

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2019

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested information with regards to elective home education. Hampshire County Council (the council) stated that this information was not held for the purposes of the FOIA under the provisions of section 3(2) of the FOIA.
2. The Commissioner's decision is that the information is not held by the council for its own purposes and therefore falls outside the definition held for the purposes of the FOIA under section 3(2) of the FOIA. The Commissioner has found that the council breached section 10(1) of the FOIA as it responded to the request outside the required 20 working days.
3. As the council has now responded, the Commissioner does not require the council to take any steps.

Request and response

4. On 15 January 2018 the complainant made the following request to the council:

"Can you please supply copies of correspondence and/or documentation between yourselves and Staffordshire County Council in relation to elective home education and/ or Lord Soley's home education bill from 01/01/2016 to the date of this freedom of information request."

5. The council acknowledged receipt of the request on the 16 January 2018. The complainant refined his request on the same day, asking that the council ignore the latter part of the request regarding Lord Soley's Home Education Bill, because a separate request has been made about that.
6. On the 18 September 2018 the complainant requested an internal review as they had received no response from the council.
7. The council acknowledged receipt of the internal review request on the 21 September 2018 and responded to it on the 1 October 2019. It confirmed that it has not responded within the required 20 working day timeframe.
8. The council also advised that emails relevant to the request have been identified but these were sent by an officer in their capacity as a Chair of the Association of Elected Home Education Professional (AEHEP), not as part of their role within the council.
9. The council explained that this information is not held by the council for the purposes of the FOIA as it does not provide any direct assistance in creating, recording, filing or removing the information. All the information is held within the individual's email account and controlled solely by them. The council is only providing storage of this information and it is not required as part of council business.

Scope of the case

10. The complainant contacted the Commissioner on 10 October 2018 to complain about the way his request for information had been handled as he considers the information identified should be provided.
11. The Commissioner considers the scope of the case is to determine whether the information is held by the council as per section 3(2) of the FOIA.

Reasons for decision

Section 3(2) of the FOIA – Information held by a public authority

12. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
13. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if

 - (a) it is held by the authority, otherwise than on behalf of another person, or*
 - (b) it is held by another person on behalf of the authority."*
14. In this case the council has advised the Commissioner that this request is very similar to the complainant's other request considered in a decision notice issued by the Commissioner under reference FS50729968¹ and it relies on the same arguments from that case as to why it does not hold the information in this case.
15. The information in question is information created by a member of staff in another capacity and not in their role as a council officer. This other capacity being the Chair of the AEHEP, which is not a role as part of the individual's role within the council.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2260071/fs50729968.pdf>

16. Based on the findings and reasoning from the related decision notice FS50729968, the Commissioner is satisfied that this request context falls within the same parameters of the other request and therefore falls outside the definition of information held for the purposes of the FOIA under section 3(2).
17. In summary, the correspondence was generated by a member of staff solely in their capacity as the Chair of the AEHEP. The Commissioner accepts that the information generated in this capacity is not held by the council for its own purposes and therefore excluded from the Act.

Section 10(1) of the FOIA – Response Time

18. Section 10(1) of the FOIA acts requires a public authority to respond to an information request within 20 working days following its receipt.
19. In this case the request was made on the 15 January 2018 and refined on the 16 January 2018. It was only after the complainant contacted the council further requesting an internal review on the 18 September 2018 that the council provided a response to the request on 1 October 2018, almost nine months later.
20. This is clearly outside the required timeframes for providing a response and therefore the Commissioner finds that the council has breached section 10(1) of the FOIA due to the time it took to respond to the request.
21. As the council has since responded, the Commissioner does not require the council to take any steps.

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
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