

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 July 2013

**Public Authority:** Cardiff Council  
**Address:** County Hall  
Atlantic Wharf  
Cardiff  
CF10 4UW

#### Decision (including any steps ordered)

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1. The complainant requested various information from Cardiff Council in respect of Council Tax and the inspection of properties where a Class C exemption has been applied for. The Council informed the complainant that it does not hold relevant information falling within the scope of his request by virtue of section 1(1) of the FOIA. The Commissioner's decision is that Cardiff Council has correctly relied on section 1(1) of the FOIA. The Commissioner requires no steps to be taken.

#### Request and response

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2. On 8 June 2012, the complainant wrote to Cardiff Council ('the Council') requesting the following information in respect of Council Tax and the inspection of properties where a Class C exemption has been applied for:

*"Question 3. If [named Council official's] response is based upon a written policy, then under the terms of the Freedom of Information Act, please provide a copy of that written policy..."*

*Question 4. If [named Council official's] response is based upon a verbal and unwritten policy, then ... please confirm the date the policy came into place, please provide the minutes of the meeting at which the policy was agreed, and please provide copies of all e-mail and letters which put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.*

Question 7. *"If the requirement for my current residential address (which you have confirmed that I am not under obligation by statute to provide) is [a] requirement of Council policy, ... please provide a copy of that policy..."*

Question 8. *If this is yet another verbal and unwritten policy, ... please confirm on what date the policy came into place, please provide the minutes of the meeting at which the policy was introduced, and please provide copies of all e-mails and letters that put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.*

*...In respect of the requirement to visit in accordance with your verbal policies, I would ask;*

Question 9. *...please confirm on what date the policy came into place, please provide the minutes of the meeting at which the policy was introduced, and please provide copies of all e-mails and letters that put in writing any part of this policy – both those that have been sent internal to the Council, and those that have been sent to members of the public.*

Question 10. *...please provide the minutes of any meeting at which the policy has been reviewed, and the changes in the policy that resulted."*

3. The Council responded on 3 August 2012. It stated that:

*...following a search of our paper and electronic records, I have established that the information you requested is not held by the Council."*

4. Following an internal review the Council wrote to the complainant on 12 October 2012. It stated that:

*"I can confirm that ...no information is held in relation to your request..*

*...The Council do not have or hold any policies or indeed any documentation such as procedures or minutes relating to your request ...in relation to any Council Tax claims of unoccupied and unfurnished exemptions, we do not have formal Council [P]olicy or guidance which is required to be followed."*

### **Scope of the case**

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5. The complainant contacted the Commissioner on 29 January 2013 to complain about the way his request for information had been handled.

He expressed concern that the response contradicts what he has previously been informed in writing by the Council. The complainant also alleged that in his view, the Council is refusing to provide details of its policies because its staff have broken those policies.

6. The Commissioner notes that questions 1, 2 5, 6, and 11 of the complainant's correspondence with the Council do not constitute requests for information under the FOIA.
7. The Commissioner would also point out that he can only consider whether the information is held and not the wider concerns expressed by the complainant.

### **Reasons for decision**

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8. Under section 1(1) of the Act, 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's judgement in cases such as this therefore is based on both the complainant's arguments and the public authority's submissions and where relevant, details of any search undertaken. The Commissioner expects that the public authority should take a reasonable and proportionate search.
11. The Council has confirmed that it contacted all relevant officers within the Council Tax area and asked them to conduct an electronic and paper search of its records. The officers have confirmed that the Council does not have a written policy relevant to the request. They have added that in order for such a policy to exist, a report would have to be taken to full Council where it would need to be formally approved/rejected by the Council's elected members.
12. The Council has further explained that under the Council Tax (Administration and Enforcement) Regulations 1992, an authority has a duty to take '*reasonable steps*' to ascertain whether or not dwellings are exempt. As far as the Council is aware, '*reasonable*' has not been

defined in council tax law. Should a Council Tax payer be aggrieved with a decision not to award an exemption, they have a formal right of appeal against this which can ultimately lead to the matter being referred to the Valuation Tribunal, (an independent body set up to consider such concerns).

13. The complainant however, is not satisfied with this account and as outlined in paragraph 5 of this notice believes that the following information he had previously been given by the Council demonstrates this. On 27 February 2012, he was informed by a named Council official that:

*"I can confirm that it is Council Policy to inspect properties to establish whether a Class C exemption is applicable.*

14. The complainant received a further email on 13 March 2012 and a letter from the Council dated 5 April 2012 stating respectively:

*"As detailed in my email of 27 February, the process of [I]nspecting properties for a Class C exemption is the policy of the authority and not a legal requirement."*

*" This is a verbal policy decided by senior management which is subject to review, given the circumstances at the time. There is no written policy."*

15. Whilst the Commissioner accepts that these responses contradict the Council's response to the complainant's request for information under the FOIA, he has no reason to consider that the response provided by the Council in respect of details of its search are incorrect. Indeed, the Commissioner considers that it is more likely that the Council has been found to have referred to both written and verbal policies which do not exist and notes that it is beyond his the remit to comment on.
16. The complainant has also expressed concern to the Commissioner with the quality of the Council's search stating that the default mailbox size of the majority of its users email accounts is so small that the electronic search which members of the Council Tax office could have undertaken would only cover a minute amount of correspondence, considering that Council Tax goes back to 1991. He has further argued that the search should have been undertaken by the Council's IT department.
17. The Council has confirmed that its electronic search was not confined to mailboxes and encompassed a broader range of information.
18. The Commissioner has considered the arguments of the complainant and the details of the search undertaken by the Council to determine whether it holds relevant information. Whilst he accepts that the

complainant has received contradictory information from the Council, he considers that an electronic and paper search of all relevant officers within the Council Tax area is both reasonable and proportionate.

19. The Commissioner has therefore concluded that on the balance of probabilities, that the Council is unlikely to hold information relevant to the complainant's request. The Commissioner has therefore concluded that the Council's 'information not held' response is compliant with section 1(1) of the Act.

## Right of appeal

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20. 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)

21. 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.
22. 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 – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**