

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 September 2012

**Public Authority:** Devon County Council  
**Address:** County Hall  
Topsham Road  
Exeter  
Devon  
EX2 4QD

### Decision

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1. The complainant has requested information relating to a pedestrian footbridge. Some information was disclosed but the complainant remained dissatisfied and is of the view that not all information held by the public authority has been disclosed in response to his request.
2. The Commissioner's decision is that Devon County Council has disclosed all the information it holds which is described in the complainant's request.
3. The Commissioner does not require the public authority to take any further steps to ensure compliance with the legislation in this case.

### Request and response

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4. On 5 August 2011<sup>1</sup>, the complainant wrote to Devon County Council (the council) and requested information in the following terms:

*"IF County own bridge please show proof, as I have said I have copies of deeds for house and bridge. The documents I require are*

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<sup>1</sup> See [http://www.whatdotheyknow.com/request/footbridge\\_higher\\_mill\\_lane\\_cull#outgoing-187723](http://www.whatdotheyknow.com/request/footbridge_higher_mill_lane_cull#outgoing-187723) at correspondence beginning 5 August 2011. Previous and later requests are dealt with under case references FS50430733 and FS50430745 respectively

*any letters / emails to/from town council on this matter of the defects \repair to bridge."*

5. The council responded on 19 August 2011. It stated that its previous assertion<sup>2</sup> that the bridge was owned by it was mistaken. It explained the circumstances by which this misunderstanding had arisen.
6. The complainant submitted a follow-up request on 19 August 2011:

*"PLEASE confirm as requested*  
*1. Does Devon County own the bridge a simple YES /NO*  
*2. As there appears to be Cullompton S106 money spent on repairing/replacing a private bridge what steps will now be taken to recover money from the actual owner ?*  
*3. I am aware that County knew of ownership of bridge when I was a serving councillor, why was this not pursued to save public purse."*
7. The council provided further clarification and response to the complainant's points on 5 September 2011<sup>3</sup>.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the council had not disclosed all the information it held related to his requests.
  9. The Commissioner considers the scope of this case to be to determine whether Devon County Council has disclosed all the information it held which is described in the complainant's requests.
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<sup>2</sup> The requests under consideration in this decision notice occurred as part of a sequence of requests and correspondence submitted by the complainant and the assertion was made in correspondence prior to the present request. The requests fall into three pairs of related enquiries, dealt with as three separate requests by the council. These have been dealt with by the Commissioner in cases FS50430733, FS50430723 and FS50430745 respectively.

<sup>3</sup> The sequence of events comprises six requests and associated responses, with internal reviews conducted, in the main, towards the end of the correspondence. The Commissioner is satisfied that, in the context of the end-to-end process, the complainant has exhausted the council's internal complaints processes and complaints have been accepted on this basis.

## Background

10. A footbridge in Cullompton was replaced as part of a development to build a new supermarket in Cullompton town centre. The footbridge was replaced using funds provided by the developer ('section 106 monies') via an agreement reached under section 106 of the Town and Country Planning Act 1990 which provides that developers may be required to undertake other works or provide funding for works, by agreement, in the course of that development. The council explains that the bridge was replaced to improve public access.
11. The complainant understands that the footbridge is privately owned. The Commissioner recognises that he therefore questions the use of funding derived from section 106 monies to replace or improve what he believes is a private asset.

## Reasons for decision

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### 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."

12. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities.
13. 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 whether it is inherently unlikely that the information so far located represents the total information held.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/1990/8/contents>

14. The council holds a manual file on the footbridge, which contains information such as maintenance records. It explains that the footbridge supports a public highway, which, under the Highways Act 1980, falls to be maintained at public expense. It has confirmed to the Commissioner that its searches were confined to this manual file, as it was considered reasonable that all information held in respect of this bridge would be held in that manual file.
15. With specific reference to the complainant's request about ownership of the bridge, the council subsequently confirmed that its statement (in response to a previous request in this sequence) that the bridge was in council ownership was mistaken, and based on an assumption that as there was a public highway over the bridge it followed that the bridge was itself a public structure. This was shown by the complainant to be an error, which the council later accepted. The Commissioner notes that the council has confirmed to the complainant that the bridge is privately owned.
16. The Commissioner therefore recognises that as the bridge is privately owned, the council cannot hold information in proof of its ownership of the bridge. He accordingly finds that the information requested in the complainant's 5 August request about the ownership of the bridge is not held by Devon County Council. With regard to the second part of that request, for correspondence about defects/repairs to the bridge, the Commissioner understands from the council's submissions that all information on those elements of the request relating to maintenance of the bridge is likely to be held within the file on the bridge held by the council.
17. The complainant explained that he had served as a Cullompton town councillor and recalled being present when matters relating to the condition of the bridge had been notified by Cullompton Town Council to Devon County Council. He was, however, unable to be more specific about this correspondence. The Commissioner nevertheless put this to the council, asking it to conduct additional searches for correspondence from Cullompton Town Council about the footbridge.
18. The council responded, confirming that it had undertaken a thorough review of the full contents of the file which is held on the bridge, and had not located any additional correspondence which falls within the scope of the complainant's request. It had located correspondence between it and the owners of the property to which the bridge belongs, but that it was not information which fell within the scope of the complainant's requests. The Commissioner reviewed this correspondence and agrees that it does not contain information described in the requests.

19. The Commissioner agrees that the requested information would be likely to be held within the dedicated file held on this bridge, and is satisfied that the council has conducted sufficiently thorough and well-directed searches for the requested information.
20. The complainant provided the Commissioner with anecdotal evidence which suggested the possibility that further information might be held, but was unable to be more specific. This anecdotal evidence might suggest that it was inherently unlikely that the information disclosed was all the information held, but in the absence of information to suggest any new lines of enquiry, or alternative locations for searches, the Commissioner accepts that the council has already conducted appropriately directed searches in the location where it might reasonably expect such information to be found.
21. The Commissioner accordingly finds that, on the balance of probabilities, no further information is held by the council which is described in the complainant's 5 August 2011 request.
22. In respect of the follow-up request of 19 August, the complainant is asking questions, the first of which requires a 'yes/no' answer. The Commissioner is satisfied that this does not fall to be considered under FOIA and, in any event, the council has adequately responded to this question by making clear to the complainant that its initial, mistaken, assertion that the bridge was a council-owned structure was incorrect. The second and third questions are also queries, rather than overt requests for recorded information, however there remains the possibility that information might be held which addresses those queries.
23. The council's response to the second and third questions is that no information is held. Again, for the reasons confirmed by the Commissioner at paragraphs 18-20 above, he finds that no information is held by Devon County Council which is described in these questions.

## Right of appeal

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24. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. 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 .....**

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