

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2016

Public Authority: Rochford District Council
Address: Council Offices
South Street
Rochford
Essex
SS4 1BW

Decision (including any steps ordered)

1. The complainant has requested information about a now defunct family swim scheme offered by a local leisure centre. Rochford District Council ("the Council") said that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 5 February 2016, the complainant wrote to the Council and requested information in the following terms:

"Please would you:

(a) inform me whether the Council holds information as to the terms and conditions of the "Family Superswim" scheme operated by Clements Hall Leisure Centre for 'centre resident founder members' for many years; and

(b) (if so) let me have a copy or full details, of that information."

5. The Council responded on 16 February 2016. It stated that the Family Superswim scheme was no longer available at its leisure centres and that it did not hold the requested information.
6. Following an internal review the Council wrote to the complainant on 7 April 2016. It reiterated that it did not hold the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 15 April 2016 to complain about the way his request for information had been handled. He challenged the Council's claim that it did not hold the requested information.
8. The Commissioner has considered in this decision notice the Council's assertion that it did not hold the information described in the complainant's 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 there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely or unlikely that the Council holds information relevant to the complainant's request.
11. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She 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, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. The complainant set out his concerns to the Commissioner as follows:

"The leisure centre is operated in partnership with [the Council]. It is therefore not credible or respectable for [the Council] to have no information as to how its partnership asset is run by the operator as a local authority amenity. It has a duty to be involved in and to know about how its private sector operator is behaving in this respect. The "scheme" applied for many years, so cannot credibly be unilaterally cancelled by Virgin/Fusion without some process of referral to/supervision/approval by the Council."

13. The Council had confirmed to the complainant that the Family Superswim membership was no longer available at its leisure centres. The complainant considered that the fact the Council was aware of this was evidence that it must hold some information which was relevant to his request.
14. With this in mind, the Commissioner asked the Council to explain its reasons for considering that it did not hold the information described in the request. He asked a series of detailed questions aimed at establishing the nature of its relationship with the leisure centre and any specific reasons it had for considering that it did not hold the information (including details of any searches conducted).
15. The Council explained that its leisure facilities, including the leisure centre named in the request, are outsourced via a management contract to Fusion Lifestyle. Fusion Lifestyle's website¹ describes itself as a registered charity dedicated to providing sport, leisure and fitness activities in local communities. To deliver its services it works both independently and in partnership with sporting bodies, educational establishments and local authorities.
16. The Council said that it has no involvement in the day-to-day running of the leisure facilities. Fusion Lifestyle is responsible for their day-to-day operation and management within the terms of the contract in place. (The same arrangement applied in respect of the previous contract-holders, Holmes Place and Virgin Active.)
17. Under the terms of the contract, Fusion Lifestyle is required to provide certain core activities (such as swimming, squash, fitness sessions and badminton) and it is responsible for how such activities are delivered.
18. In response to the complainant's comment about the Council knowing that the Family Superswim scheme was no longer in operation, the

¹ <http://www.fusion-lifestyle.com/>

Council stated that it was only aware of this because it had been advised accordingly by the leisure centre contract manager. Fusion Lifestyle is free to develop its own marketing and promotional campaigns and deal with all related issues from an operational perspective and the Council would not object as long as the core activities are delivered. The Council may specify a maximum price for the core activities, but would not, in practice, comment on any special offers which are available below an agreed maximum price. Nor would the Council comment as to the duration of such special promotions.

19. The Council considered that it followed from this that it had reasonable grounds for believing that it did not hold the information the complainant requested. However, it had nevertheless conducted a series of searches to verify whether information was held.
20. It said that detailed electronic and manual searches were conducted for the minutes of partnership meetings between the Council and Fusion Lifestyle (and the previous contract holder, Virgin Active), emails relating to the leisure contract, documents relating to the leisure contract and the leisure contract itself. It listed a series of search terms that had been used and the locations (both electronic and physical) that had been searched. Had the Council been in possession of the information requested by the complainant, these searches would have revealed information relevant to the request. However, they did not. This led it to conclude that it did not hold the requested information.

Conclusion

21. When, as in this case, the Commissioner receives a complaint that a public authority has not provided some or all of the requested information, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 10 and 11, above, the Commissioner is only required to make a finding on the balance of probabilities. In this case the Commissioner is satisfied that the Council has demonstrated that it has reasonable grounds for considering that it does not hold the information (specifically, that it has no involvement in leisure centre operational policy of the type that the requested information would fall under, and that thorough searches have failed to locate any relevant information). Set against this, the complainant has not supplied any evidence which supports his belief that it does hold the information. His position is simply that it "must" hold the information.
22. Taking all the above onto account the Commissioner is satisfied that that, on the balance of probabilities, the Council does not hold the requested information.

Right of appeal

23. 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

24. 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.
25. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF