

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 January 2016

Public Authority: Southwark Council
Address: Finance & Governance
Second Floor Hub 2
PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested from Southwark Council (the 'Council') information relating to a named Process Server and for details of the Council's bailiff company.
2. The Commissioner's decision is that the Council does not hold the requested information. Therefore, the Commissioner does not require the Council to take any steps.

Request and response

3. On 30 September 2015 the complainant wrote to the Council and requested information in the following terms:

"1. Would you please state the employment title of [named individual] and confirm or not whether she is legally certificated to work as a process server, and if so please state which Court she works for, and confirm or otherwise whether or not she is a member of a Bailiff association or trade organisation.

2. Please provide a copy of her signed Code of Conduct from her employer.

3. Please provide copies of her legal authority to serve statutory demands.

4. Please provide the name and address of your Bailiff company."

4. The Council responded on 6 October 2015 and confirmed that it did not hold information to parts 1-3 of the request. However, the Council provided information to part 4 of the request.
5. Following an internal review the Council wrote to the complainant on 11 November 2015. The Council maintained its position and said that the information requested is not held. It added that if the Council did hold the information, it would be considered personal data and would therefore be exempt from disclosure.

Scope of the case

6. The complainant contacted the Commissioner on 12 November 2015 to complain about the way her request for information had been handled.
7. The Commissioner considers the scope of the request to be whether the Council holds information to parts 1-3 falling within the scope of the request.

Reasons for decision

Section 1 – information not held

8. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
9. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that the Council holds further information, this argument cannot carry weight.

The Council's position

11. The Council explained that its legal section had confirmed that it has a need to use a process server to serve court documents. The Council said that it can do so by appointing a local company, depending on availability and location for service. It added that for service of documents in London, the Council often uses one of the local private companies. If however the company was unable to provide a service, the Council stated that it could seek to use a different contractor.
12. The Council reported that when it employs a company, it does not require information to be provided about that particular company's employees neither does it request for copies of codes of conduct. Therefore, the Council argued that it does not hold details of the employees' employment titles or membership of bailiff associations or trade organisations.
13. The Council argued that it does not hold information about the company's employees in respect of any legal authority or certificate which enables them to work as a process server. The Council added that it is not aware of any such requirement on an individual to enable them to carry out this work.
14. The Council confirmed that the named individual in question is not employed by the Council and that is why it does not hold the information to parts 1-3 of the request.

The complainant's position

15. The complainant argued that the Council does keep details of the process servers which it uses because she is of the view that the Council contacts them to arrange for the process servers to serve "*stat demands.*"
16. The complainant further argued that because the Council sub-contracts with bailiffs and process servers, there should be a code of conduct in place due to the fact that they are sent to the private homes of residents in the Borough.
17. The complainant considers that the Council does hold information on the contractors which it uses. She argued "*how would they contact them if it did not know who they were?*"
18. The complainant said that the process servers and bailiffs are employed by a company and that there will be a contract between the Council and the bailiff company. Therefore, the complainant considers that information is available but is not disclosed.

19. The complainant argued that the process servers and bailiffs can make witness statements and that they regularly do on behalf of bankruptcy petitions by the Council. The complainant therefore considers that their employment must be verified in these circumstances and she argued that it has not been.
20. The complainant believes that the information should be held by the Council as she considers it to be a public body and that its employees are not subject to anonymity. The complainant argued that all the employee's actions are accountable as they are paid by the taxpayer.
21. She further argued that the Council do hold information on "*stat demand process servers* [named individual] *because she wrote a witness statement for them in action which the Council brought against me and which failed.*" The complainant added that the process servers are provided with council mobile phones.
22. The complainant expressed her dissatisfaction with the Council's internal review response as she considered this to be '*untrue*' and the complainant said that she knows that the named individual works as a bailiff for the Council. Therefore the complainant is of the view that the information requested must be easily available. She added that as a public body worker the named individual's actions during the course of their employment are the responsibility of the Council and that the Council must hold the information requested.
23. The complainant is of the view that the Council know its process servers ('*stat demand servers*') personally as it deals directly with them when the process servers serve the notices and they work directly with the lawyers in the Council's legal department. The complainant said that the Council telephone the process servers after they have served the notice and that they report back to the legal department personally when they have served the stat demand.
24. The complainant argued that the Council is therefore in a position to confirm whether the named individual is a certified process server.

The Commissioner's position

25. During the investigation and following further arguments from the complainant, the Council was asked to clarify its procedure with working with the process servers and its relationship with them.
26. The Council explained that when a need to serve a court document is identified, a local company of process servers will be contacted, if appropriate, to find out if they can provide the service. The Council went on to explain that the arrangements are not confirmed in writing but are made orally. The relevant documents are prepared by the Council's legal

services section and are either collected from council offices by the process server company or sent by a courier firm to the company for serving.

27. The Council stated that it does not have a list of employees at each company but it is able to specify, for example, that a female process server is required. It said that in the case involving documents served by the named individual the Council had specified that a female process server was required and that it was aware that the named individual was employed at that time by the relevant company.
28. The Council stated that it is not supplied with details of the process server allocated and that it is the company who the Council uses for the contract that holds these details. However, the Council reported that sometimes in certain circumstances, it uses its own staff as process servers and it confirmed that the named individual is not employed by the Council.
29. Taking into account the arguments submitted by both the complainant and the Council, the Commissioner considers that the Council is not in a position to confirm whether or not the named individual is legally certificated to work as a process server and the details of their employment. Therefore on the balance of probabilities the information is not held by the Council.
30. The Commissioner has considered whether the Council had any reason or motive to conceal the requested information but he has not seen any evidence of this. 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 information relevant to this request.
31. The Commissioner notes the complainant's concern that the information requested should be held by the Council and that she believes that the Council provided incorrect information relating to its 'not held' arguments. However, the Commissioner acknowledges that there can be a difference between what a complainant believes should be held and what is actually held.
32. On the balance of probabilities, the Commissioner has decided that the evidence submitted by the Council suggests that it does not hold information falling within the scope of the request.

Right of appeal

33. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Rachael Cragg
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