

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2024

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested copies of communications sent by a named councillor to various third parties. Cardiff Council (the Council) stated that the information requested was not held. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any information within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 2 September 2023, the complainant wrote to Council and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000 concerning Councillor [councillor name redacted]. Specifically, I would like to request the following:

1. Copies of all emails forwarded from Councillor [councillor name redacted]'s council email address to her personal Gmail or [councillor email address redacted] email address since she assumed office.

2. Copies of all emails and WhatsApp messages sent from Councillor [councillor name redacted] to [name of third party redacted] since she assumed office.
 3. Copies of all emails sent from Councillor [councillor name redacted] to anyone at Cathod Du Consulting, as well as any messages in any Cathod Du WhatsApp group since she assumed office.
 4. A thorough check of computer servers for any stored communications relating to the above".
3. The Council responded on 18 September 2023 and stated that it did not hold the information requested. It advised that elected members are not public authorities for the purposes of FOIA and as the councillor named in the request was not a cabinet member or a Chair of a local committee any information held by them would not fall under the provisions of the FOIA.
 4. On 19 September 2023 the complainant requested an internal review of the Council's handling of the request.
 5. The Council provided the outcome of its internal review on 5 October 2023 and upheld its decision that no information was held.

Scope of the case

6. The complainant contacted the Commissioner on 9 October 2023 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation is to determine whether, on the balance of probabilities, the Council holds any information within the scope of the request.

Reasons for decision

Section 1 – general right of access

Section 3 – information held by or on behalf of a public authority

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.

9. 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

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(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."

10. The issue for the Commissioner to determine is whether ACAS holds the requested information and, if not, whether it is held by another person on its behalf.

The Council's position

11. In its initial responses to the complainant the Council explained that elected members were not public authorities themselves for the purposes of the FOIA. As a result any information which a councillor holds for their own purposes for example for political work or relating to personal matters, was not covered by the FOIA. The Council added that information held by a councillor would only be covered by the FOIA if it is held for the purposes of Council business.
12. The Council confirmed that the councillor named in the request "has no personal authority to act on behalf of the Council, the Cabinet or any Council Committees nor to represent the Council on any outside bodies". They are not a Cabinet member or a Chair of any Council Committee. As such the Council stated that, if any information is held by the councillor concerned it would not constitute information held on behalf of the Council itself.
13. The Council advised the Commissioner that it had checked the website of Cathod Du Consultancy, which is a PR consultancy. The person named in the request, who is a former councillor, is its Founder Director and the councillor named in the request is listed as a Consultant Associate. The Council considers that this suggests that the two individuals are colleagues, both working for Cathod Du Consultancy. The Council confirmed that it is not aware of any Council related relationship or business with Cathod Du Consultancy or with the individual named in the request since the the councillor in question was elected to office in May 2022. On this basis, the Council concluded that if any information were held by the councillor concerned it would be held for their own purposes, and not connected with any Council business.
14. The Council advised the Commissioner that searches were carried out of all published Committee decision making papers, Members Services casework support files and the Member Enquiry. The search terms used

in these searches included 'Cathod', Cathod Du Consulting' and the name of the third party named in the request. These searches did not identify any relevant information. The Council advised that, as Democratic Services is responsible for supporting elected members if any relevant information was held, it would be held within this department.

15. In addition, the Council advised the Commissioner that it had consulted with the councillor concerned who confirmed that they did not hold any information relating to Council business falling within the scope of the request.

The complainant's position

16. The complainant confirmed that the request was specific to communications relating to official matters which may be stored on Council servers. They pointed out that councillors often engage in activities beyond their formal role as an elected member which may still constitute council business. They also highlighted that councillors would be able to use both their official council email address and any personal email address when conducting council business.
17. The complainant considers that the Council should take "a broader review of its records and consider a more inclusive definition of what constitutes Council business. It's in the public's interest to comprehend the activities and communications of elected representatives, especially regarding official duties".

The Commissioner's position

18. It is not disputed that a Council is made up of councillors and that, once elected, councillors become members of the Council. However, this does not mean that everything councillors do represents council business and is therefore covered by FOIA. The point is a functional one – are they acting in their capacity as members of the council in carrying out the functions of the council, or are they carrying out a separate constituency role or even acting in a purely personal capacity?
19. As set out in the Commissioner's guidance on information held for the purposes of FOIA¹ unless information held by a councillor relates to

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-foia/>

council business, it is not held by the Council in its own right, and there is no right of access under the FOIA.

20. In reaching a decision on this case the Commissioner has taken into account the searches undertaken by the Council and the councillor concerned, which he considers to be reasonable and proportionate. The Commissioner also notes the Council's representations concerning the status of Cathod Du Consulting and the fact that it is not aware of any council business with the organisation or the person named in the request.
21. Having considered the circumstances of this case, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the requested information, nor is it held by another party, ie the councillor concerned, on behalf of the Council. The Commissioner therefore finds that the Council was correct to confirm that it did not hold any information falling within the scope of the request.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF