

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 5 July 2011

**Public Authority:** Milton Keynes City Council  
**Address:** Civic Offices  
1 Saxon Gate East  
Milton Keynes  
MK9 3HQ

### Summary

---

The complainant requested a copy of a letter he believed the Council had been sent by another council, containing information about the qualifications of a former senior council employee. The Council stated that it did not hold the requested information. Having considered information supplied by both parties, the Commissioner's investigation concluded that on the balance of probabilities the Council did not hold the information.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### Background

---

2. The request came as part of a wider, protracted exchange of correspondence between the complainant and the Council, on a number of matters.

### The Request

---

3. On 31 August 2010 the complainant wrote to the Council and asked for the following information:

*"Under the Freedom of Information Act I demand to see the letter from the Council Norfolk or Norwich relating to [individual's name redacted]. The letter about how that Council who do proper check up's on people's said qualifications and if said university actually exist where said qualification's were supposedly gained."*

4. The complainant made a number of allegations of misconduct against the named individual and accused the Council of complicity.
5. The Council received the letter on 3 September 2010 and responded on 29 September 2010, stating that it did not hold the requested information. It provided information about how to ask for the response to be reviewed. It also said that it would respond to the allegations the complainant had made about the named individual separately, which it did on 18 October 2010, stating that it could find no evidence to substantiate the allegations.
6. The complainant sent copies of the correspondence to the Commissioner, but the Commissioner declined to investigate the matter, directing the complainant to exhaust the Council's internal review procedure first.
7. The complainant wrote to the Council on 28 October 2010 repeating his request and alleging corruption on the part of the Council.
8. The Council wrote to the complainant on 10 November 2010 with the results of its internal review. It stated that that it had made further enquiries in response to his letter but that its response remained the same as in its letters of 29 September and 18 October.

## **The Investigation**

---

### **Scope of the case**

9. On 11 November 2010 the complainant wrote to the Commissioner to complain about what he considered to be the Council's refusal to give him the information he had asked for. He did not comment on the Council's claim that it did not hold the letter. He also expressed concern that the Commissioner's office might collude with the Council to deny him the information he had requested.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

11. Prior to commencing a formal investigation into the matter, on 4 December 2010 the Commissioner wrote to the Council to inform it of the complaint and asking to be sent copies of any information covered by the request.
12. The Council responded on 20 December 2010, enclosing copies of its letters to the complainant of 29 September, 18 October and 10 November 2010.
13. On 15 February 2011 the Commissioner commenced his investigation into the complaint. He wrote to the complainant and asked him to clarify how he knew of the existence of the letter he had asked for and whether he knew its approximate date. He explained that such information might assist the Council in the event that it was unable to locate a copy.
14. The complainant replied on 18 February 2011. He failed to engage with the questions that the Commissioner had asked. He repeated his allegations about wrongdoing by the named individual and the Council and stated that the Council should not be allowed to withhold the letter.
15. The complainant wrote again on 25 February 2011, repeating his allegations about the actions of the Council and the named individual. He asked the Commissioner to approach Norfolk and Norwich Councils directly to obtain a copy of the letter which he said one or the other had sent to the Council.
16. In the meantime, the Commissioner wrote to the Council on 15 February 2011, asking it a number of questions with the aim of verifying the likelihood of it holding the requested letter.
17. The Council replied on 8 March 2011, stating that it did not hold a copy of the letter the complainant had asked for. It answered the Commissioner's questions about possible locations for the information.
18. The Commissioner notified the complainant of the Council's response. The complainant wrote back on 7 April 2011. He stated:

*"As the letter was sent to M/K/CC why would it be held in [name redacted]'s file. It would be in a Council file held on [name redacted] which is PUBLIC DOMAIN".*
19. He accused the Commissioner of conspiring with the Council to cover-up incompetence, fraud and lies.

## Analysis

---

### Substantive Procedural Matters

20. The normal standard of proof to apply in determining whether or not a public authority holds any requested information is the civil standard of the balance of probabilities.
21. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information *is* held, including the likelihood of whether the information so far located represents the total information held.
22. The complainant requested a copy of a letter which he said had been sent to the Council by either Norfolk or Norwich Council and which contained information about the educational qualifications of a named individual. The Council consulted the named individual's archived personnel file and stated that it did not hold such a letter.
23. The complainant clearly believes that the Council does hold such a letter, repeatedly questioning its "refusal" to let him see it, rather than its claims not to hold it.
24. However, the Commissioner is mindful of the fact that the complainant has provided only very vague information about the letter, comprising two possible authors and its general subject matter. Although asked to by the Commissioner, the complainant did not provide more specific information about the approximate date of the letter or how he had been alerted to its existence. He did not offer any explanation as to why he believed that the Council did hold a copy of the letter.
25. Set against this, the Council claims it holds information which directly contradicts the information the complainant says is contained in the letter. It says it did not consider this alternative set of information for release in response to the complainant's request because it appeared to fall outside of the scope of the request (which was specifically for a copy of the letter).
26. Having considered both these factors, the Commissioner has been unable to reach a conclusion as to whether the letter described by the complainant, in all likelihood, exists.
27. The Commissioner therefore proceeded with the investigation on the grounds that if such a letter did exist and was held by the Council, the

complainant had a right to have his request to see a copy considered under the Act.

28. He therefore asked the Council for information about the searches it had undertaken to satisfy itself that it did not hold the requested letter.
29. The Council said that if such a letter had been received, it would have been held in manual form and placed on the named individual's personnel file. The named individual left the Council's employment in 2006, and his file was archived with a third party storage provider. In order to comply with the request, the file was requested from the archive on 10 September 2010 and received by the Council on 14 September 2010. The file was then examined and no letter fitting the description in the request was found. The Council does not appear to have conducted any further searches, satisfied that this would have been the logical filing place for the letter.
30. The Commissioner acknowledges that his decision as to what would represent an appropriate search or search strategy will have to depend on the circumstances of each case, but he would expect to see evidence of a reasonable and logical search strategy. The adequacy of the scope and thoroughness of any searches made may be determined in part by any other evidence that information is likely to be held.
31. Although the information supplied by the complainant about the letter has been vague, the Commissioner considers it both reasonable and logical to conclude that if it were held, a copy would be held on the named individual's personnel file. He has no grounds for disbelieving the Council's claim that it has checked the file and the letter is not there. However, the Commissioner must consider whether it was reasonable for the Council to conclude from this that the letter was not held without conducting further searches.
32. In this case, the Commissioner notes that the Council claims to hold recorded information which contradicts the information the complainant alleges would be contained in the letter, which calls into question whether the letter actually exists. The Commissioner also notes that the complainant has not provided more information which might assist the Council in identifying an alternative location for the letter, despite being asked to do so by the Commissioner. In light of these points, the Commissioner considers that it is difficult to identify where else the Council might productively have searched.

33. Although, as the Tribunal has observed<sup>1</sup>, there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records, the Commissioner considers that in this case there can be a reasonable degree of certainty that the information is not held. Fulfilling the request has not involved having to draw together a broad selection of information on a general subject, with the danger that something may have been missed. The complainant requested a single, specific document, which, because of its content, if held, would in all likelihood have been filed in a specific location (a personnel file).
34. The Commissioner therefore regards the scope of the search conducted by the Council to be reasonable on the face of it and is not aware of any other material that ought to have additionally been searched. He accepts that, on the balance of probabilities, the Council does not hold a copy of the requested letter.
35. The complainant has been advised to approach Norfolk and Norwich Councils to make a request for a copy of the letter. He has been given the contact details for the receipt of requests for information and has indicated to the Commissioner that he intends to pursue this as a route to the information he is seeking.

## **The Decision**

---

36. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

---

<sup>1</sup> Linda Bromley & Others / Environment Agency EA/2006/0072

## Right of Appeal

---

37. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 5<sup>th</sup> day of July 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

---

### General Right of Access

#### **Section 1(1) provides 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."