

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2022

Public Authority: South Somerset District Council
Address: Council Offices
Brympton Way
Yeovil
Somerset
BA20 2HT

Decision (including any steps ordered)

1. The complainant has requested information from South Somerset District Council (the Council) regarding non-payment of council tax by councillors. The Council stated that the information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner requires no further steps to be taken as a result of this decision.

Background

4. The complainant previously submitted a broader request for information surrounding non-payment of council tax by South Somerset councillors. They brought a complaint to the Commissioner regarding the Council's handling of that broader request, which resulted in the Commissioner serving a decision notice (IC-113392-G4M2). The Commissioner found that the Council was entitled to rely on section 12 of FOIA to refuse the request, however, it ordered the Council to provide the complainant with advice and assistance to refine the scope of the request in order to bring it under the appropriate cost limit.

5. This further complaint now relates to the complainant's dissatisfaction with the Council's response to the request which they submitted to the Council following its advice and assistance to narrow the scope of the information they were requesting.

Request and response

6. Between 20 June 2022 and 11 July 2022 the Council and the complainant were in email correspondence to discuss how the request could be refined to bring it under the appropriate cost limit. On 11 July 2022 the complainant submitted the following refined request:
 - "1. Correspondence between the Council Tax Team and elected members who are in arrears; and
 2. Internal emails between services such as Council Tax and Democratic Services regarding elected members who are in arrears."
7. The Council asked the complainant on 11 July 2022 to confirm which year they wanted the requested information for, and explained that the Council has a 13 month email retention policy so would no longer hold emails from prior to June 2021.
8. The complainant responded on 12 July 2022 and confirmed that they wanted the information from the same dates as set out in their original request which was refused under section 12, which referred to the municipal years of 2019-20 and 2020-21.
9. On 15 July 2022, the Council informed the complainant that it had asked its IT department to search the back-ups to see if any relevant emails could be located.
10. On 25 July 2022, the Council informed the complainant that its IT department had been unable to retrieve any of the requested information from its back-ups.

Scope of the case

11. The complainant contacted the Commissioner on 25 July 2022 to complain about the way their request for information had been handled. Specifically, they consider that the Council should find a way to retrieve the requested information and provide it to them.
12. Given the particular circumstances of this case, and the background of the Council having revisited it on a number of occasions both as the original broader request and the subsequent refined request, the

Commissioner considers that it would serve no useful purpose to ask the Council to revisit it again to conduct an internal review.

13. The Commissioner considers that the scope of his investigation is to consider whether, on the balance of probabilities, the Council is correct when it says that it does not hold the requested information.

Reasons for decision

14. Section 1(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, and
 - (b) if that is the case, to have that information communicated to him.
15. FOIA provides a right of access to recorded information which is held by a public authority at the time when it receives the request; that right does not extend to information which was held in the past and has now been destroyed.
16. The Commissioner is satisfied with the Council's explanation of its 13 month email retention policy, which is considered to be reasonable and standard practice across the majority of public authorities.
17. The Commissioner is further satisfied that the Council has conducted appropriate and proportionate searches by asking its IT team to determine if any emails within the scope of the request could be retrieved from back-up systems.
18. The Commissioner's published guidance¹ on the retention and destruction of information states that a public authority does not have to delay the deletion of information until relevant complaints and appeals procedures have been exhausted, where the public authority has relied on section 12 to refuse a request. This is because it would defeat the purpose of the exemption, to protect a public authority's resources, if the public authority were to put considerable resources into locating and setting aside material which falls within the scope of the request.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/retention-and-destruction-of-information/>

19. Therefore, the Council was correct not to ring-fence information falling within the scope of the original request whilst the Commissioner considered the case and made a decision.
20. For the above reasons, the Commissioner is satisfied that the Council has complied with section 1 of FOIA in this case, and on the balance of probabilities, is correct when it says that it does not hold the requested information.

Right of appeal

21. 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

22. 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.
23. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF