

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2019

Public Authority: Hastings Borough Council

Address: Town Hall
Queens Road
Hastings
East Sussex
TN34 1 QR

Decision (including any steps ordered)

1. The complainant has requested from Hastings Borough Council (the Council) information regarding its legal costs incurred concerning the Coffey 2 report.
2. The Commissioner's decision is that the Council failed to discharge its section 1(1) duties by failing to identify the information held within the scope of the first request.
3. The Commissioner has concluded that by failing to disclose the information, which it has now provided to the complainant, within 20 working days the Council breached section 10(1) of FOIA.
4. As the breach has been remedied, the Commissioner does not require the Council to take any further steps.

Requests and responses

Request 1

5. On 28 March 2018, the complainant submitted the first request for information to the Council in the following terms:

"Now that the tribunal decision has been made and all representations made could you please supply the following.

The costs of all activities concerning the request for the Coffey 2 report. These should include:

Initial legal advice costs when responding to the initial ICO query

All legal costs for the appeal prior to the tribunal

All legal costs for attendance at the tribunal

All post tribunal legal costs

The travel and accommodation costs for legal representatives in attending the tribunal

The travel and accommodation costs for HBC staff in attending the tribunal

The time spent by HBC staff in attending the tribunal

All other associated costs concerning the tribunal

The HBC staff time spent in handling this request for the Coffey 2 report."

6. The Council responded on 18 April 2018, stating:

"This information is held

Response:

Barristers fees - £7725.00 to date, no final invoice has been received.

Staff travel expenses - £230.40

Staff time attending the Tribunal and handling of Coffey 2 - Information not held, we do not have time recording equipment for staff to record their time at present."

Request 2

7. On 17 May 2018, the complainant submitted another information request for the same information, with the addition:

"I previously made this request back in March 2018 and was supplied with costs to date. I was advised that not all invoices had been received for legal works.

I make the request again to obtain the latest cost figures following submission of further invoices for legal costs."

8. The Council responded on 8 June 2018, stating:

"Our response remains the same as that sent in March 2018 under ref: FOI-71541831.

Hastings Borough Council has not been invoiced further as yet from the Barrister."

Request 3

9. On 24 September the complainant wrote to the Council regarding the same topic, stating:

"Please advise whether further invoices have been submitted and please supply the full invoiced costs."

10. The Council responded on 27 September 2018, stating:

"I refer to your email dated 24 September 2018.

I can confirm Hastings Borough Council has not received any further invoices from the Barrister in relation to the handling of Coffey 2."

11. The complainant requested an internal review on 1 October 2018. He stated:

"On the 18th April 2018 you supplied details of some invoices totalling 7225 pounds covering telephone advice and consultation for the period before the tribunal hearing.

...

You now state that no further invoices have been received.

...

Could you please review your accounts system and provide me with details of all invoices for all ICO tribunal related work."

12. Following an internal review the Council wrote to the complainant on 11 October 2018. It stated:

"I can confirm the Information Officer was mis-informed by our Finance Department. Hastings Borough Council has in fact received an invoice from the Barrister Damien Welfare, Cornerstone Barristers in relation to the ICO Tribunal appeal hearing EA/2017/0084 - Hastings Borough

Council vs Information Commissioner.

Unfortunately this was not found on first investigation, please accept my apologies on behalf of Hastings Borough Council for this error.

The amount invoiced was £19,506.70 exc vat and dated 15 January 2018."

Scope of the case

13. The complainant contacted the Commissioner 11 October 2018 to complain about the way his request for information had been handled, stating:

"I wish to make a formal complaint that Hastings Borough Council have on three separate occasions falsely stated that a requested invoice for legal costs does not exist. After conducting a second level review HBC have now discovered that the invoice dated 15/01/2018 does exist."

14. During the course of her investigation, the Commissioner invited the Council to submit its representation in relation to this complaint.
15. The Council provided its explanation regarding the delay in providing the complainant with the information requested. It stated *"We believe this to be an honest mistake brought about by the requirement to implement a new finance system which was installed and went live on 1 April 2018."*
16. The Commissioner has considered whether the Council dealt with the request in accordance with its obligations under section 10(1) of the FOIA.

Reasons for decision

Section 1 – Determining the information held

17. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

18. When considering whether the requested information is held the Commissioner had regard to her own published guidance on *"Determining whether the information is held"*¹.
19. In paragraph 7 of this guidance it is stated that *"When a public authority receives a request, its first task is usually to determine whether it holds the requested information."*
20. As described above, in responding to the complainant's first request the Council failed to identify the correct information it held in relation to legal costs invoiced by the barristers involved.
21. Therefore, the Council failed to discharge its duties provided in section 1(1) of the FOIA.

Section 10 - Time for compliance

22. Section 10 of the FOIA states that responses to requests made under the Act must be provided *"promptly and in any event not later than the twentieth working day following the date of receipt."*
23. The Council explained that when it responded to the complainant's first request of 28 March 2018, it provided him with the information which it believed was held. However, when the complainant asked the Council to review how it handled the requests relevant to this complaint, the Council discovered that at the time of the first request, it held further information to what was initially provided. This information consisted of an invoice submitted to the Council by a relevant barrister on 15 January 2018.
24. The above additional information was provided to the complainant on 11 October 2018, which is clearly outside of the deadline provided in section 10 of the FOIA.

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

Right of appeal

25. 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

26. 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.
27. 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
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Wycliffe House
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SK9 5AF**