

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

### **Decision notice**

**Date:** 30 November 2021

**Public Authority:** North East Lincolnshire Council

**Address:** Municipal Offices  
Town Hall Square  
Grimsby  
North East Lincolnshire  
DN31 1HU

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

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1. The complainant has requested information with regards to information held by North East Lincolnshire Council (the council) about "provision for future payments to Anglian Water".
2. The Commissioner's decision is that the council has, on the balance of probabilities, provided all the information it holds falling within the scope of the request.
3. She also found that the council should have applied section 21 of the FOIA to information that had previously provided to the complainant, and with that, breached section 17(1) of the FOIA in not issuing a refusal notice. The Commissioner also found the council breached section 10(1) of the FOIA as the information was provided outside the required 20 working days following receipt of the request.
4. As the information has been provided, the Commissioner does not require the council to take any steps.

## Request and response

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5. On 15 October 2020 the complainant made the following request to the council:

*"Would you please provide me with all the recorded information held by the Council, and by its partner Engie on its behalf, relating to:*

*Actions taken by NELC in respect of the £101,000 "provision for future payments to Anglian Water" it has retained from the Fitties water rebate calculation for 2017/18. This will be from the date the provision was first retained, to its inclusion in the 2019/20 annual accounts as a debit item, together with the recorded information for its current status.*

*Please do not include:*

- *Fitties water rebate calculation for 2017/18 (already held)"*
6. The complainant contacted the council further as he had not received a response to his request. The council responded on 25 November 2020 stating no information was held, other than what had previously been disclosed to him.
7. The complainant requested an internal review on 26 November 2020. He specified information relevant to his request that he believed would be held by the council.
8. The council provided its internal review on 7 December 2020 and disclosed to the complainant further information that was within the scope of his request.

## Scope of the case

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9. The complainant contacted the Commissioner on 12 May 2021 as he considers more information to be held by the council.
10. During the Commissioner's initial investigations the council located an email from Anglian Water dated 6 October 2020 and provided a copy of it to the complainant on 21 September 2021.
11. The scope of the case is to determine whether the council holds any further information falling within the scope of the complainant's request.

## Reasons for decision

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

12. 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 information within the scope of the request, and if so, to have that information communicated to him,
13. 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 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 which falls within the scope of the request (or was held at the time of the request).
14. The council has told the Commissioner with regards to internal communications about the subject matter of the request, no specific advice was required, as the decision was based on the facts surrounding estimated outstanding liability for future water bills at that time, the calculation of which has previously been provided to the complainant.
15. The Finance Strategic Lead also used their experience and technical knowledge as a qualified accountant to make the decision to treat this in the accounts as a provision. Therefore there would be no further information held on this, other than the information the council has previously provided to the complainant.
16. With regards to internal communications between Ward Councillors and Officers about the £101,000 provision and progress made, there was no specific correspondence identified.
17. The council has explained to the Commissioner that it had already supplied to the complainant information within the scope of this request in response to his previous requests. It has provided the Commissioner with a list of what it has previously provided.
18. The council has told the Commissioner that it contacted its Finance service, who checked their systems, as they would be aware of any actions and agreements in relation to the £101,000. The service utilised codes from within the finance system relevant to the transaction type and transaction area requested to try to locate further information.
19. The council's Estates Team were also consulted to see if any further information was held as they are responsible for property management. No further information has been located.

20. The council has confirmed to the Commissioner that if further information was held, it would be held electronically and that no information within the scope of the request has been deleted or destroyed.
21. Other than the information located and provided, the council has stated the Commissioner that no further information is required for either a business purpose or statutory requirement in relation to the subject matter of the request.
22. The council maintains that no further information is held.
23. On review of the above, the council has stated that information that would have fallen within the scope of this request has previously been provided to the complainant.
24. Having considered the council's submissions on the departments and officers it has contacted to establish if anything further is held, the Commissioner is satisfied that these would be the most likely places and officers to contact.
25. It appears that further information related to the subject matter of the request was created after the date of the complainant's request. This could explain why the council held less information than the complainant anticipated at the time of his request.
26. The Commissioner can only consider what information was held at the time the request was made, she cannot consider any information that may have been created at a later date.
27. Having considered the council's submissions, the Commissioner is satisfied that, on the balance of probabilities, no further information is held falling within the scope of the request.

**Section 21 of the FOIA – Information reasonably accessible by other means**

28. Section 21 of the FOIA states:
  - (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
29. In the council's initial response to the complainant's request and in its response to the Commissioner's investigation, the council has stated that no further information was held other than what had already been provided in response to previous information requests.

30. Under section 1 of the FOIA a public authority should provide any information it holds falling within the scope of the request, unless it considers the information to be exempt, and if that is the case, it should issue valid refusal notice to that information.
31. As the council did not re-supply this previously provided information in response to the complainant's 15 October 2020 request, the Commissioner finds that the council should have refused it under section 21 of the FOIA.

### **Section 17(1) of the FOIA – Refusal of a request**

32. Section 17(1) of the FOIA requires a public authority, when refusing to provide information to a request, to give the applicant a notice which
  - a) *"States that fact,*
  - b) *Specifies the exemption in question, and*
  - c) *States (if that would not otherwise be apparent) why the exemption applies."*
33. In this case, the council did not issue any refusal notice relating to the information it had previously provided – as discussed in the considerations of section 21 of the FOIA above.
34. The Commissioner therefore finds that the council breached section 17(1) of the FOIA in not issuing a refusal notice.
35. As the Commissioner has found section 21 of the FOIA to be engaged, she does not require the council to take any steps.

### **Section 10(1) of the FOIA – Time for compliance**

36. Section 10(1) of the FOIA requires a public authority to respond in accordance with section 1(1) of the FOIA within 20 working days. That is, to provide the information it holds, within the scope of the request, to the person who has made the request.
37. In this case, the council did not provide the complainant with all of the information it held within the required 20 working days. Therefore the Commissioner finds that the council has breached section 10(1) of the FOIA.
38. As the information has now been provided. The Commissioner does not require the council to take any further steps.

## **Right of appeal**

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39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

40. 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.
41. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**