It informed the complaint that as stated in previous responses, it does not hold a formal written policy or process but confirmed that:

"It is the Council's opinion that, it is reasonable to request a visit to a property to verify an exemption that has been awarded."

5. It referred the complainant to its response in respect of his previous request regarding item three, and for item four, stated:

"A search of the email system has been conducted in line with the parameters that you have requested and I can confirm that no data is held."

6. Following an internal review the Council wrote to the complainant on 4 August 2016. It stated that whilst the Tribunal's initial ruling considered

there must be records held which refer to this policy without necessarily calling it a policy, its ruling following the Council's amended response, upheld its reliance on section 12 of the FOIA. It reiterated that:

"...the search process which would need to be implemented to establish if any relevant data was held would take over 18 hours of officer time."

7. In respect of item three of the request, it added that:

"Reframing the question as you set out would still result in the same process."

8. Finally, in relation to item four, the Council maintained that it does not hold relevant information.

Scope of the case

9. The complainant contacted the Commissioner on 2 November 2016 to complain about the way his request for information had been handled. He outlined three elements to his complaint, the first of which he identified as not providing details of a changed policy in respect of comments in his request for an internal review, alleging that the Council has refused to answer this question, or even confirm if it is a valid FOI request.
10. The second element of the complaint to the Commissioner was also concerned with '*not providing details of change of policy*' but in respect of the Council's comments in its internal review that it did not accept that there were documents which refer to the policy. The complainant considered that the view appears to undermine the objectivity of any search for information subsequent to the ruling of 2014, if staff undertaking the search are aware that their managers are taking the line that the information does not exist.
11. Finally, the complainant expressed concern that the Council has failed to produce documents known to exist in respect of item four of his request as he stated it is a matter of documented fact there are emails that exist which match the criteria of his request as they were sent by the named Council Officer to the complainant, and are still on file as part of this ongoing FOI process and also an appeal to the Valuation Tribunal. The complainant expressed dissatisfaction with the Council's search undertaken.
12. The Commissioner considers that the first element of the complainant's request will be covered in her assessment of the Council's reliance on

section 12 of the FOIA. Whilst both the second and third elements, of the complaint will be included in her consideration of whether the Council has complied with its obligations under section 1(1) of the FOIA in respect of item four of the request.

Reasons for decision

Section 1 – General right of access to information held

13. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
14. In her consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
15. The Commissioner's judgment in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
16. The Commissioner notes that in its initial response, the Council informed the complainant that having searched its email system in line with the parameters specified, it does not hold relevant information in respect of item four of his request.
17. However, in his request for an internal review, the complainant stated that it is a matter of fact that emails were sent to and received from the Council Officer in question and asked it to detail how the search was conducted. The Council's subsequent internal review informed the complainant that its corporate email system is Microsoft Outlook, and the search parameters set out in his request were used to conduct the search, reiterating that no information is held.
18. The complainant informed the Commissioner that he accepts that expecting all emails to be in the inbox of an individual after several years of requests is unlikely, as they are likely to have either been deleted (but recoverable) or archived. He added that since the information is known to exist, the search methodology the Council was

using must be incorrect, as it had failed to find information which does exist, and has not provided any explanation for this.

19. In her investigation of this matter, the Commissioner contacted the Council requesting details and evidence of its search, and in particular whether it focused solely on the current email account of the named

Council Officer or whether it extended to deleted or archived emails to and from the Council Officer.

20. The Commissioner also pointed out to the Council that there were in fact emails falling within the scope of the request in 2012, and would need details of the Council's email retention policy and whether they are automatically deleted from an Officer's account after a certain time, whether any back-up copies are retained, and if so, for how long, and whether its search included an interrogation of its archived system.

21. Following various correspondence between the Commissioner and the Council, it confirmed that the officer in question had left the employment of the Council on 8 May 2017. The Council also confirmed that when an officer leaves the employment of the Council, their email account is deleted, although it is backed up for up to 15 days depending on the service space available at the time. The Council was however, able to obtain from its back-up system the Officer's email account and searched the inbox, sent items and deleted items using the following key terms, (providing the Commissioner with evidence of this):

- Policy
- Procedure
- Class C
- Council Tax
- Inspecting properties

22. The Commissioner notes that the search yielded no relevant results with the Council confirming that the account did not contain information earlier than 2016.

23. The Council further confirmed that it does not currently automatically delete emails held in individual Officer's accounts. However, all employees are expected to transfer any information relevant to its business needs to its 'I' World system for retention, and the lack of emails would be consistent with this.

24. The Commissioner referred to the complainant's comments that information relevant to this item of the request, (albeit likely to already be in his possession) did exist in 2012 and appears to have formed part of the evidence sent to the Valuation Tribunal. The Council informed the

Commissioner that if the information is no longer held in the email account, the only other place it could be held is in its 'I' World Council Tax account for the account holder.

25. Having subsequently checked these records, the Council was able to retrieve copies of the emails to and from the complainant and the named Council officer, and these have recently been forwarded to the complainant.
26. The Commissioner would point out that while information held in the complainant's Council Tax account did not at face value appear to fall within the scope of the complainant's request for a copy of all emails sent to and from the named Council officer, it might have been helpful if, in its original response, it had provided the complainant with a full explanation of its search, and details of its record keeping.
27. Additionally, the Commissioner also notes, that the Council did not search under all of the parameters specified in paragraph 21 of this notice until requested by the Commissioner.
28. The Commissioner would remind the Council that based on its record keeping policy in relation to emails, a reasonable and proportionate search of its records in relation to emails must include all relevant parameters, and that it might be necessary to search other potential records in addition to the email account itself.
29. Having investigated the matter, the Commissioner is satisfied that no additional relevant is held, and that the Council has now complied with its obligations under section 1(1) of the FOIA. However, its failure to locate and provide this information at the time of its initial response and internal review, represents a breach of section 1(1) of the FOIA.

Section 12 – cost of compliance exceeds the appropriate limit

30. Section 12 of the FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

31. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

32. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.

 33. As stated in paragraph 2 of this notice, the Council has refused items one to three of the request in reliance on section 12 of the FOIA and stated that reframing the request, does not alter the search process necessary for this more specific request.

 34. The Commissioner has considered the information being sought by the complainant in items one to three of his request, and notes that item one refers to information in respect of the training of the policy, item two requested information in respect of any documented review processes to ensure staff conform with the policy, with item three asking how he can gain access to the policy/process documents that a named Council Official would have made reference to when the policy was confirmed to him back in 2012.

 35. The Commissioner considers that if it is likely, as ruled in her decision notice of FS50546033, and subsequently upheld by the First-tier Tribunal under EA/2014/0318 that section 12 is engaged in respect of searching for the policy itself, then it is also logical that the cost of compliance in searching for training, process information and policy documents referred to in items one to three of the request will also exceed the appropriate limit. She is therefore satisfied that section 12 of the FOIA is engaged in respect of items one to three of the request.
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Right of appeal

36. 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

37. 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.
38. 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

Catherine Dickenson
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