

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2024

Public Authority: Cherwell District Council
Address: Bodicote House
Banbury
Oxfordshire
OX15 4AA

Decision (including any steps ordered)

1. The complainant requested information about the removal of an automatically generated response which the council previously used to send in response to emails it received from the Whatdotheyknow website. Cherwell District Council ("the council") said that no information is held by it.
2. The Commissioner's decision is that the council was correct to state that no information is held by it. The council has therefore decided that the council's response complied with the requirements of section 1 of FOIA. However the Commissioner has also decided that the council did not comply with the requirements of section 10 of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 10 June 2023, the complainant wrote to the council and requested information in the following terms:

"In November 2022 when an FOI request was submitted to Cherwell District Council via the What Do The Know (WDTK) website a response was automatically generated asking the requestor to submit the request to the Council's own website. An example of that automatically generated response is as follows:....

...Please provide all documents you may hold (minutes from meetings/emails) concerning the decision to remove the automatically generated response directing requestors to the Council's website."

5. The council responded on 17 July 2023. It said that no information is held by it.
6. Following an internal review, the council wrote to the complainant on 25 October 2023. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 7 October 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether, for the purposes of section 1 of FOIA, the council holds any information falling within the scope of the complainant's request for information.

Section 1 – General right of access to information

9. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
10. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, 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 Commissioner 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). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.

The complainant's position

12. The complainant argues that the council will hold information falling within the scope of the request for information.
13. The complainant argues that someone must have been responsible for the change in the automatic responses which were generated by the systems.

The council's position

14. The council argues that it does not hold any information falling within the scope of the request.
15. It explained that, until 2022, its information governance services were delivered by Oxfordshire County Council (OCC). In 2022 the two councils separated the provision of this service and it started to provide its own service. It argued that, following discussions with senior officers responsible for the meetings where the changes were arranged, it understands that the decisions relating to this were made verbally, and so no information is held by it. It said, however, that it is possible that OCC may hold information relating to this.
16. It clarified that if information were held, it would be likely to be held by its information governance team or its IT team. It explained that its information governance team would have been required to provide input into such a decision, and the information governance manager at the time would have actioned the request or been involved in any discussions regarding the change. It said that it had therefore carried out searches of its information governance inboxes and network areas for information such as communications, minutes, and project documentation relating to the decision. No relevant information was located.
17. It said that the change would also have had to have been actioned by its IT department, however a similar search of its systems did not locate any relevant information.
18. It said that all information would be held electronically, and provided the Commissioner with a list of the search terms it had used to search its electronic files.

19. It also confirmed that it has no business purpose for retaining such information if it were ever held.

The Commissioner's conclusion

20. The Commissioner has considered the arguments of both parties.
21. Whilst the complainant believes that the council will hold information, it has confirmed to the Commissioner that after adequate and appropriate searches of its systems it has not located any relevant information falling within the scope of the request for information. It has also provided an explanation as to why that is likely to be the case.
22. The Commissioner recognises that the main reason for the change is likely to be the separation of service provision between OCC and the council. Council managers responsible for the change have also indicated that they believe that decisions were made verbally. In accordance with this, following adequate and appropriate searches of its records with the appropriate teams, no information was located by it. Therefore, the council is satisfied that no relevant information is held by it.
23. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
24. On this basis the Commissioner has concluded that, on the balance of probabilities, the council does not hold the requested information.

Section 10 – time for compliance

25. Broadly, section 10 of FOIA requires that a public authority complies with the requirements of section 1 within 20 working days of receiving the request.
26. The council received the request for information on 10 June 2023. It did not, however, provide its response to the request until 17 July 2023.
27. This falls outside of the 20-working day time for compliance. The Commissioner has therefore decided that the council did not comply with the requirements of section 10 of FOIA.

Other matters

28. The Commissioner notes that the council did not provide a response to the complainant's internal review request of 18 July 2023 until 25 October 2023.

29. The Commissioner reminds the council that, where a requester contacts it to explain that they are dissatisfied with the council's response to their request, the council should seek to provide an internal review response within 20 working days, or 40 in exceptional circumstances.
30. The Commissioner refers the council to his published guidance on internal review. This guidance can be read here:
<https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-freedom-of-information/refusing-a-request/#20>.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
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