

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2019

Public Authority: Dorset Council
Address: South Walks House
South Walks Road
Dorchester
Dorset DT1 1UZ

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of outstanding FOI requests to West Dorset District Council now Dorset Council (the council).
2. The Commissioner's decision is that the council has does not hold any further information within the scope of the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.
4. However, the Commissioner recommends that it reviews the WDTK website and identifies any outstanding requests and respond accordingly. The council should also review the Section 46 Code of practice to ensure its new policy and procedures comply.

Request and response

5. On 30 November 2018, the complainant wrote to the council and requested information in the following terms:

In each of the past six years how many requests under The Freedom of Information Act have been made to West Dorset District Council?

How many of these have been dealt with by providing in full the information that was requested?

How many of these were responded to by a partial disclosure of information?

How many requests were refused?

How many requests were not dealt with for whatever reason?

6. The council responded on 5 December 2018 and provided a spreadsheet of information.

7. In his request for internal review the complainant stated:

In the attachment you state that you have excluded, "open FOIs from the data", however judging from the number of requests made on this site, there are a significant number of "open FOIs" purely because there has been no action taken by the council in order to comply with these. In the circumstances, please include the "open FOIs" in the response. The original request called for information on all FOI requests to be included.

8. The council provided its internal review on 15 January 2019 and provided a further spreadsheet. The complainant responded the same day stating:

"Prima facie it appears that you have not conducted an appropriate Internal Review, or given the information you were asked to provide. An inspection of the new spreadsheet, comparing it to the previous one submitted, reveals that the only details that have been amended are the figures for the total in 2018. This is increased by an amount of 70 for the revised chart.

In the earlier years there are FOI requests on this site which have yet to be dealt with, the years 2015, 2016 and 2017 have a number of requests marked, "long overdue". Can you please explain why these figures for these years have not been amended to reflect these? Have these long outstanding failures to comply with the FOI Act been included in the year for 2018, or how have they been dealt with here?

As is [sic] stands I cannot concur that you have given an appropriate response to the original FOI request."

Scope of the case

9. The complainant contacted the Commissioner on 18 April 2019 to complain about the way his request for information had been handled. In his correspondence he stated:

"There were delays and problems with the handling of this request. On 6 December 2018, I made a Request for Internal Review. They provided a response dated 15 January 2019 but it became clear they had not given

me the information I requested. I queried this with them on 15 January 2019 and went into detail on the issues on 16 January 2019. There was a response from them on 14 March 2019 when I was promised an E-Mail within a week of the officer's return to the office (date not specified). This remains outstanding and given other difficulties in getting information from this body, I am not sanguine I will ever receive a response.

It is quite clear the reply from them understates the situation with outstanding FOI requests."

10. The Commissioner considers the scope of this case to be to determine if the council holds any further information within the scope of the request.

Background

11. The council explained that the current Dorset Council was brought into being on 1 April 2019 when a number of other District and Borough Councils were dissolved. There have been a series of mergers since 2011 and this has ensured constant change in both the systems dealing with Freedom of Information and the officers.
12. As part of the council's investigation into this complaint, the officer that produced the two spreadsheets was interviewed. The officer concerned is experienced in software development database administration and application support.

Reasons for decision

13. 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.
14. 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, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

16. As is the practice in a case such as this, the Commissioner asked the council a number of questions to confirm/establish if further information is held.

The council's position

17. The council explained that following its initial response and internal review the applicant requested a further review on 26 February 2019. The council responded that they would revisit the request, however no changes were required and the data had been checked three times.
18. On 6 March 2019 the council advised that any data missing prior to May 2017 was no longer held and the old system had been closed down. Therefore no further records could be located.
19. A fourth request for internal review was received and as a matter of courtesy it was sent to the officers concerned. Further enquiries were conducted but after a discussion with officers no changes were considered relevant.
20. At that time it was then the lead up to the formation of the Dorset Council (new Unitary replacing West Dorset District Council from 1 April 2019) which resulted in a failure to issue another response to the applicant who subsequently contacted the Commissioner.
21. At this point the Commissioner would like to draw the council's attention to her guidance on records management¹.
22. The council explained that the officer concerned started dealing with the FOI systems in 2017 and began creating a new system to handle FOI requests and data protection requests for three councils that merged: West Dorset District Council (WDDC), Weymouth & Portland Borough Council, North Dorset District Council.
23. A bespoke system for WDDC was inherited but this only allowed a very limited access with a few administrators. The officer began to adapt this system to allow extra staff and officers to gain access and make the system more efficient. This new system went live in May 2017. The current system reflects the original specification but a new FOI system is being created for Dorset Council, which is not yet live.

¹ <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

24. The council confirmed that the database is the only repository for FOI requests. It is a networked system based on a web based front end and a database back end, as such, no searches of personal computers were carried out.
25. The council carried out searches using the dates in the request and a flag for potential results such as non-disclosure, full disclosure, whether the case was closed at the time.
26. The council explained that on 11 January 2019 the officer extracted the data from the database used prior to May 2017 to enable that data to be accessible to customer services. Once adopted they deleted the obsolete database. This decision to amend/delete data was undertaken by the officer personally thinking the old data was not to be retained under any new system.
27. The council confirmed that a back-up would be in place in a similar format accessed by IT, however the officer has confirmed that there are no other searches or records that can be located to assist.
28. There is no business purpose for which the requested information should be held except for that as a local authority. The requirements for retaining data on FOI are only as per any recommendations by the ICO/National Archives.
29. The schedules were prepared in good faith and only historic information was deleted because it seemed to be of little use. The new system and policy envisaged will need further work and changes for the council to operate efficiently. The officer is also aware that many of the old enquiries on the WDTK website are either not complete or the links do not work. This has led to confusion and inaccurate records.
30. The council is in the process of implementing a new system and the policy currently envisaged will need further work and changes for the council to operate efficiently. The officer is also aware that many of the old enquiries on WhatDoTheyKnow.com are either not complete or the links do not work. This has led to confusion and inaccurate records that the website continues to suffer from.

Conclusion

31. The Commissioner has considered the response provided by the council and has determined that on the balance of probabilities it does not hold any further information which falls within the scope of the request. She accepts that historic information prior to May 2017 was deleted in good faith and the formation of the Dorset Council contributed to its mishandling of this request.

32. Although the Commissioner accepts the council's position in this case, it is clear that adequate procedures were not in place to monitor its compliance with the FOIA.
33. The Commissioner again refers to her guidance to the Section 46 Code of practice. She strongly recommends that the council deal with any outstanding requests as a matter of urgency.

Right of appeal

34. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

**Pamela Clements
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