

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2022

Public Authority: Swindon Borough Council
Address: Civic Offices
Euclid Street
Swindon
SN1 2JH

Decision (including any steps ordered)

1. The complainant requested information from Swindon Borough Council (the Council), including a copy of a Trading Standards investigation report he believed it held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested report.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 8 May 2021, in correspondence regarding a complaint about the Outside Clinic, the complainant made the following request for information to the Council:

"This is a formal FOI Request to Swindon Trading Standards FOI Compliance Officer. Please supply me with the following Paperwork, Reports **including your Public Healths** [sic] **Team Evaluation of the Case**, Memos and Directives including Health & Safety at Work and Government related to the Covid 10 [sic] Pandemic instructions specifically relating to PPE and Clinical Waste".
5. Subsequently, on 10 July 2021 the complainant requested the paperwork relating to the procedures that Swindon Trading Standards (STS) employed when they evaluated his complaint:

"I am not requesting the STS Office provide me with any Outside Clinic (OC) information I already hold that what [sic] I am requesting is that I obtain the paperwork relating to the procedures that the STS have used/employed when they evaluated my complaint. ...

This FOIA Request relates [to] the paperwork generated by STS when investigating this complaint including the 'STS Investigation Teams Report' on the case ...".

6. The Council responded to that request on 11 August 2021. With respect to the first part of the request, it told him that it had checked to see if it holds information relating to the process of how Trading Standards investigates such cases, but that, as each case is reviewed on a case by case basis, it was unable to provide a written process on how the cases are investigated.
7. With respect to the second part of the request, it said that any information relating how the complainant's own complaint was dealt with would likely be exempt by virtue of section 40(2) (personal information) or 30 (investigations and proceedings) of FOIA.
8. Following an internal review, the Council upheld its position with respect to written procedures on how cases are investigated. With respect to the complainant's own complaint, it said that there is nothing further it can provide. With respect to the Public Health Team evaluation of the case it confirmed that there was no written evaluation of the issue.

Scope of the case

9. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 20 October 2021, to support his complaint about the way his request for information had been handled.
10. By way of background, the complainant described an event which led to a concern about the disposal of used PPE waste. He told the Commissioner he contacted Swindon Trading Standards (STS) and informed them of what had happened. He told the Commissioner they investigated the case.
11. He believes that he is entitled to a copy of the Swindon Trading Standards Office Investigation Team report.
12. The Commissioner is mindful that the requested information is variously referred to by the complainant and the Council as the Public Health Team Evaluation and the Swindon Trading Standards Office

Investigation Team's report. The Commissioner is satisfied that both terms describe the same information. For the purposes of this decision notice, the Commissioner will refer to the requested information as 'the report'.

13. The analysis below considers whether the Council holds the requested report.
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part I of FOIA.

Reasons for decision

Section 1 general right of access

15. Section 1 of 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".

16. In scenarios such as this, 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.
17. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
18. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, at the time of the request, the Council held the requested report.
19. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. He will also consider, where applicable, the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In

addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

The Council's view

20. During the course of the Commissioner's investigation, the Council confirmed that it does not hold the requested report. In that respect, it explained that Swindon Trading Standards Investigation Team only create a report when enforcement action may follow. It told the Commissioner:

"No report is held in this instance, as there was no case to answer".

21. Similarly, it told the Commissioner that, from a Public Protection point of view there was no written evaluation and so no information is held.

The Commissioner's view

22. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
23. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
24. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant and the explanations provided by the Council.
25. The Commissioner accepts that the requested information is clearly of interest to the complainant. However, having considered the Council's response, and on the basis of the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, at the time of the request, the Council did not hold information falling within the scope of that part of the complainant's request relating to the report.
26. He is therefore satisfied that the Council has complied with the requirements of section 1 of FOIA in this case.

Right of appeal

27. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

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