

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

Public Authority: Maidstone Borough Council

Address: Maidstone House
King Street
Maidstone
ME15 6JQ

Decision (including any steps ordered)

1. The complainant requested information about solicitors instructed by the Maidstone Borough Council ("the Council") in relation to statutory demand and bankruptcy petitions. The Council disclosed information relevant to the request and has indicated that it does not hold any further recorded information within scope of the request.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Council holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner therefore does not require the Council to take any corrective steps.

Request and response

4. On 23 November 2021, the complainant wrote to the Council and requested information in the following terms:

"1. Please provide the name of the solicitor instructed by the Council to issue a statutory demand and the name and contact details of the firm and status within the firm and their grade.

The name of the company and company house number if instructed through a company.

2. Please provide the same details for a creditor's bankruptcy petition.
3. Confirmation that those the Council instruct are authorised to carry out debt and bankruptcy work as listed on the SRA and The Law Society registers."
5. The Council responded to the request on 24 November 2021. It disclosed the name of the firm of solicitors instructed in response to question 1 and said that it did not record information relevant to questions 2 and 3.
6. On 24 November 2021, the complainant wrote to the Council and clarified their request for information in the following terms:

"Thank you for your reply but the information you have provided cannot be verified without further clarification so please provide the SRA numbers of all legal entities the Council have instructed. A reasonable person would expect the Council to check that those they instruct are listed as qualified.

[Redacted] is not the name of a solicitor or the name of a firm and do not appear on the SRA register or the Law Society register.

Neither, is there a company listed on Companies House under the name the Council has supplied.

 1. Please provide the company number and full correct name to identify who the Council has instructed to issue a statutory demand and list the names of the directors.
 2. Please provide the name of the solicitor that must be registered and their status within the firm, instructed by the Council and authorised to carry out debt and bankruptcy - individuals.
 3. Please provide the full and correct name of the firm and the contact details held on record when instructed to issue a creditor's bankruptcy petition on Maidstone Borough Council's behalf against individuals and whether or not this is the same solicitor instructed to issue a statutory demand.
 4. Please clarify whether a partner in a partnership firm or whether a company has been instructed."
7. The Council responded to the clarified request on 30 November 2021. It reiterated the name of the firm of solicitors instructed to carry out insolvency work and associated actions and provided a link to an external website where the other information sought may be found.

8. Following an internal review the Council wrote to the complainant on 10 December 2021 and upheld its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 26 January 2022 to complain about the way their request for information had been handled.
10. The Commissioner has considered whether, on the balance of probabilities, the Council holds recorded information within scope of the complainant's request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

11. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
12. In scenarios such as this, where there is some dispute between the public authority and the complainant about the information held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
13. 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. In doing so, he will consider any reasons why it is inherently likely or unlikely that the information is or is not held.
14. The Council provided the complainant with information in relation to the request, in particular, the name of the firm of solicitors which had been instructed to carry out insolvency work on behalf of the Council. It also provided a link to the website where further information about the firm was held. The Council did not specifically provide information about the firm such as its company registration number. However, the Commissioner considers that it is inherently unlikely that such specific information including the solicitors' company number, lists of its directors and trading name would have been held by the Council due to its specific nature. The Council did, however, provide a website link where it indicated such details could be found.

15. Having undertaken searches of the relevant website, it is apparent that the information requested was available on that website. The website also included the names of individual solicitors who conduct insolvency work at the firm. Although the Commissioner notes that the Complainant requested names of individual solicitors, the name of the individual instructed by the Council would likely depend on the individual case.
16. Having considered all the circumstances, the Commissioner therefore accepts that the Council does not hold any further recorded information. He is satisfied that, on the balance of probabilities, and given the nature of the information requested, the Council has provided all the information it holds that falls within the scope of the request. He has, therefore, determined that it has complied with section 1(1) of FOIA.

Right of appeal

17. 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

18. 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.
19. 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

Claire Churchill
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF