

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2019

Public Authority: Tendring District Council

Address: Town Hall
Station Road
Clacton-on-Sea
Essex
CO15 1SE

Decision (including any steps ordered)

1. The complainant requested information relating to a recruitment assessment day. Tendring District Council (the Council) denied holding the requested information.
2. The Commissioner has found that the requested information is not held by the Council for the purposes of the FOIA by virtue of section 3(2).
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 16 March 2019, the complainant wrote to the Council and requested information in the following terms:

"I attended an Assessment Day for the post of Revenues Officer. ... I wonder if you could provide me with a list of everyone's scores (no names – just the scores). Please also provide me with details of what the 'strict criteria' was for selecting candidates".
5. The Council responded on 19 March 2019. It explained that the assessment day was not a Council recruitment process and advised the complainant to contact the third party company concerned directly, as they were the company employing the individuals.

6. The Council clarified its response on 21 March 2019, confirming that it did not hold the requested information. It provided the complainant with contact details for the third party company.
7. Following an internal review, the Council wrote to the complainant on 25 March 2019 maintaining its original position.

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2019 to complain about the way her request for information had been handled.
9. She disputed that the Council was not able to provide her with the requested information, on the basis that the Council had paid for the services of the third party company.
10. In this case, there is clearly some dispute between the Council and the complainant about who may hold the requested information.
11. The issue for the Commissioner to determine is whether the Council holds the requested information and, if not, whether it is held by another person on its behalf.

Reasons for decision

Section 1 general right of access

Section 3(2) – information held by a public authority

12. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
13. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

"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."
14. This sets out a two part definition. Information is held by the public authority, and therefore within scope of a FOIA request, if the authority

holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.

Is the information held by the Council for the purposes of the FOIA?

15. The Commissioner's guidance¹ "*Information held by a public authority for the purposes of the FOIA*" explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA.

The complainant's view

16. Given that the Council had contracted its services, the complainant considered that the Council would be able to contact the third party company and ask it to provide the requested information.
17. She also considered that the Council must be able to provide her with the requested 'strict criteria' for the post, on the basis that the Council would have provided that instruction to the third party company.
18. Similarly, the complainant told the Commissioner:

"... since they paid for the services of a recruitment agency [the Council] must be able to request the information from the third party and provide me with a copy".

The Council's view

19. The Council told the complainant that the assessment day that was the subject of her request for information was not a Council recruitment process. It explained:

"The recruitment was undertaken by [the third party] as they are the company employing the individuals".

20. It confirmed that the Council has a contractual arrangement with the third party company for the provision of agency workers. It also told her:

"... the entire recruitment process, including the establishment of criteria and interview assessments, were conducted by this

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

organisation directly, and the Council does not hold this information in any form”.

21. In light of the complainant’s concerns, during the course of her investigation the Commissioner asked the Council to clarify the relationship between it and the third party company.
22. By way of background, the Council explained that it entered into a contract with the third party for that company to recruit, train, employ and supply a number of Revenues Officers.
23. The Council provided the Commissioner with a detailed explanation of the recruitment exercise in this case. The Commissioner acknowledges that the process included further stages beyond the assessment day.
24. The Council also provided the Commissioner with a copy of the third party company’s proposal documentation and the relevant terms of business.
25. With respect to the assessment day, the Council said that, while the assessment day was held at the Council’s offices, it was entirely managed by the third party.
26. The Council told the Commissioner:

“At all times, until the final interview stage with officers from the Council itself, the candidates were dealing with [the third party], working their way through [the third party]’s processes, albeit at the Council’s premises, and it would have been clear that staff recruited by [the third party] would be, and would remain throughout the term of [the third party]’s contract with the Council, employees of [the third party]”.

27. It also said:

“In this case, where the recruitment company are also the trainers and the employers of any staff assigned to the Council, there is no business need for the Council to hold the information requested. As there is no need for the Council to hold the information requested relating to those candidates who were successful in the entire process, there is absolutely no need for it to hold that information relating to those candidates who were not successful, at earlier stages”.

The Commissioner’s view

28. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes.

29. Her guidance explains that there are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA and that the weight attached to each factor will vary from case to case.
30. From the evidence she has seen, the Commissioner is satisfied that the requested information in this case was not held by the Council for the purposes of the FOIA.

Is the information or any part of it held by another person on behalf of the Council?

31. In order to comply with the requirements of the FOIA, public authorities clearly need to know what information they hold for the purposes of FOIA. This means, for example, that they need to be aware of information that is being held on their behalf by other persons.
32. In this case, the Council confirmed that, while the requested information would have been held by the third party, it was not held on behalf of the Council:

"... but was for the use and benefit [of the third party] alone".

33. The Commissioner recognises that there are several circumstances in which information is held by another person on behalf of a public authority and therefore held by the public authority for FOIA purposes.
34. One example would be as a result of a contractual arrangement.
35. Accordingly, the Commissioner has consulted her guidance² "*Outsourcing and freedom of information*" in reaching a decision in this case.
36. That guidance states:

"The definition in section 3(2) of FOIA of information "held by a public authority" includes information 'held by another person on behalf of an authority'".

37. It also states:

² <https://ico.org.uk/media/for-organisations/documents/1043530/outsourcing-and-freedom-of-information.pdf>

"The FOIA provides a general right of access to information held by public authorities. Conversely, this means that if the information is not held by a public authority, there is no right to obtain it in response to a request".

38. The Council told the Commissioner:

"There was, and is, no requirement that [the third party] provide any or all of the information they obtained in respect of each and every candidate during this particular recruitment exercise to the Council for any purpose as it was obtained by [the third party] for the sole purpose of that company providing suitably able and qualified staff to the Council to fulfil the specific roles of "Revenue Officers" in accordance with the contract".

39. In reaching her decision in this case, the Commissioner has taken into account the nature of the information requested, her consideration of the contract between the Council and the third party company and the explanations provided by the Council. She understands that the Council has no business need to access the information required by the complainant.

40. This is on the basis that the recruitment process was the responsibility of the third party company, to enable it to deliver contracted services, in this case the provision of agency staff, to the agreed standard. Nor has she been made aware of any obligation on the third party - contractual or otherwise - to provide information to the Council to allow it to verify the way in which the recruitment process was conducted in order to ensure that suitable candidates have been selected to fill the vacancies.

41. In conclusion, having considered all of the points above, the Commissioner is satisfied, in this case, that the third party company does not hold the requested information on behalf of the Council.

42. Overall, the Commissioner has therefore concluded that the Council does not hold the requested information for the purposes of the FOIA.

43. It follows that the Council complied with its duty to confirm or deny under section 1 of the FOIA.

Right of appeal

44. 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

45. 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.
46. 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

Jon Manners
Group Manager
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Wycliffe House
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