

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2021

Public Authority: Northumberland County Council

Address: County Hall
Morpeth
Northumberland
NE61 2EF

Decision (including any steps ordered)

1. The complainant requested from Northumberland County Council ("the Council") information for the specific constituencies relating to the Electoral Commission. The Council considered that it does not hold this information for the purposes of the FOIA.
2. The Commissioner's decision is that the requested information is not held by the Council for the purposes of the FOIA, and that the Council is entitled to rely on section 3(2)(a) of the FOIA. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 11 February 2020 the complainant wrote to the Council and requested information which consisted of 72 questions. These are recorded in Annex A. The first part of the request is as follows:

"Please can you provide the following information for the Constituencies of Berwick upon Tweed, Blyth Valley, Hexham please bear in mind that 90% of this information will not need to be calculated/collated/collected as this will already have been done so for the electoral commission."
4. On 13 February 2020 the Council acknowledged the request, and asked the complainant for clarification relating to the numbering of each question. The Council explained that some questions referred to other questions in the request which were "*unclear and open to interpretation*".

5. On the same day the complainant responded to the Council with numbering of each question.
6. On 19 February 2020 the Council provided its response which it said had been from its (Acting) Returning Officer, [name redacted]. The Council said; *"the Freedom of Information Act does not list any person appointed under the Representation of People Act 1983. It follows that the Returning Officer, Electoral Registration Officer or any other person appointed under the Act are not subject to the provisions of the Freedom of Information Act."* The Council also provided a link to a list of public bodies and local authorities that are subject to the provisions of the FOIA.
7. On 20 February 2020 the complainant expressed her dissatisfaction with the response, and she asked the Council to look at the request again.
8. On the same day the Council informed the complainant that it would deal with the request as an internal review.
9. On 26 February 2020 the Council provided its internal review outcome and maintained its original position. The Council reiterated the individuals are not subject to the provisions of the FOIA. Therefore, the Council does not expect them to respond individually to the request when the information will be published in due course, on the Electoral Commission website.

Scope of the case

10. The complainant contacted the Commissioner on 29 February 2020 to complain about the way her request for information had been handled. Specifically, the complainant argued the Council's reason for withholding the information. She believes that the questions should be answered by the Electoral Registration Officer, and that they are not exempt for providing information under the FOIA.
11. During the course of the Commissioner's investigation and in an attempt to informally resolve this case, the complainant was asked to reconsider her request. In response to this, the complainant decided to withdraw some of her questions within the request, and confirmed that she would still like answers to the remaining 52 questions.
12. The following analysis focuses on whether any of the information within the scope of the request is held by the Council as a public authority for the purposes of the FOIA.

Reasons for decision

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

13. Section 1(1) of FOIA states that: *"any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him."*
14. Section 3(2) states that:

"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."*
15. The Commissioner's guidance¹ states that when information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes.
16. Each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person. In this case, the only circumstance in which information would not be held by the Council by virtue of section 3(2) would be where it is held only on behalf of the Returning Officer, and not to any extent for the Council's own purposes.

The Council's position

17. The Council detailed its rationale in considering the request and its decisions made in determining the outcome of the request. The Commissioner noted the initial response to the request, this stated that [name redacted] had been appointed as (Acting) Returning Officer for the Council under Section 35 of the Representation of the People Act 1983. They explained that their appointment as (Acting) Returning Officer would be separate to any other appointment within the Council. They went on to state that although appointed by the Council *"the (Acting) Returning Officer's responsibilities and duties are personal. As*

¹https://ico.org.uk/media/fororganisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

such an (Acting) Returning Officer does not carry out the duties on behalf of the local authority but in their own personal capacity."

18. The Commissioner asked the Council questions relating to information held by a public authority for the purposes of the FOIA. She asked the Council to explain on what basis it considered that, although it physically holds the information, it does not hold this information for the purposes of the FOIA – i.e. the information is not needed for any of the Council's own functions.
19. The Council explained that *"the information held in relation to the Police and Crime Commissioner Election, like all other Election information, is held and processed to run an effective Election."* The Council said that the information belongs to the Returning Officer (as Data Controller) and that it is not used within the Council for other purposes. It stated that the Council does not have a requirement for the information to be held or processed for any other purpose.
20. The Council informed the Commissioner that the request for information was sent to the Acting Returning Officer.
21. The Council explained the reason for the request being sent to the Returning Officer, and said that the Returning Officer is the individual with full responsibility and accountability of any Election information. The Council further explained that the role of the Returning Officer *"must be impartial and the role is to ensure that the conduct of an election is conducted in accordance with the law. Their responsibility is one of a personal nature distinct from the duties as an employee of the Council."*
22. The Council reiterated its original response and internal review outcome, that with regards to the owner of the information, the Council is not the Data Controller of the information requested. It confirmed that this is the Returning Officer, and that the Returning Officer is not subject to the provisions of the FOIA. The Council quoted for reference, some previous decision notices dated November 2014 and November 2015 that are of a similar nature to this case, i.e. relating to the Returning Officer.

The Commissioner's position

23. The Commissioner addressed with the Council the complainant's view regarding the information requested. She considered that specific questions of her request had already been complied with in order to send these to Electoral Commission.

24. The Council responded to the Commissioner and stated that from further investigation, the Council discovered that the information relating to this Election, was not held/processed in the same regard as previous Elections. The Council explained that following discussions with the Returning Officer and Elections Manager, it was found that "*the information pertaining to this Election was not collated and produced in the format usually done for Elections, as there was no compulsory requirement to do this by the Electoral Commission.*" Therefore, the Council said, it considered that the information requested was not readily available in the format the complainant thought was already completed.
25. The Commissioner must note that a Returning Officer is not a public authority subject to the FOIA. Therefore, information produced/received by the Returning Officer is out of scope of the FOIA.
26. However, if the information is held by the Returning Officer, it is possible that it can also be held by the Council. The question is then whether the Council has any reason to hold the requested information for its own purposes.
27. As set out at paragraph 19, the Council explained that the information is not held for the Council's own purposes. The Commissioner also acknowledges that the Council has confirmed that the requested information relates solely to the powers and duties of the Returning Officer.
28. The Commissioner has decided that if the information was held, the Council does not hold the information for its own purposes. When making her decision, the Commissioner has referred to her own guidance which states the following:

"Returning Officers ensure that an election is administered effectively. These officers are not public authorities under FOIA and they exercise separate functions to those of a local authority. Any information held solely on behalf of these officers by a local authority is not held for FOIA purposes."
29. The Commissioner is satisfied that the information requested relates solely to the powers and the duties of the Returning Officer and is consequently not held by the Council for the purposes of the FOIA.

Conclusion

30. Given the above, the Commissioner concludes that the information is not held under section 1(1)(a) of the FOIA as under section 3(2)(a) of the FOIA, the information is only held on behalf of another person, that being the Returning Officer.

Other matters

31. The Commissioner wishes to place on record that the Council did not provide its response to the initial case letter of 17 June 2020, until 10 January 2021.
32. Following a number of reminders to the Council regarding its repeated and unreasonable delays, the Council responded with numerous explanations for the delays and failed promises to provide its submissions. The Commissioner takes note of this and encourages the Council to engage with her to ensure timely and effective responses are provided.

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

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

Annex A

On 11 February 2020 the complainant made the following request:

"Please can you provide the following information for the Constituencies of Berwick upon Tweed, Blyth Valley, Hexham please bear in mind that 90% of this information will not need to be calculated/collated/collected as this will already have been done so for the electoral commission.

- 1.** *Constituency*
- 2.** *Electorate*
- 3.** *Total number of valid votes counted*
- 4.** *Valid vote turnout (all valid votes)*
- 5.** *Total number of ballots at count*
- 6.** *Ballot box turnout (inc votes rejected at count)*
- 7.** *Total number of ballots returned by close of poll*
- 8.** *Total vote turnout (inc postal votes rejected and votes rejected at count)*
- 9.** *Number of ballot papers rejected or not counted at the count for a) want of official mark*
- 10.** *Number of ballot papers rejected at the count for b) voting more than once*
- 11.** *Number of ballot papers rejected at the count for c) Writing or mark by which the voter could be identified*
- 12.** *Number of ballot papers rejected at the count for d) unmarked or wholly void for uncertainty*
- 13.** *Number of ballot papers rejected at the count for e) rejected in part*
- 14.** *Total number of ballot papers rejected at the count*
- 15.** *Total number of postal ballot papers issued under regulation 71*
- 16.** *Total number of postal ballot papers issued under regulation 77 (spoilt and returned for cancellation), regulation 78 (lost or not received) and regulation 78A (cancelled due to change of address)*
- 17.** *Total number of postal ballot papers cancelled under regulation 86A (where the first ballot paper was cancelled and retrieved)*
- 18.** *Total number of postal ballot papers issued (15+16+17)*
- 19.** *Total number of ballot papers cancelled under regulation 78A*
- 20.** *Number of covering envelopes received by the Returning Officer or at a polling station before the close of poll (excluding any undelivered or returned under regulation 77(1) (spoilt), regulation 78(1) (lost) and regulation 86A (cancelled ballot papers))*
- 21.** *Number of covering envelopes received by the returning officer after the close of poll, excluding any returned as undelivered*

- 22. Number of postal ballot papers returned spoilt for cancellation in time for another ballot paper to be issued*
- 23. Number of postal ballot papers identified as lost or not received in time for another ballot paper to be issued*
- 24. Number of ballot papers cancelled and retrieved in time for another ballot paper to be issued*
- 25. Number of postal ballot papers returned as spoilt too late for another ballot paper to be issued*
- 26. Number of covering envelopes returned as undelivered (up to the 25th day after the date of poll)*
- 27. Number of covering envelopes not received by the Returning Officer (by the 25th day after the date of poll)*
- 28. Total numbers (20 to 27)*
- 29. Number of covering envelopes set aside for the verification of personal identifiers on postal voting statements*
- 30. Number of postal voting statements subject to verification procedure rejected as not completed (excluding prior cancellations)*
- 31. Number of postal voting statements rejected following verification procedures due to the personal identifiers on the postal voting statement not matching those in the personal identifiers record (excluding prior cancellations)*
- 32. Number of ballot papers returned by postal voters which were included in the count of ballot papers*
- 33. Number of cases in which a covering envelope or its contents were marked "Rejected" (cancellations under regulations 77, 78, 78A and 86A are not rejections)*
- 34. How many proxies were appointed for these elections?*
- 35. How many emergency proxies were appointed for these elections?*
- 36. 3) How many waivers were granted for these elections?*
- 37. a) Want of a signature*
- 38. b) Want of a date of birth*
- 39. c) Want of both*
- 40. d) Mismatched signature*
- 41. e) Mismatched DoB*
- 42. f) Both mismatched*
- 43. g) Ballot paper unreturned*
- 44. h) Postal voting statement unreturned*
- 45. What was the total number of polling stations used?*
- 46. How many covering envelopes were returned on polling day before 10pm?*
- 47. How many covering envelopes were returned on the day after polling day before 10pm?*
- 48. How many people tried to vote on polling day and were found not to be registered?*
- 49. What was your issue date for postal votes sent overseas?*

- 50.** *What was your delivery date for postal votes sent to electors in the UK?*
- 51.** *How many covering envelopes were returned via the final Royal Mail sweep on polling day in time to be counted?*
- 52.** *At what time did verification begin?*
- 53.** *At what time did verification end?*
- 54.** *At what time did counting the votes on the ballot papers begin?*
- 55.** *At what time did counting the votes on the ballot papers end?*
- 56.** *Was the count suspended?*
- 57.** *How many recounts did you hold?*
- 58.** *How many people were in a queue by 10pm and were waiting to vote at a polling station at the close of poll?*
- 59.** *How many people joined a queue after 10pm and were waiting to vote at a polling station at the close of poll?*
- 60.** *Since the close of poll how many complaints/notifications/queries have you had from people who were unable to vote for ANY reason?*
- 61.** *What were the main reasons why people were unable to vote?*
- 62.** *Who is your electoral management software supplier?*
- 63.** *What exactly does this software do?*
- 64.** *Who has access to this software?*
- 65.** *For every person/organisation/national or local government department/supplier/printer etc stated in the answer to 64, is access permanent or as and when required?*
- 66.** *For every person/organisation/national or local government department/supplier/printer etc stated in the answer to 64, is this access via direct connection to the software?*
- 67.** *Recently EMS software was purchased by NCC from Democracy counts what exactly does this software do?*
- 68.** *Who has access to this software?*
- 69.** *For every person/organisation/national or local government department/supplier/printer etc stated in the answer to 68, is access permanent or as and when required?*
- 70.** *For every person/organisation/national or local government department/supplier/printer etc stated in the answer to 68, is this access via direct connection to the software?*
- 71.** *For the general election held in 2017 since the close of poll how many complaints/notifications/queries have you had from people who were unable to vote for ANY reason?*
- 72.** *For the general election held in 2015 since the close of poll how many complaints/notifications/queries have you had from people who were unable to vote for ANY reason?"*