

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2023

Public Authority: Welwyn Hatfield Borough Council
Address: Council Offices
The Campus
Welwyn Garden City
Hertfordshire
AL8 6AE

Decision (including any steps ordered)

1. The complainant has requested information relating to the tendering for a specific post held by a member of staff at Welwyn Hatfield Borough Council (the Council).
2. The Commissioner's decision is that the Council has breached section 1(1)(a) of FOIA in that it failed to confirm or deny whether it held information within the scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. The complainant initially requested information relating to the personal data of a specific member of staff and the post they held. That request was refused under section 40 of FOIA. On 23 January 2023, following the Council's refusal of the original request, the complainant submitted a further request relating to the tendering and recruitment process for the post.

"I would like to have full details of the tendering process for the post. E.g. the criteria, the advertising, the number of applicants, the remuneration and terms offered."

5. The Council responded on 17 February 2023, providing some information.
6. Following a further email from the complainant the Council responded on 21 February 2023, providing information about their retention policy and confirming that no further information falling within the scope of the request was held.

Scope of the case

7. The complainant contacted the Commissioner on 22 February 2023, complaining that the council was "refusing" to provide the requested information.
8. The scope of the case is for the Commissioner to determine whether, on the balance of probabilities, the Council holds the requested information.

Reasons for decision

Section 1 held / not held

9. 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 in the request, and (b) if that is the case, to have that information communicated to him."
10. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
12. The complaint in this case was that the Council was "refusing" to provide the information requested.

13. On review of the Council's responses to the complainant it was noted that the Council, while making reference to its retention policy, had not specifically confirmed or denied whether it held information falling within the scope of the request.
14. Therefore, as part of his investigation, the Commissioner wrote to the Council asking it to clarify what, if any, recorded information it held which fell within the scope of the request.
15. The Council's submission to the Commissioner confirmed that recruitment records are only retained for six months. It also confirmed that recruitment for this particular post took place in late 2021. Its position was, therefore, that by the time of the request it no longer held any information relating to the recruitment exercise in question.
16. It stated that, as recruitment records were no longer held, the information provided to the complainant was based upon general knowledge and from the memory of the officers involved.
17. The Commissioner has considered the explanations and information provided by the Council; it is his opinion that it has provided reasonable explanations as to why information falling within the scope of the request was not held. As the relevant retention period had expired by the time of the request the Commissioner is aware of no reason why the Council should have been expected to continue holding the requested information at the time of the request.
18. Therefore, having considered all the available information, the Commissioner is satisfied that, on the balance of probabilities, the Council did not hold the requested information at the time of the complainant's request.

Procedural Breach

19. The Commissioner is mindful that, rather than giving a clear response under section 1(1)(a) of the FOIA as to whether or not the requested information was held, the Council was attempting to be helpful to the complainant in providing some explanation relating to their request even though this was not held as recorded information.
20. However, it appears that this approach has caused confusion and given the impression that it was "refusing" to provide information.
21. In accordance with section 1(1)(a) the Council should have given a clear statement as to whether it held recorded information falling within the scope of the request.

22. If appropriate, it could have then gone on to provide any general explanation based on the knowledge of individuals, clearly explaining the difference between that and recorded information.
23. Whilst the Commissioner has found above that the Council did not hold information falling within the scope of the request, it did not at any stage state this to the complainant.
24. In failing to issue a response which accurately confirmed or denied whether it held recorded information within the scope of the request, the Council breached section 1(1)(a) of FOIA.

Right of appeal

25. 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

26. 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.

27. 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

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