

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2023

Public Authority: Scarborough Borough Council
Address: Town Hall
St. Nicholas Street
Scarborough
Y011 2HG

Decision (including any steps ordered)

1. The complainant has requested information from Scarborough Borough Council ("the Council") in relation to a lease for North Bay Railway. The Council advised that it does not hold information that falls within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information that falls within the scope of the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 23 February 2022, the complainant wrote to the Council and requested information in the following terms:

"With regard to North Bay Railway, please provide the following information:

1. FOIA8348 refers to a Lease dates "2007". Please provide the complete date of the Lease to specify the day and month.
2. Please confirm the number associated with the use of the Council Seal

in the Register of Sealing that is maintained by the Council in relation to the Lease referred to in FOIA8348.

3. Please confirm the position/title of the officer who witnessed the application of the Council Seal to the Lease referred to in FOIA8348.”
5. The Council responded on 24 March 2022. It stated that it was withholding the requested information under section 12 (cost exceeds the appropriate limit) of FOIA, as it aggregated the request to another two requests that had been received from the complainant.
6. Following an internal review the Council wrote to the complainant on 30 May 2022. It advised that it was no longer relying on section 12 and informed the complainant that it did not hold any recorded information within scope of their request.

Scope of the case

7. The complainant contacted the Commissioner 3 May 2022 to complain about the way their request for information had been handled.
8. The Commissioner has considered whether, on the balance of probabilities, the Council holds recorded information within scope of the request. .

Reasons for decision

9. 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.
10. The Council has explained that the application of section 12 of FOIA was done so correctly when it first responded to the request. However, due to the time that has elapsed between the date of the two previous requests and this specific request/the internal review for this request, it considered that it was reasonable to reply to the request and not rely on section 12.
11. The Council advised that it does not hold any information in relation to the request.
12. During the Commissioner's investigation he asked the Council further questions regarding the requested information.

13. The Council explained that there is no complete date on the lease, only the year (2007) and that no Seal has been applied to it, which therefore means that no Council Officer witnessed the application of the Seal.
14. From the information provided to the Commissioner, he is satisfied that, on the balance of probabilities, the Council does not hold information that falls within the complainant's request. FOIA does not require a public authority to create information to answer a request.
15. The Commissioner is satisfied that the Council has complied with section 1(1) of FOIA.

Other matters

16. The Commissioner reminds the Council that although there is not a requirement under FOIA to carry out an internal review, it is considered best practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. In this instance, the Council exceeded these recommendations.

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

Michael Lea
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Wycliffe House
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