

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2019

Public Authority: Royal Borough of Kingston upon Thames

Address: The Guildhall
High Street
Kingston upon Thames
Surrey
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kingston upon Thames (the Council) concerning a decision to postpone a project. The Council responded to advise that it did not hold information within the scope of the request.
2. The Commissioner's decision is that, based on the balance of probabilities, the Council does not hold any information within the scope of the request.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 6 December 2018, the complainant wrote to the Council to request information in the following terms:

"I note that para.11 of this report says that the Community Benefit Society (CBS) project, which was approved by the Housing Sub Committee on 23 January and reaffirmed by Council on 27 February 2018, has been postponed to 2020/21.

<https://moderngov.kingston.gov.uk/docume...>

I am unaware that this decision was debated by any Committee or full Council. Please provide documents showing who was involved in making this decision, what information they considered before making this decision and their reasons for deciding to postpone the project."

5. The Council responded on 4 January 2019. It had addressed the request by explaining that the quote from the report shown in the request did not represent a decision not to implement the CBS, therefore it denied holding the requested information.
6. The complainant requested a review of the response on 9 January 2019. He explained that the response did not answer his question and, if it was the case that the CBS had not been postponed, he requested different information about this.
7. The Council then provided an internal review on 17 May 2019 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 March 2019 to complain about the way his request for information had been handled.
9. Following the Commissioner's intervention, the Council provided its internal review response. The Commissioner then was able to begin her investigation.
10. Having received the Council's submission, the Commissioner wrote to the complainant and set out her initial view as to why she considered that, not only did the Council not hold the requested information but that, in all likelihood, it had never existed.
11. The complainant described the Commissioner's view as "irrational" and based on an investigation which lacked thoroughness and impartiality. He offered no evidence which would support such a view of the investigation. Nor did he provide any substantive reasoning as to why the Commissioner's conclusion was wrong – beyond repeating points that the Commissioner had already shown to be flawed.
12. Within the complainant's correspondence with the Commissioner, he highlighted his concerns about the questions asked to the Council regarding the investigation and included a copy of a document setting out some sample questions which the Commissioner often poses to a public authority when determining what information it holds – which he suggested had not been asked. The Commissioner wishes to place on

record that the questions she poses to a public authority are those which she deems most relevant to the circumstances of the individual case and are thus at her discretion. However, for the avoidance of doubt, she is happy to confirm that the questions the complainant referenced were put to the Council. This decision is based on the answers to those questions and others which the Commissioner deemed it appropriate to ask.

13. As the complainant did not accept her preliminary findings, the Commissioner therefore considers the scope of her investigation will be to establish whether the Council handled the request in accordance with the FOIA. Specifically, the Commissioner will consider whether the Council was correct to advise that it does not hold the information within the scope of the request.

Reasons for decision

Section 1 - Information held/not held

14. 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.*

15. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for in his request of 6 December 2018. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

17. To revisit the request, the complainant asked for the following information about the decision to “postpone” the CBS project:

“...documents showing who was involved in making this decision, what information they considered before making this decision and their reasons for deciding to postpone the project.”

The complainant’s position

18. The complainant’s point of view is that there was a target date for the CBS project being established which was April 2018. So, if the report for the 2019/2020 financial year mentions that the project was postponed, and there has not been an establishment of the CBS project since the target date, he would want to know the reason why. Therefore he is asking for *“...documents showing who was involved in making this decision, what information they considered before making this decision and their reasons for deciding to postpone the project.”*
19. As the complainant made reference to the Council’s report within his request for information, it is reasonable to interpret the request to be for the reasoning behind the decision in the report.

The Council’s position

20. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant’s request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion or destruction of information which might be relevant to the complainant’s request.
21. Along with the standard questions about the searches it has made to determine whether the Council held information within the scope of the complainant’s request, the Commissioner had asked the Council further questions to explain statements it had made within its responses to the complainant.
22. For example, as the Council had said that the complainant has taken the word “postpone” out of context, the Commissioner asked the Council to explain the context it should have been in. The Council advised this in response:

“The use of the word ‘postponed’ in the budget monitoring report relates to a financial decision as to which areas are prioritised for the coming financial year and which areas are to be considered again in the following financial year. The CBS has not yet been established and will be considered again in the next financial year.”

23. After receiving this, the Commissioner asked the Council how this "financial decision" was made and made some further enquiries regarding this, as it could be the case that the Council did hold some information relating to the "financial decision".
24. The Council explained that *"The reference to CBS in the financial report does not pertain to a decision regarding implementation of the CBS. The decision in question here was to remove the previously projected CBS income from the financial forecast until such a time as the CBS is implemented. The reason for this was to avoid an extraneous ongoing monthly variance. The reference to postponement of the CBS was purely a commentary to explain this, alluding to the fact the CBS had not yet started. The council has already, at the ICO's request, carried out a search of electronic records pertaining to CBS and no information regarding any financial decisions relating to this report have been found."*
25. The Council agreed that in the meeting the complainant referred to, on 23 January 2018, it was proposed for the CBS to have been established as soon as is practically possible" but had a target date of April 2018. This decision was subject to a community call-in, but a full council meeting upheld the decision to use April 2018 as a target date.
26. However, the Council had also shown the Commissioner that "the Director of Adult Social Services and the Monitoring Officer, in consultation with the Portfolio Holder for Adults Social Care and Health, are authorised to agree and sign off any final documentation in relation to the creation of the CBS." If nothing has been signed off yet, had a vote taken on, or had the delegated people make an official decision on the matter. Then it was clear that the Council would be of the view that it held no information within the scope of the request because it has not made the "decision" to "postpone" the CBS project.
27. Therefore the Council advised the only reason why it had referred to a "financial decision" was to remove the income from the CBS, which had previously been projected, to reflect the fact that the project had not yet been established. As such, the situation that the complainant assumes has happened (and upon which his request is predicated), simply has not. For that reason, the Council states that it does not hold the information within the scope of the complainant's request.

The Commissioner's conclusion

28. The Commissioner is aware that the word "decision" may have more than one interpretation. In this case, it is clear from the origin of the request that both parties understand the word to be interpreted in the way that it is used in a local government context. This means that

although the CBS has not yet come to fruition, the Council has not voted on the matter therefore this could be for many different reasons.

29. The Commissioner can appreciate the complainant's point of view on the matter that as the Council has not yet established the CBS project, there must have been a decision to postpone the project. However, after making her enquiries and completing her investigation, she accepts the Council's explanation.
30. Although the complainant did not receive the information that was requested, the Council did provide a reasonable explanation of why it did not hold the information that was within the scope of the complainant's request.
31. Therefore on the balance of probabilities, the Commissioner is satisfied that the Council does not hold the information within the scope of the complainant's request.

Right of appeal

32. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**