

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 May 2019

**Public Authority:** BCP Council  
**Address:** Town Hall  
Bourne Avenue  
Bournemouth  
BH2 6DY

#### **Decision (including any steps ordered)**

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1. The complainant has requested information with regards to her deceased husband. BCP council (the council), who were Bournemouth Borough Council at the time the complaint was brought to the Commissioner, after seeking clarification and citing section 12 of the FOIA established that it did not hold information falling within the scope of the request. The council forwarded the request to the Coroner's Office who identified information that it held.
2. The complainant considered that the council would hold further information, that the Coroner's Office was a part of the council and that the Coroner's Office would hold more information than it had identified.
3. During the Commissioner's investigation the council located some information held by the mortuary and provided it to the complainant outside of the FOIA as it considered it would be exempt from disclosure to the general public.
4. The Commissioner's decision is that the Coroner's Office is not a part of the council and so any information it holds on its behalf is not subject to the FOIA. On balance, the Commissioner finds that the council does not hold any further information relevant to the scope of the request other than what has been provided.
5. The Commissioner does not require the council to take any steps.

## The council

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6. At the time of the complaint being brought to the Commissioner, the council was Bournemouth Borough Council but on the 1 April 2019 it has undergone a local government re-organisation. The council's serving Bournemouth, Christchurch and Poole have been replaced by BCP Council which is now responsible for all local government services for the areas.

## Request and response

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7. On 31 July 2017, after providing background information, the complainant made the following information request to the council:

*"I write in order to request all information that is held by the Council, or any of its departments (including the Coroner's Office for the County of Dorset located at the Town Hall in Bournemouth, or any predecessor), in relation to the death of my late husband, [name redacted]. The inquest into [name redacted] death concluded on [date redacted]."*

8. As no response was received, the complainant contacted the council again on the 29 August 2017 and the council responded on the same date. It advised that the request cannot be handled as an FOIA request as the request is for personal/ confidential information that is specific to her late husband.
9. The council explained that she would be entitled to the information, just not under the FOIA. But before this could happen, the council stated that it needed some clarity regarding the information being sought. It explained that a request for all information would take a long time as it would involve multiple departments and that the complainant may end up with information that was not required, such as council tax details.
10. The council also stated that it was clear that information from the Coroner's Department is required and the council advised that it has passed on the request for them to respond directly to the complainant.
11. On the 30 August 2017 the complainant responded to the council disputing its statement that her request cannot be treated as an FOIA request. The complainant made the following points:
  - FOIA applies to the council as a whole and all information held by it
  - Any information held by the Coroner's Office is held by the council

- Her request is for all information that is held by the council, or any of its departments (including the Coroner's Office)
  - Any information that is personal data can be redacted before providing information.
12. The complainant also clarified that she does not require information such as Council Tax information. She requires all information relating to her husband's death, the investigation that took place (whether in England or Spain), the inquest and the return of his body to England.
  13. On 20 September 2017 the Coroner's Office contacted the complainant explaining what information it holds in relation to her husband's death and that a fee would be required before it is released or suggested that she contact her solicitors, as this information has previously been provided to them.
  14. The Coroner also advised the information it holds with regards to the delay in releasing her husband's body and provided copies of this information.
  15. The complainant contacted the Commissioner on 25 January 2018 dissatisfied with the amount information provided by the Coroner's Office (it only provided information already held by the complainant) and because the council has not provided any information.
  16. The Commissioner contacted the council on the 14 February 2018 asking that it provide a response to the complainant's request in accordance with section 1 of the FOIA or issue a valid refusal notice. The Commissioner asked that the council do this as part of its internal review.
  17. The council provided its internal review on the 7 March 2018. It stated that without clarification of the request, the request would be deemed exempt under section 12 of the FOIA – as it would be over the appropriate limit to respond.
  18. The council considered that it has complied with section 16 of the FOIA in asking for a refined request and suggested that the type of information being requested may be refused under section 41 of the FOIA – information provided in confidence.
  19. The council then concluded its review by stating that it considered the request was directed solely at the Coroner's Office who are not subject to the FOIA, but noted the Coroner's Office response did advise of the information the complainant is entitled to by law.

## Scope of the case

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20. The complainant contacted the Commissioner again on the 23 October 2018 advising that they disagreed with the council's position. The complainant considers that the Coroner's Office is part of the council or the council's functions and therefore it should be able to respond under the FOIA.
21. The complainant also considers that the council has failed to address the part of the request in which it should search other departments for information.
22. The council contacted the Commissioner to clarify that the information being sought is information that would be held by the Coroner's Office and that it is very unlikely that any other information, relevant to the request, would be held by the council.
23. On reviewing the responses it had provided to the complainant the council has advised the Commissioner that the manner in which it had responded to the complainant was not always entirely helpful or appropriate given that this was an extremely sensitive issue arising from a tragic death which has clearly caused immense distress for the family.
24. The council points out that it should not have referred to the fees limit as the cost of making enquiries was not an issue; because it became clear to the council that it did not hold the information being sought and the request had a minimal impact of the council's resources in terms of having to respond.
25. The council states that it regrets the way in which it handled the original enquiries, and has clarified its position that it does not hold the requested information and that any information would be held by the Coroner's Office who are a separate entity to the council.
26. As the complainant considers the Coroner's Office is part of the council and that further information may also be held in other council departments, the Commissioner considers the scope of the request is to firstly determine whether the Coroner's Office is a part of the council. Once this has been established, the Commissioner will go on to consider whether or not the council holds any information falling within the scope of the request.

## Reasons for decision

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### Is the Coroner's Office a part of the council

27. Schedule 1 of the FOIA<sup>1</sup> sets out the entities that are designated as public authorities. The council is such a public authority under Schedule 1 of the FOIA.
28. The Coroner is not designated as a public authority and is not, therefore, subject to the FOIA regime.
29. As explained by the council, the Coroner is not a local government officer but an independent judicial officer holding office under the Crown and is obliged to carry out his or her duties in accordance with the Coroners and Justice Act 2009 and the Coroners (Inquests) Rules 2013.
30. As is in this case, it is common for local authorities to provide premises for the administrative support that the Coroner needs and for the Coroner to keep papers and other records. However, this does not mean that these documents and the information contained within them is held by the council.
31. There is a separate regime relating to disclosure of documents by Coroner's which are set out in the 2013 rules and therefore the Commissioner cannot consider whether or not the Coroner's Office holds further information as it would be outside her remit to do so.
32. The Commissioner will now go on to Consider whether the council holds any information relevant to the request.

### Section 1 of the FOIA – Information held/ not held

33. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
34. 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

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).

35. In this case the complainant has highlighted to the Commissioner the types of information it considers would be held by the council relevant to the request.
36. The Commissioner, in her investigation letter to the council, asked that it review these seven points (marked i to vii) and advise the Commissioner whether it holds information of this type.
37. The Commissioner has not reproduced these seven points in full within the decision notice as the detail in them could potentially reveal information regarding the deceased husband and his family.
38. The council's response to these points are:
  - a) for points i) to iv) although framed as requests for information, they are asking for the basis for decisions made by the Coroner. The council has told the Commissioner that it does not hold any information which would cast any light on these matters.
  - b) Point v) asks about what steps were taken so that the cremation could have taken place earlier. The council has told the Commissioner none were taken as it did not have any involvement in the decisions relating to the husband's body.
  - c) Point vi) was with regards to Material held by or produced by the council's department headed by [name redacted], Head of Registration & Coroners Services, Legal Democratic, Bournemouth Borough Council (as set out above, on 15 February 2017, [name redacted] confirmed that there is a file – *"I've just had a look on the file to see if the Spanish post mortem report makes any reference to the organs but it does not"*)

The council has confirmed that the officer was provided access to the Coroner's file, but being given permission to view the file does not then make this information council held information.

The Commissioner agrees with the council's position on this. If the Coroner had to give permission for the file to be viewed and the officer only viewed the file, then the information remains that of the Coroner, it does not then become council held information as the council was not in control of what happens to the information.

- d) Point vii) the council has advised the Commissioner that the Mortuary has confirmed that the only information stored there is the admission and release form for the deceased husband. Any other information and post mortem details would be held by the Coroner.
39. As this information has now been located, the council provided a copy of this to the complainant on the 24 April 2019. However, it has provided it to the complainant outside the remit of the FOIA as it considers it would be exempt from disclosure to the public.
  40. The council has told the Commissioner that there is no other information held by it in relation to the above.
  41. With regards to which departments the council contacted to establish if it held anything relating to the above or any other information falling within the scope of the request, the council has told the Commissioner that it has only contacted the Coroner's Office and the Mortuary. This is because the information requested was in relation to the husband's death, to the judicial proceedings which followed that and the reasons for the retention of his body.
  42. The council says that its only involvement in the case has related only to requests for information and the responses sent. The council has told the Commissioner that it did not have any involvement in the investigation in the husband's death, any of the judicial proceedings which followed or any decision to whether his body should be released to his family for cremation.
  43. The council has confirmed to the Commissioner that no information has been deleted or destroyed relevant to the request and there is no statutory requirement or business purpose for it to create or retain any information on this matter.
  44. The council, in its response to the Commissioner, is certain that it would not hold information falling within the scope of the request, other than what it has identified being held by the mortuary – admission and release forms for the husband's body.
  45. The fact that the council has made it clear that it was not involved in the case of the complainant's husband's death makes it difficult to determine that information would be held by the council.
  46. The Commissioner appreciates that the Coroner using the council's premises and receiving administrative support from it can make the lines appear blurred as to how their roles may differ. Nonetheless, the Coroner is a distinct legal entity separate from the council and each

operate within their own legislative framework with their own statutory obligations and oversight.

47. As acknowledged by the council, the initial responses were not entirely helpful. With the council requesting clarification, making reference to applying both section 12 and section 41 to information before finally establishing their position that it does not hold the information, the Commissioner can see how this would have added to the complainants reasoning that information is held by the council.
48. However, as has been recognised, the Coroner is a separate entity to the council and not a public authority for the purposes of the FOIA. The council has accepted that its poor handling of the initial responses to the request contributed to the escalation of the complaint and was only able to establish a settled position once the Commissioner's enquiries began.
49. Having considered these explanations and the Coroner's role and the searches undertaken, the Commissioner finds that on the balance of probabilities, the council holds no further information falling within the scope of the request.

## Right of appeal

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50. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

51. 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.
52. 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**