

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2020

Public Authority: North Somerset Council
Address: Town Hall
Walliscote Grove Road
Weston-super-Mare
BS23 1UJ

Decision (including any steps ordered)

1. The complainant requested from North Somerset Council (the Council) information consisting of email correspondence between two named Council officers and Kingston Seymour Parish Council during a specified period of time. The Council disclosed some information in its initial response and additional correspondence in the outcome of its internal review. However, the complainant was not satisfied with the amount of information received.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold any further information within the scope of the request, but breached section 10(1) of the FOIA in providing the information it did hold outside the required 20 working day response time.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 26 April 2019 the complainant wrote to the Council requesting information of the following description:

"Could I see the email from NSC officers [name redacted] and [name redacted] of the Engineering & Design team A, Transport to Kingston Seymour Parish Council for the period 16th May 2018 to 4th July 2018."
5. On 24 May 2019 the Council sent its response by post. The complainant called the Council on 29 May 2019 informing them that he had not received the Council's response. On the same day the Council resent its response. The response included 16 pages of emails which were considered to be within the scope of the information request. The Council decided to redact personal information of third parties under section 40(2) of the FOIA.
6. Remaining dissatisfied with the amount of information received, on 22 July 2019 the complainant requested an internal review. He stated that *"there appear to be unexplained gaps in the sequence of emails."*
7. The Council provided the complainant with the outcome of its internal review on 31 July 2019. It stated that one or two emails were missed from the initial disclosure. These subsequently uncovered emails were provided to the complainant as part of the Council's outcome of the internal review.

Scope of the case

8. The complainant contacted the Commissioner on 16 October 2019 to complain about the way his request for information had been handled. The complainant was concerned that the Council had not disclosed all the information it held within the scope of the request of 26 April 2019. The complainant did not express any objection in relation to the Council's decision to redact some third party personal information.
9. The complainant informed the Commissioner that he had submitted additional information requests in the meantime. However, the Commissioner informed the complainant that these additional information requests would not be included in the scope of this investigation as the complainant had not exhausted the internal review procedure in relation to these requests.
10. Therefore, the following analysis determines whether the Council complied with section 1 of the FOIA, when it stated that it held no

further information within the scope of the request beyond what was already disclosed.

11. The Commissioner has also examined whether the Council complied with section 10 of the FOIA in relation to the timeliness of its response to the complainant's information request.

Reasons for decision

Section 1 – Determining whether further information is held

12. Section 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."*

13. In this case, the complainant disputes that the information that was disclosed is all the information that the Council held within the scope of the request.
14. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
15. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the Council to check whether the information is held and any other reasons offered by the Council to explain why the information is not held. In addition, 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 proof of the balance of probabilities.

17. As part of her investigation, the Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The Commissioner's questions were focused on the Council's endeavours in searching for the requested information, and whether any information falling within the scope of the requests was deleted or destroyed.
18. The Council confirmed that all information that was held at the time of the request and within the scope of the information request of 26 April 2019 was disclosed, and no further information was held that was within the scope of the complainant's request.
19. The Council stated that when the request was received, the Council's handling officer approached the officers named in the request in order to obtain the relevant email correspondence that was requested by the complainant. The handling officer also searched the relevant case file in their efforts to identify the information within the scope of the request.
20. The Council explained that when preparing the initial response no automated searches were carried out. Instead the two named officers were asked to forward their relevant correspondence within the timeframe specified. *"An additional manual search of the case file, held on the networked drive, was also carried out."* However, when conducting the internal review, the Council's Information and Communication Technology (ICT) team was involved, who following an independent automated search managed to identify two additional pieces of correspondence which were subsequently provided to the complainant. The Council clarified that *"relying solely on the mailbox search would have been a mistake, as North Somerset Council staff are advised that Outlook is not a document storage software. If emails need to be kept, our instruction is that they should be saved outside of Outlook, within the relevant case file."*
21. The Council told the Commissioner that, as the request was for emails, its searches consisted of examination of electronic records. The Council added that it *"strives to be a paperless council, and therefore printing of emails is very unusual."*
22. When asked if any recorded information was deleted or destroyed, the Council stated that *"while I am confident that all records held at the time of the request were disclosed, there is always the potential for the officers to have sent an email of no case value (for example a short "thank you" email), which would have been deleted. However, any email that would add value to a case will have been kept, and therefore would have been disclosed."*

23. In its response to the Commissioner's investigation letter, the Council enclosed a copy of its Retention Schedule. It provides that complaints and correspondence classified as general enquiries are kept for one year from the last contact, whilst complaints and correspondence marked as service requests/stage one complaint are kept for two years from the last contact. The Council explained that *"If there were any superfluous emails of no value, these would be considered as 'Simple correspondence'. Deleted emails are held in back-up for one month, and are included within the ICT mailbox search."*
24. When asked if there was a business purpose for which the requested information should be held, the Council explained most of the correspondence between the Council's officers and the Parish Council was routine in nature and did not need to be held. However, *"emails relating to the specific details of the proposals and their funding arrangements were necessary to be retained until the works were completed and accounts settled (this is ongoing)."*
25. The Council stated that there was no additional statutory requirement to retain the requested information.

The Commissioner's Conclusion

26. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
27. Having considered the scope of the request, the Commissioner is satisfied that, although not in a timely fashion, the Council carried out necessary searches to identify the requested information that was held at the time of the request.
28. The Commissioner appreciates the complainant's concerns, however, in the absence of evidence to the contrary, the Commissioner is satisfied that the Council has provided the complainant with all of the relevant information which it held falling within the scope of the request.
29. Therefore, the Commissioner is of the view that, on the balance of probabilities, the Council did not hold further information within the scope of the request.

Section 10 - Time for compliance

30. Section 10 of the FOIA states that responses to requests made under the Act must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*

31. The Council explained that when it responded to the complainant's first request of 26 April 2019, it provided him with the information which it believed was held. However, when the complainant asked the Council to review how it handled his request, the Council discovered that at the time of the first request, it held further information to what was initially provided. This information consisted of two additional emails that were not disclosed in the Council's initial response.
32. Whilst, the additional information noted above was provided to the complainant on 31 July 2019, this is clearly outside of the deadline provided in section 10 of the FOIA. In failing to supply that information to the complainant within 20 working days of receipt of the request, the Council breached section 10(1) of the FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Ben Tomes
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