

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 1 May 2019

**Public Authority:** West Sussex County Council  
**Address:** County Hall  
West Street  
Chichester  
West Sussex PO19 1RQ

#### **Decision (including any steps ordered)**

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1. The complainant requested information about media use from West Sussex County Council ("the Council"). The Council responded to the complainant under section 1(3) of the FOIA for more information, asking her to clarify her request.
2. Following further correspondence with the complainant, the Council considered that it was still unable to identify the requested information in order to locate it.
3. The Commissioner's decision is that the request was valid under section 8 of the FOIA. However, the Council was correct to return to the complainant for clarification under section 1(3). Furthermore, the Council complied with its duty to provide advice and assistance under section 16 of the FOIA.
4. As there are multiple objective readings of the request, no further duty under the FOIA, other than the requirement to seek clarification of the request, has arisen and the Commissioner does not require the Council to take any steps.

#### **Previous request and clarification**

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5. On 17 June 2018, the complainant wrote to the Council to request information of the following description:

*"I would like to request information on media use by West Sussex County Council. I am interested in receiving information on any media activity involved in the areas of Crawley and Haywards Heath district on an ongoing basis since 2014. I would also like to receive information on data you share with media."*

6. On 18 June 2018, the Council responded and asked her to clarify the information she was seeking. She responded later that day:

*"Please inform me of any media that have presented themselves in West Sussex in Crawley and Haywards Heath specifically since 2014. I was informed that media were present in Handcross by MSDC [Mid Sussex District Council]. Please name the organisation, its purpose and location to include any children's data that you may have shared without parental consent."*

7. On 19 June 2018 the Council asked her for further clarification. She replied on the same day, stating:

*"I was informed by MSDC that reporting media were present in the area of Handcross and Crawley in 2014. [redacted] I was informed by MSDC that filming was not taking place. I was informed by WSCC to contact police in 2014. Therefore WSCC has recorded information of activity in Handcross from 2014 onwards that would be considered not usual local activity. If you have no records of media in the area then I will have to assume this was in fact illegal activity and the police advice [redacted] was accurate information."*

8. On 20 June 2018 the Council asked her for some further details. It stated:

*"Do you have copies of any of the communications that you mention from MDSC, WSCC or the police? Without those we would not be able to identify the information you are requesting."*

9. Later that day the complainant wrote to the Council:

*"I requested any information that you have on media that was present in Haywards Heath Specifically Handcross and Crawley in 2014. This is a freedom of information request. If you have no knowledge of any media use in Handcross area since 2014 up until 2018 then I will assume criminal activity. I certainly do have police documents and documents from other government departments. I am awaiting an outcome of a DWP investigation also. It would be helpful if you could provide details of any activity such as media or charity so that other types of criminal activity can be identified clearly."*

10. No further response was provided at this stage.

## Request and response

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11. On 3 December 2018, the complainant wrote to the Council in the following terms:

*"I am writing to you regarding the information request to supply information on media activity or SAR reports made involving Handcross Haywards Heath. Are you aware of any activity in the area since 2014 involving media, charity or other suspicious activity?"*

12. On 5 December 2018 the Council advised her that: *"The Council has nothing to add to [previous] response[s] and will not correspond further on this matter unless you are able to supply the details which would make this possible."*

13. On 6 December 2018 the complainant provided further information as follows:

*"I have been requesting information on any media that you have been aware of or any charity organisation in Handcross, Haywards Heath as I have reported substantial criminal activity in the area since 2014, any information you gave could have assisted any police investigation. The criminal activity has been ongoing and substantial and the police documents that were requested have now been sent to WSCC safeguarding in education department. I was concerned about media use in and around education and employment departments, I have an ongoing investigation with the DWP also as the Crawley department have not responded to the request and so are being investigated by the Independent Case Examiner.*

*I can certainly send copies of the documents from police to your department, however I have already mentioned that your staff were aware of unusual activity and did request I contact police in 2014. I am due to contact a solicitor about this communication next week so any information that you have would be helpful."*

14. On the same day, the Council responded and stated:

*"As I said in my email yesterday, there is no information I can identify without further information from you. I will therefore not respond further on this matter."*

15. Notwithstanding the Council's view that it could not identify the information being requested, the complainant then requested an "internal review" on 6 December 2018, also stating:

*"This is a general enquiry about any significant media presence in the area specified for a significant period of time."*

16. The Council sent her the outcome of its "internal review" on 7 December 2018. It found that it had been unable to regard her requests as valid and actionable because *"insufficient information had been provided to allow an identification of the information requested enabling it to be located"*. The Council also stated that it considered it had complied with its duty under section 16 of the FOIA to provide advice and assistance.

## **Scope of the case**

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17. The complainant contacted the Commissioner on 12 December 2018 to complain about the way her request for information had been handled.
18. The following analysis covers whether the complainant made a valid request for information in accordance with section 8 of the FOIA, whether it was reasonable for the Council to return to the complainant for more information under section 1(3) of the FOIA, and whether any advice and assistance that was offered complied with the duty arising under section 16 of the FOIA.

## **Reasons for decision**

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### **Section 8 – request for information**

19. Section 8(1) of the FOIA states that:

*"In this Act any reference to a "request for information" is a reference to such a request which—*

*(a) is in writing,*

*(b) states the name of the applicant and an address for correspondence, and*

*(c) describes the information requested."*

20. The Commissioner has considered the request of 3 December 2018 to determine whether it complies with section 8(1)(c) in that it *"describes the information requested"*.

21. As the Commissioner's guidance on recognising a valid freedom of information request<sup>1</sup> explains, most requesters are unlikely to know what exact information is held by a public authority, or to have an appreciation of how the authority's records are stored. This means that requesters cannot always reasonably be expected to be specific about details such as the titles, contents and location of documents or other files. It also follows that they will not always provide enough detail to enable the authority to identify the information from the description provided.
22. The guidance explains that, for these reasons, the Commissioner's view is that there has to be a low test for a description to meet the requirements of Section 8(1)(c).
23. Authorities should therefore treat any description that allows the requested information to be distinguished from other information held by the authority as valid under Section 8(1)(c).
24. Viewing the request of 3 December 2018 and the clarification provided on 6 December 2018, the Commissioner notes that the complainant stated that she required "*information on media activity*", "*any activity in the area since 2014 involving media, charity or other suspicious activity*", "*any media that you have been aware of or any charity organisation*", "*media use in and around education and employment departments*" and "*unusual activity*".
25. On requesting an "internal review", the complainant requested "*any significant media presence in the area specified for a significant period of time*".
26. The Commissioner has considered whether this would enable the Council to distinguish the requested information from other information held by the Council.
27. The Commissioner considers that the term "*media*" is extremely broad in scope. However, its most common meaning, provided as the first definition in a number of dictionaries including the Oxford English Dictionary, is to refer to *broadcast media* such as newspaper, radio and television.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

28. She has considered the complainant's previous request, dated 17 June 2018, and the subsequent clarification provided by the complainant on 19 June 2018. The complainant referred to "*filming*" taking place in the relevant area of Sussex. She also referred to "*media presence*" in her communication dated 6 December 2018. This indicates that the complainant was interested in information held by the Council which related to the presence of broadcast media.
29. The Commissioner is satisfied that, using the low test which she applies in such cases, the request was valid under section 8 of the FOIA.
30. She has therefore considered whether the Council reasonably required further information in order to locate and identify the information requested.

### **Section 1(3) – further information required by the public authority**

31. Section 1(3) of the FOIA states that:

*"Where a public authority—*

*(a) reasonably requires further information in order to identify and locate the information requested, and*

*(b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."*

32. The Commissioner considers that the descriptions of the requested information provided by the complainant in her request of 3 December 2018, as well as in her earlier request and in her subsequent attempts at clarifying it, as set out previously in this notice, are unclear.
33. By way of example, the requested information is described as being about "*activity in the area since 2014 involving media, charity or other suspicious activity*" and "*any media that you have been aware of or any charity organisation*". The Commissioner considers that these phrases are broad and non-specific.
34. The Commissioner notes that the complainant also stated that she had reported criminal activity, and referred to "*criminal activity which has been ongoing and substantial*". In her view, this only served to confuse the description of the information further.
35. Even allowing for the fact that the Council may have been able to infer that the complainant appeared to be interested in information about the presence of broadcast media in the relevant location, the Commissioner

considers that confusion arose from the wording of the complainant's request. Her view is that it was not possible for the Council to reach a single objective reading of, and issue a substantive response to, the request.

36. The Commissioner is satisfied that the Council reasonably required further information in order to locate and identify the information requested under the provisions of section 1(3) of the FOIA.
37. When a public authority returns to a complainant for further information under section 1(3), this triggers the duty under section 16 of the FOIA to provide advice and assistance to the complainant. The Commissioner has therefore considered whether the Council has complied with this duty.

### **Section 16 – duty to provide advice and assistance**

38. Section 16 of the FOIA states that:

- 1) *"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*
- 2) *Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."*

39. Section 16 refers to conforming with the "code of practice". This refers to the code of practice issued by the Government under section 45 of the FOIA, which provides standards and guidance on how a public authority should discharge its duties under Part 1 of the FOIA. The updated version is dated May 2018 and is called the *Freedom of Information Code of Practice* ("the code").
40. The code states that *"there may... be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought"*.
41. The code does not specify any particular level of advice and assistance that should be provided in assisting the complainant to clarify their request. The Commissioner has therefore examined the available evidence to determine whether the Council provided a level of advice and assistance that she considers to have been sufficient, in the

circumstances of this case, for it to have discharged its duties under section 16 of the FOIA.

42. She notes that the Council, in responding to the request of 3 December 2018, relied to some extent on its previous responses to the request of 17 June 2018. Indeed, it stated that it had nothing to add to its previous responses.
43. The Commissioner considers that, in view of the fact that the request of 3 December 2018 was closely related to the request of 17 June 2018, it was reasonable for the Council to refer the complainant back to its previous responses. She has therefore considered whether the advice previously provided to the complainant was sufficient for the Council to have complied with section 16 in this case.
44. She notes that the Council's initial response to the request of 17 June 2018 was sent to the complainant on 18 June 2018, and stated that clarification was needed. The Council stated: *"In particular, you could explain what you mean by the terms 'media use by West Sussex County Council' and 'media activity', and say what information you seek regarding 'data that you share with media'."*
45. The Commissioner notes that following the complainant's response, the Council contacted her again on 19 June 2018, again attempting to define what was meant by *"media"*.
46. After being informed by the complainant that she had shared some information with the police, the Council then asked if she was able to provide copies of it so that it could determine the scope of her request. The response from the complainant is quoted at paragraph 9 above and did not include the documentation that the Council had requested.
47. In summary, the Commissioner notes that the Council returned to the complainant three times within the three days after she had made her request of 17 June 2018, making clear that it required further clarification of the type of *"media activity"* and/or *"data sharing"* that her request related to so that it could commence searching for information.
48. The Council has stated to the Commissioner that it considers that the scope of the request remained ill-defined. It explained that, in its view, *"the request has remained largely in its original terms and no succinct search could be undertaken"*.
49. The Council has also informed the Commissioner that it searched records of previous contacts relating to the complainant, but was unable to identify any material which appeared relevant, or which could have been used to guide her further to clarify her request.

50. The Council has also stated that, had the complainant provided any meaningful clarification after she had spoken to her solicitor, as she stated was her intention in December 2018, it may have been able to conduct a search for the information. However, she did not provide this.
51. The Commissioner is satisfied that that the complainant did not provide clarification that would have enabled the Council to identify a single objective reading of the request.
52. The Commissioner considers that the complainant may have succeeded only in further confusing matters by seeking to provide further details; for example, by referring in non-specific terms to charities and suspicious/criminal activity. She did not attempt to define her use of the word "media" nor refer to any specific incident of which she may have been made aware.
53. The Commissioner considers that the Council acted adequately and appropriately in returning to the complainant three times to ask for further clarification of the scope of the information she was requesting.
54. The Commissioner's decision is that the Council discharged its duty under section 16 of the FOIA to provide advice and assistance to the complainant on clarifying the scope of her request. She does not require the Council to take any steps.

## Right of appeal

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55. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.
57. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**