

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2021

Public Authority: Milton Keynes Council
Address: Civic Centre
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information with regard to missing emails and attempts to recover them. Milton Keynes Council ("the Council") disclosed held information.
2. The Commissioner's decision is that the Council has disclosed all the information it held within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 24 November 2019, the complainant wrote to the Council and requested information in the following terms:

"Please send me the following information in relation to the deletion of [redacted name]'s emails in or around December 2018 and the subsequent failed recover of them:

1. When did the Council learn that [name redacted] had deleted her emails and who discovered this?

2. Why did the Council attempt to recover [name redacted] emails after she left the authority?

- 3. When did the Council attempt to recover the emails and why did this recovery fail?*
 - 4. Copies of all emails between Officers in relation to the deleted emails and the attempts to recover them*
 - 5. Details of any referrals to auditors/the Audit Committee in relation to the failed recover of the emails. If this did not happen, please explain why*
 - 6. Details of any steps taken alter the failed recovery to ensure that emails are retained in accordance with the Council's retention policy I would like the above information to be provided to me as electronic copies."*
5. Following Decision Notice FS50897101¹, the Council responded on 9 September 2020. It disclosed information.
 6. On 10 September 2020, the complainant asked the Council to undertake an internal review of its response to parts 3 and 4 of the request.

Scope of the case

7. The complainant contacted the Commissioner on 12 October 2020 to complain about the way their request for information had been handled, and specifically that the Council was likely to hold additional information in respect of parts 3 and 4 of the request.
8. The scope of this case and of the following analysis is whether the Council has disclosed all the information it held within the scope of the complainant's information request.

Reasons for decision

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618185/fs50897101.pdf>

Section 1 – General right of access to information

9. 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.*

10. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

11. In scenarios where there is some dispute between the amount of information located 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 (Information Rights) decisions, applies the civil standard of the balance of probabilities.

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

Parts 3 and 4 of the request

13. The Commissioner understands that the request relates to the manual deletion of emails from an officer's inbox, and the Council's subsequent action in attempting to recover those emails.

14. Part 3 of the request asks the Council to explain when it took that subsequent action, and why that action failed to recover the emails.

15. In response, the Council did not disclose recorded information, but appears to have provided advice and assistance in which it explained that the subsequent action took place in early November 2018, and that the action failed to recover the emails because it took place outside of the 28-day recovery period following deletion.

16. Part 4 of the request seeks copies of all emails between officers in relation to the deleted emails and the attempts to recover them.

17. In response, the Council disclosed recorded information, namely a chain of emails dated 14 November 2018, 21 July 2020, 22 July 2020 and 9 September 2020.

The Council's position

18. The Commissioner has questioned the Council about the steps it has undertaken to search for any held recorded information within the scope of part 3 and 4 of the request.
19. The Council has stated that the request for assistance to the Council's IT staff was made verbally, and that the 'ticketing' system used at that time (for referrals to IT staff) has since been replaced with a new system, with the tickets associated with the old system not retained, as there is no business need to do so.
20. The Council has stated that involved officers' email accounts were searched by subject, and the resulting identified emails reviewed for relevance and then disclosed.

The Commissioner's conclusion

21. The Commissioner has considered the Council's position, in conjunction with the requests.
22. The Council has confirmed that the request for assistance to the Council's IT staff was made verbally, and further, that there has since been a replacement of the 'ticketing' system used to manage referrals to IT, which has meant that the records associated with the actions by IT staff is no longer retained.
23. The Council has also confirmed that officer email accounts were searched by subject, and the retrieved emails disclosed.
24. Whilst the Commissioner recognises the complainant's frustration with the Council's prior handling of the request (which was the subject of the Decision Notice FS50897101), there is no evidence available to the Commissioner that suggests that the Council's searches have been deficient, or that further recorded information is likely to be held.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, all relevant information has now been disclosed.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

27. 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.
28. 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

Daniel Perry
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