

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2012

Public Authority: North East Lincolnshire Council
Address: Municipal Offices
Town Hall Square
Grimsby
DN31 1HU

Decision (including any steps ordered)

1. The complainant has requested information from North East Lincolnshire Council (the council) relating to what he referred to as the 'lying policy'. The council responded stating that it did not hold the requested information.
2. The Commissioner's decision is that the council has complied with its obligations under section 1(1) of the FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 24 June 2012 the complainant made the following request for information to the council under the FOIA:

"Q.1. Whose responsibility within the council is it to decide policy requiring staff dealing with queries and complaints to refute allegations of maladministration without first making preliminary investigations into their validity?"

Q.2. If it is nobody's responsibility within NELC to decide policy detailed in Q1, is this decided by central government? i.e. is the council given guidelines?"

Q.3. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating, before council's policy allowed staff to consider that

a complaint may be investigated, rather than dismissed?

Q.4. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating, before council's policy allowed staff to uphold a complaint?

Q.5. What provision is there that allows the council to address valid issues raised by residents (unknown to them) in instances where they'd been successfully fobbed-off with its "Lying policy"?"

5. The council responded on 4 July 2012 and explained that it had interpreted the complainant's requests in more general terms as it considered that they included unfounded statements. The council therefore provided the complainant with a link to its feedback policy and some additional information about its complaints procedure.
6. Following an internal review the council wrote to the complainant on 6 July 2012. It stated that it had met its responsibilities under the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 11 July 2012 expressing dissatisfaction with the council's response to his requests. The Commissioner has therefore considered whether the council's response is compliant with section 1(1) of the FOIA.

Reasons for decision

8. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
9. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
10. The Commissioner understands that questions 1, 2 and 5 of the complainant's request relate to his assertion that the council has a

recorded policy requiring staff to lie, referred to by the complainant as the 'lying policy'. With regard to questions 3 and 4, the Commissioner considers that these relate to the council's procedures for dealing with complaints specifically about bailiffs. The Commissioner has therefore considered whether, on the balance of probabilities, the council holds any information which could be considered as a 'lying policy' or any information regarding procedures for dealing with complaints specifically about bailiffs.

11. The complainant had initially specified that he was concerned that the council had interpreted his questions incorrectly, the Commissioner therefore asked the council to reconsider its response to the requests, focusing on way they had been written by the complainant. The council responded providing some additional narrative information and advice regarding the policies and procedures in place for dealing with general complaints, which would include complaints of the nature described by the complainant. However, it confirmed that its position remained that it did not have a 'lying policy' and therefore did not hold any information about it which could be disclosed. It also reiterated that the policy for dealing with all complaints, including those about bailiffs, was the feedback policy, and it again provided a link to this.
12. The complainant responded stating that he was entirely dissatisfied with the response. He stated that he believes that there must be some protocol which obliges staff dealing with complaints and queries to lie and to refute allegations of malpractice without making enquiries. The complainant maintains that he has evidence from his own dealings with the council, regarding a complaint he has about the council's bailiff contractor, that the council requires its staff to lie and misinform individuals about the contractor's malpractice.
13. The council has confirmed that it does not have any policy in place *"which requires staff dealing with queries to complaints 'to refute allegations of maladministration without first making preliminary investigations into their validity'."* In addition to this, it has confirmed that it does not have a written policy for complaints specifically about bailiffs. The council has explained that the policy it has in place which governs the way in which complaints such as those made by the complainant about bailiffs are handled is the feedback policy, a copy of which has been provided to the complainant.
14. The feedback policy defines a complaint as *"any expression of dissatisfaction, whether justified or not, which requires a response"*. Such a general definition of what type of complaint will be dealt with by the feedback policy strongly suggests that the council is unlikely to have any further policies which deal specifically with complaints made about bailiffs. In addition to this, having reviewed the feedback policy, the

Commissioner can find no reference to any alternative policies which would require council staff to lie.

15. In weighing up the balance of probability that the council holds any policy additional to the feedback policy which could be described as a 'lying policy' or which deals specifically with bailiffs, the Commissioner has had regard to the complainant's assertion that one exists because of his experience of complaining to the council. It is clear to the Commissioner that the complainant is dissatisfied with the way the council has handled his complaints in the past. It is also obvious that he believes that council staff have been lying to him in relation to these complaints and that there must therefore be a written policy requiring them to do so. However, the Commissioner does not have any difficulty in accepting that the council does not have a written policy compelling its staff to lie to and mislead its customers.
16. The Commissioner therefore finds that on the balance of probabilities, the council has complied with the requirements of section 1(1).

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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