

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2020

Public Authority: North Tyneside Council
Address: Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY

Decision (including any steps ordered)

1. The complainant has requested information regarding parking policies configured into a council system.
2. The Commissioner's decision is that, on the balance of probabilities, North Tyneside Council is not withholding any information in scope of the request.
3. The Commissioner does not require any steps.

Request and response

4. On 24 January 2020, the complainant wrote to North Tyneside Council ('the council') and requested information in the following terms:

"Under FOI reference FOI1220 the council stated the following on 8 May 2019:

'The Council's enforcement policies are configured into the system to produce a decision/response based on options selected by the Appeals Officer using information provided in the motorists appeal.'

I hereby request disclosure of the policies that are configured into the Response Master system. This request covers all the rules, criteria and logic that is applied as part of the decision making process. Any technical or other details as to how that logic is implemented within the software is outside the scope of this request."

5. The council responded on 19 February 2020. It denied holding the requested information.
6. The complainant requested an internal review on 22 February 2020, asserting that that the information requested was for the enforcement policies, which are owned by the council and therefore should be held by the council.
7. The council sent the outcome of its internal review on 22 April 2020 in which it upheld its original position that the information is not held. By way of explanation it provided:

"the third-party software was configured through discussions between the Council's Parking Manager and the software provider at the initial time of purchase."

Regarding obtaining an extract of the policies configured into the system the council stated:

"there was no obligation for the third-party software provider to supply information that they deemed to be commercially sensitive."

8. The ICO contacted the council on 19 June 2020 regarding its response and suggesting that it carried out a further review.
9. The council responded on 31 July 2020. It confirmed that the information is not held. However, it provided further information:

"Subsequent to your initial request work and discussions have now taken place within the Parking Service area and Enforcement Documents are now published on the Councils Website and can be found at the following link:

<https://my.northtyneside.gov.uk/category/1421/parking-strategy-policies-and-operational-reports>

These are the policies that the appeals officer will apply now however it should be noted that each case is considered on its own merits. The Response Master software simply provides a suggested response based on the criteria selected by the officer from the appeal letter or any attachments that are provided within the appeal. The Appeals Officer needs to then consider whether some discretion is appropriate based on the unique circumstances of the appeal"

Scope of the case

10. The complainant contacted the Commissioner on 24 April 2020 to complain about the way his request for information had been handled. The complainant stated that the council had not provided a response to specific detail of the request which was for the enforcement policies which are configured into the Response Master software system ('the System'). The basis of the complaint is that the council must either hold this information because it provided it initially to the software supplier, or the information is held on the council's behalf by the software supplier and therefore should be provided
11. The Commissioner considers that the scope of the case is whether, on the balance of probabilities, the council holds any information in scope of the information request.

Reasons for decision

Section 1 general right of access

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 scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
14. 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.
15. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the council and other information or explanation offered by the council which is relevant to her determination.

The complainants view

16. The council stated that the enforcement policies are configured into the System, as such the complainant surmises that the council conceded the policies exist.
17. The complainant submits that the council officers may not be able to access the polices if they are "*found within the internal settings of the software*", however this isn't a valid argument that the information does not exist at all.
18. The complainant referred to the council's first internal review response which upheld that the information is not held but also stated "*there was no obligation for the third-party software provider to supply information that they deemed to be commercially sensitive.*"
19. The complainant iterated that the request was for the information created by the council, and that it is not apparent how extracting that information would harm the software providers commercial interests as anything regarding how the System worked was outside of the scope of the request.
20. In summary the complainant's view is that the council must either hold this information because it provided it initially to the software supplier, or otherwise the information is held on the council's behalf by the software supplier and therefore should be provided.

The Council's response

21. The council confirmed that the System is configured with policy guidelines. It explained that the information configured into the System

includes protocol guidelines, support staff names, preferred terminology and the legislation under which the council operates.

22. However, it advised that it no longer holds a copy of the guidelines. The System was configured at the time of purchase with the protocols that were current. It advises that at this time the council also deleted all hard copy and electronic versions of the guidelines, to which staff may have previously referred, in order to avoid any potential confusion.
23. The council advised the Commissioner that the System does not hold the configured protocols in a way that makes it possible to extract them for the complainant.
24. It also explained that the previously held guidance documents were not formal prescriptive instructions of what an *'Appeals Officer'* would do in each situation. Appeals Officers comply with the Civil Parking Enforcement legislation's discretionary obligations, therefore each appeal is considered on its individual merits. It advised it would not be possible to document all potential situations due to the multitude of scenarios in which a penalty charge notice may be issued.
25. The Commissioner asked the council to explain how the System provides a suggested response based upon the criteria selected. The council explained that the System takes a number of factors into account including criteria selected by the officer, contravention, stage, payment, established protocols, user responses including overrides where users can depart from protocol guidelines and exercise discretion. However, it confirmed that there is no way of extracting any of these factors from the System.
26. The council confirmed that information regarding its enforcement and appeals protocols and policies relating to parking were not held at the time of the request.
27. However subsequently the *'Parking Service Area'* undertook activities that produced guidance documents regarding its enforcement activities and policies and also the appeals processes and discretion policies. The council confirmed that this information has been published on the council's website and the Commissioner notes that a link to this information was communicated to the complainant in the second review.
28. The council advised that an officer will consider these published policies when reviewing an appeal, however, in accordance with the legislation, each case is considered on its own merits and discretion is applied as applicable.
29. In summary the role of the System is to provide a suggested response based on the criteria selected by the officer from the contents of the

appeal letter or any attachments that are provided within the appeal. The Appeals Officer needs to then consider whether some discretion is appropriate based on the individual circumstances of the appeal.

30. The council advised that it had undertaken electronic searches of the folders within the shared drive for all staff within the Parking Control team. It had used search terms Enforcement Guidelines, Parking Policy, Parking Guidelines, Enforcement Policy. The searches found no information, it advised that information would only be held in electronic form.
31. As previously explained the council confirmed that guidance document had been produced prior to the purchase of the System. However, this information was destroyed when the System was implemented. It advised that the contract for the System commenced on 1 December 2010. *"Any copies of the redundant Enforcement Guidelines were destroyed and removed from the website in the weeks following the system going live, when we were confident that it was stable and working as expected"*
32. There is no record of the documents' destruction however the *'Parking Control Manager'* confirmed they were destroyed following the implementation in December 2010.
33. The council advised that the previously held documents were not formally approved council documents. It stated that there was no business purpose nor statutory requirement for them to be retained.

Conclusion

34. In coming to a conclusion, the Commissioner has considered this case from two perspectives. Firstly, whether the information configured into the System is held for the purposes of the FOIA. And secondly whether at the time of the request, the council held, in the words of the complainant, the *"rules, criteria and logic"* that are applied by the System, in some other format.
35. The Commissioner has not considered the point made by the council in the initial internal review, and raised by the complainant, when it stated *"there was no obligation for the third-party software provider to supply information that they deemed to be commercially sensitive."* The council has not at any stage applied an exemption on these grounds and furthermore the second internal review makes no reference to this comment. The Commissioner concludes that the second internal review superseded the initial review, and therefore the council position is simply that the information is not held.

36. In her guidance¹ the Commissioner outlines that in most cases when information is held in electronic files and can be retrieved and manipulated using query tools or language within the software, that such information is held for the purposes of FOIA. The use of query tools or languages does not involve the creation of new information. Their use should be viewed simply as the means of retrieving information that already exists electronically.
37. However, in this case, the council has confirmed to the Commissioner that that the System does not hold the configured rules in a way that makes it possible to extract them for the complainant. The Commissioner considers that configuration files containing the logic and rules applied by a computer application, are not the same as files that contain records and information. Neither is it usual practice for configuration files to be manipulated or queried in order to extract recorded information. As such the Commissioner finds that the information configured into the System is not held for the purposes of the FOIA.
38. The Commissioner does however consider it reasonable to assume that information would be held to enable the initial configuration of the rules into the System. And furthermore, for it to be held in order to ensure that the rules remained in step with current policies and legislation.
39. In this respect, the council has explained that existing documentation was used to define and configure the rules into the System for its launch in December 2010. The documentation was subsequently destroyed after the launch to stop any potential confusion caused by staff referring to the previous guidelines. The Commissioner notes that the council, from inception to the date of the request, has identified and resolved a gap in its documentation relating to the policies that the appeals officer will apply. It has published this information on the council website and advised the complainant.
40. The Commissioner is satisfied that the council undertook adequate searches, for any related information in scope of the request, on its electronic drives. Moreover, that it has confirmed there to be neither statutory nor business reasons to retain the original documentation which was used as a basis for configuring the rules on the System.

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

41. Furthermore, the Commissioner has found no evidence that information exists that is being withheld.
42. Having considered the council's responses, and in the absence of any evidence to the contrary, the Commissioner is satisfied that, on the balance of probabilities, the council does not any information within the scope of the request.
43. The Commissioner therefore considers that the council complied with its obligations under section 1(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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF