

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 04 September 2013

Public Authority: Maldon District Council
Address: Princes Road
Maldon
Essex
CM9 5DL

Decision (including any steps ordered)

1. The complainant requested information relating to a leisure centre contractor. Initially the Council failed to provide a valid response. Following the intervention of the Commissioner, the Council provided a fresh response to the complainant and disclosed some of the information requested. The Council stated that the remainder of the information requested by the complainant was not held.
2. The Commissioner's decision is that the Council stated correctly and in accordance with section 1(1)(a) of the FOIA that the remainder of the information was not held and is not required to take any further action.

Request and response

3. On 29 October 2012 the complainant wrote to the Council and requested information in the following terms:

"(1) Any reports to councillors or senior managers between 1 November 2006 and 13 June 2008 that include details of the performance of Leisure Connection.

(2) Copies of minutes (or other records if minutes do not exist) of meetings between representatives of the Council and Leisure Connection concerning conditions on site and any complaints received from the public. I seek the last six sets of minutes (or other records from June 2007).

(3) The last two Quest reports on Blackwater Leisure Centre and the last

two for Dengies Hundreds Sports Centre before the drowning [of a child at Blackwater Leisure Centre in June 2008] occurred.

(4) Copies of any Health & Safety notices or correspondence between the Council and Leisure Connection in the twelve months up to 13.6.08.

(5) Copies of any Environmental Health notices or correspondence between the Council and the Leisure Connection in twelve months up to 13.6.08."

4. The Council responded on 27 November 2012. The information requested was not disclosed, but no grounds from the FOIA were referred to as the basis for this refusal.
5. The complainant responded on 7 December 2012 and requested an internal review. The Council responded on 18 December 2012 and maintained the refusal to disclose the information. Again the Council failed to clearly confirm or deny whether it held the information specified in each of the complainant's five requests, although it did at this stage refer to the exemptions provided by the following sections of the FOIA:
 - 30(1) (information held for the purpose of an investigation)
 - 41 (information provided in confidence)
 - 43(2) (prejudice to commercial interests)

Scope of the case

6. The complainant contacted the Commissioner on 18 December 2012 to complain about the refusal of his information requests. The complainant indicated at this stage that he did not agree with the grounds given by the Council for the refusal of his requests.
7. Early in the investigation the ICO contacted the Council and advised that it did not appear that the complainant's requests had been responded to in accordance with the FOIA. It was noted that the responses had failed to clearly confirm or deny whether each item of the information requested was held. The Council was also advised that, based on the brief rationale it had given in the internal review response, it appeared unlikely that section 30 would apply.
8. Given the inadequacy in the handling of these requests, the Council was recommended by the ICO to issue a fresh response to the complainant. It was advised that this response should clearly confirm or deny whether the requested information was held and, in relation to any information

that was held, that this information should either be disclosed, or the complainant should be provided with an explanation of the provision within the FOIA as to why this information would not be disclosed.

9. The Council agreed to provide a fresh response and this was sent to the complainant on 24 June 2013. The information specified in requests (1) and (2) was disclosed and those requests are not covered further in this notice. In response to requests (3) to (5) the Council stated that no information was held.
10. The complainant subsequently confirmed to the ICO that he wished it to investigate whether the Council was correct to state that the information specified in requests (3) to (5) was not held. The analysis in this notice concerns whether the Council complied with section 1 of the FOIA in stating that this information was not held. The Commissioner comments further on the issues in the handling of the complainant's requests in the '*Other matters*' section below.

Reasons for decision

Section 1

11. Section 1(1)(a) of the FOIA provides that, upon receipt of an information request, a public authority must respond confirming or denying whether it holds information falling within the scope of the request. This means that a public authority should take steps to identify all relevant information that is held upon receipt of a request.
12. The task for the Commissioner here is to determine whether the Council is correct in stating that it does not hold information falling within the scope of requests 3 to 5. In line with the practice of the First-tier Tribunal (Information Rights), the test applied by the Commissioner is whether on the balance of probabilities the Council holds further information.
13. Covering request (3) first, the Council has stated that a "Quest Report" is prepared as part of the process of leisure facilities gaining "Quest Accreditation". It has stated that gaining this accreditation is a pre-requisite before the Council will award a leisure contract.
14. The Council has stated that such a report would be the property of the contractor and would be sent directly to them, but has also acknowledged that it previously held copies of these reports. However, the Council has supplied to the Commissioner evidence that responsibility for enforcement in relation to the leisure facilities specified in the request was passed from the Council to the Health and Safety

Executive (HSE) in November 2009. The Council states that the reports in question were passed to the HSE at that time and that no copies were retained.

15. The Commissioner asked the Council to describe the searches it had carried out in order to verify that it had not retained any copies of these reports. In response to this, the Council stated that it had carried out:

"A electronic search of the PCs of the Leisure & Community Services Manager, Monitoring Officer, and Sports Development Officer, (including their e-mail system, hard drive and central storage drive).

A visual search of files, draws and desks."

16. The Council has provided what the Commissioner believes to be a credible explanation as to why it does not hold the information falling within the scope of this request: that enforcement responsibility has been transferred to the HSE. It has also confirmed that searches were carried out to verify that no copies of this information had been retained, and it provided a description of these searches.
17. The complainant noted that, in the fresh response that the Council sent to him dated 24 June 2013, it referred to having sought permission from the contractor to the disclosure of these reports. The complainant believed that this suggests that the Council did, in fact, hold this information.
18. The Commissioner agreed with the complainant that this reference to having sought permission to disclose was confusing given that the Council had also stated that it did not hold these reports. This point was raised with the Council and in response it stated that this reference was to it having asked the contractor to pass copies of the reports to the complainant (the contractor refused to do so).
19. Although, as stated above, the Commissioner agrees with the complainant that this reference to the Council having sought permission from the contractor to disclosure was confusing, he accepts that it is not an indication that the Council was incorrect to state that it did not hold the requested information. Having accepted that explanation from the Council and for the reasons given above at paragraph 16, the conclusion of the Commissioner is that, on the balance of probabilities, the Council does not hold information falling within the scope of request (3).
20. Turning to requests (4) and (5), the explanation of the Council as to why it did not hold this information was the same as in relation to request (3); this information had been held by it previously, but enforcement responsibility had been passed from the Council to the HSE

in November 2009 and so there was no requirement for the Council to retain this information.

21. As with request (3), the Commissioner asked the Council to describe the steps it had taken to verify that no copies of this information had been retained. The description provided by the Council was as follows:

"A electronic search of the PCs of the Environmental Health Officer, (including their e-mail system, hard drive, central storage drive).

A visual search of main Environmental Health filing system, Uniform computer system, files, draws and desks."

22. Again, in relation to requests (4) and (5) the Council has provided what the Commissioner believes to be a reasonable explanation as to why it has not retained this information and this explanation is supported by the evidence supplied to the Commissioner of the November 2009 transferral of responsibility. It has also confirmed that a search was carried out to verify that no copies of this information had been retained and gave a description of that search. On the basis of these representations from the Council the Commissioner finds that, on the balance of probabilities, the Council does not hold information falling within the scope of requests (4) and (5).
23. The overall conclusion of the Commissioner is that, when issuing its fresh response to the complainant, the Council stated correctly and in accordance with section 1(1)(a) of the FOIA that it did not hold information falling within the scope of requests (3), (4) and (5). No further action in relation to these requests is required.

Other matters

24. Whilst the Commissioner has found that there is no outstanding breach of the FOIA, his view remains that the initial handling of the requests by the Council was poor. The Council should ensure that it engages fully with the scope of future requests and ensure that responses clearly confirm or deny whether the requested information is held and either disclose that information, or give a valid explanation as to why that information will not be disclosed.
25. A record has been made of the issues that have arisen in this case. These issues may be revisited should future cases suggest that they are indicative of systemic problems within the Council.

Right of appeal

26. 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

27. 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.
28. 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

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