

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2013

Public Authority: Wirral Borough Council
Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
Merseyside
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information between the Director and Deputy Director of Adult Social Services concerning reimbursement issues in relation to adult social service providers between Jan 2009 and April 2010. The Commissioner's decision is that, on the balance of probabilities, Wirral Borough Council does not hold the requested information. The Commissioner does not require any steps to be taken.

Request and response

2. On 28 May 2012, the complainant wrote to the council via the WhatDoTheyKnow website and requested information in the following terms:

"Please Disclose:

- 1.Emails
- 2.Correspondence
- 3.Investigations
- 4.Reports

Between [named individual], Deputy Director of the Department of Adult Social Services to [named individual], Director of Department of

Adult Social Services concerning reimbursement issues in relation to adult social service providers between Jan 2009 and April 2010.”

3. On 6 June 2012, the council requested clarification as to what was meant by ‘reimbursement issues in relation to adult social service providers between Jan 2009 and April 2010’. The complainant responded on the same day as follows:

“Please find an excerpt from the AKA Final Report below:

6.20.122. However, the Council did make provision in the DASS budget to create a Deputy Director post. It is understood that this post was not filled until Employee 64 appointed Employee 90, who undertook these duties for approximately 15 months until he/she retired in April 2010. Employee 64 has advised that Employee 90 “devoted very considerable amounts of his/her time to the reimbursement issues” associated with Service Provider 3.

For Employee 64 please read [named individual], Director of Adult Social Services. For Employee 90 please read [named individual], Deputy Director of Adult Social Services.”

4. Having received no response, the complainant then requested an internal review on 29 June 2012.
5. The council wrote to the complainant on 7 August 2012 stating that it has no knowledge that there was any specific project or task undertaken by the Deputy Director in relation to “reimbursement issues in relation to adult social service providers between Jan 2009 and April 2010” and it holds no recorded information to provide in response to the request.
6. Following an enquiry from the complainant on 9 August 2012, the council confirmed that its email of 7 August 2012 was both a response to the request and an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 11 February 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether, on the balance of probabilities, the council hold any information within the scope of the request.

Reasons for decision

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. The complainant alleges that information within the scope of the request must exist as the AKA report states that the Director of Adult Social Services explicitly indicated that he tasked his Deputy Director with spending considerable time of his 15 month tenure with reimbursement issues. He contends that there must be evidence of the work relating to the task being undertaken in the form of correspondence, briefings or reports being the two most senior officers within a department.
12. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The council explained that the then Director, Deputy Director and Deputy Director's Personal Assistant had all left the council at the time of the request but the Directors Personal Assistant conducted a search of her electronic records and no information was found. It stated that if information were held it would likely be electronic and that, as far as it was aware, no information had ever been held which had since been deleted or destroyed or held in other locations. The council also explained that the Principal Manager for Contracts, The Principle Manager for Management Accounts and the Director's Personal Assistant were all spoken to for knowledge of a project on reimbursement issues in relation to Service Provider 3 but none had any recollection or record of such a project.
13. The Commissioner asked the council to explain, if it wished to maintain that no recorded information exists within the scope of the request,

what the extract from the AKA report refers to. The council said that the extract from the AKA report relates to a statement made by a previous Director of the council and it is unable to comment on the intent, specific meaning or the context in which the statement was made.

14. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council stated that as it is unaware of the project referred to, it cannot answer this question.
15. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He appreciates the complainant's view that in light of the Director stating he tasked his Deputy with a particular project it would be expected that information relating to that project would exist, but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
16. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Other matters

17. The Commissioner is concerned about the council's delay in responding to this request. He issued an Undertaking in July 2013 under case reference ENF0476820, which the Chief Executive of the council has signed, agreeing to ensure that requests for information are handled in accordance with section 1 of the FOIA and regulations 5 and 11 of the Environmental Information Regulations 2004.

Right of appeal

18. 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

19. 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.
20. 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
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Wycliffe House
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