

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2016

Public Authority: Ashford Borough Council
Address: Civic Centre
Tannery Lane
Ashford
TN23 1PL

Decision (including any steps ordered)

1. The complainant has requested information in relation to the Chief Executive of Ashford Futures. Ashford Borough Council (the council) advised that it did not hold this information and at the internal review stage advised that this person had in fact resigned. The complainant considered the council held information on a dismissal, but during the Commissioner's investigation, the council provided a copy of the individual's resignation letter.
2. On the production of this resignation letter, the Commissioner determined that the council would not hold information on a dismissal.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 28 May 2015, the complainant wrote to the council and requested the following information:

"I have been advised to contact you with regards to the above named individual. I understand that [name redacted] was dismissed by the council in 2007 as Chief Executive of Ashford Futures and I should be grateful if you would please advise me, under the Freedom of Information Act, why he was dismissed."

5. The council responded on the 8 June 2015 and it advised that it did not hold the requested information because [name redacted] was employed by the South East England Development Agency (SEEDA). It further stated that SEEDA ceased to operate in 2012 after the government abolished regional development agencies and replaced them with Local Enterprise Partnerships so it was unable to provide any contact details for SEEDA.
6. The complainant requested an internal review on the 8 July 2015. He explained to the council that he had been reliably informed that the previous Chief Executive of the council, in 2007, had removed [name redacted] from his post. The complainant therefore considered that the council was directly involved in the dismissal and asked that it re-check its records on this.
7. The council provided its internal review on the 21 July 2015. Although it maintained that it does not hold records of [name redacted] employment, it did advise that its understanding was that [name redacted] resigned.
8. The council also advised that it does hold some correspondence between itself and SEEDA concerning members of staff employed by Ashfords Future, but stated that this information would be exempt from disclosure under section 40(2) of the FOIA – third party personal data.

Scope of the case

9. The complainant contacted the Commissioner on the 23 October 2015 as he was not satisfied with the council's response to his request as he considers that the council would hold information in relation to his request.
10. The Commissioner considers the scope of the case is to determine whether the council holds information in relation to [name redacted] dismissal.

Reasons for decision

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standards of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. In this case, the Commissioner wrote the council in order to understand what searches it carried out in order to establish it held no information with regards to a dismissal.
14. The council responded maintaining that it held no information regards to any dismissal and as stated in its internal review response pointed out that it is only aware that [name redacted] resigned. After further investigation, the council was able to provide both the Commissioner and the complainant with a copy of his resignation letter in relation to Ashford's Futures.
15. On being provided with a copy of this resignation letter, the complainant has told the Commissioner that this shows the council held the information requested and considered it must hold more.
16. However, the Commissioner disagrees and considers that the production of this resignation letter clearly demonstrates that the council would not hold information on [name redacted] dismissal because he resigned, he was not dismissed.
17. The Commissioner has also viewed a news article, provided by the complainant, about [name redacted]. This article also states that [name redacted] resigned.
18. The complainant has stated to the Commissioner that if the reported events are linked to [name redacted] resignation rather than dismissal, he would expect the Commissioner to request the relevant information from the council regardless.
19. The Commissioner appreciates the newspaper article talks about allegations about [name redacted] but the Commissioner is not able to investigate or make determinations on these allegations. The Commissioner, under the FOIA can only consider whether information is held within the scope of the request and if so, whether that information should be provided, if refused. In this case it was whether there is information held on a dismissal.

20. With the council providing a copy of [name redacted] resignation letter, the Commissioner is satisfied that [name redacted] was not dismissed so, on the balance of probabilities, he finds that no information would be held on a dismissal.

21. There may or may not be information held on the particular allegations referred to in the article, but this is not what has been requested in this case. The Commissioner cannot go on to request information in relation to the reported events on the complainant's behalf, it would be for the complainant to refine his request to the council, should he choose, now that it has become apparent that [name redacted] resigned.

Right of appeal

22. 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

23. 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.
24. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF