

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

### **Decision notice**

**Date:** 7 August 2024

**Public Authority:** Cumberland Council  
**Address:** Civic Centre  
Rickergate  
Carlisle  
CA3 8QGX

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

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1. The complainant requested information relating to a consultation on winter road gritting. Cumberland Council (the "Council") disclosed some information and confirmed that other information was not held.
2. The Commissioner's decision is that the Council correctly confirmed that it does not hold the consultation responses identified in the request and that it complied with section 1(1) but that in disclosing some of the requested information outside the statutory time limit it breached section 10(1).
3. The Commissioner does not require further steps.

## **Request and response**

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4. On 8 January 2024, the complainant wrote to Cumberland Council (the "Council") and requested the following information:  
  
"...please supply me with details of the most recent consultation on winter road gritting which informed a decision in December 2020 to reduce the number of roads to be gritted. In particular, I am requesting the date of the consultation, the closing date, who was consulted, and copies of the responses received."
5. The Council responded on 13 February 2024 and provided a narrative regarding the consultation in question, confirming who was consulted.
6. On 22 February 2024 the complainant asked the Council to carry out an internal review. The complainant highlighted that the Council's initial response did not provide the requested dates or copies of consultation responses.
7. Following an internal review the Council wrote to the complainant on 22 April 2024. The Council provided the requested consultation dates and confirmed that further information was not held, clarifying that the consultation was a verbal exercise.

## **Scope of the case**

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8. On 28 April 2024, following the Council's internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner has considered whether the Council responded to the request within the statutory time limits and whether it disclosed all the relevant information that it holds.

## **Reasons for decision**

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### **Section 1(1) – duty to provide information held**

10. Section 1(1) of the FOIA requires that a public authority must inform a requestor whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.

11. Section 10(1) of the FOIA requires authorities to comply with section 1(1) within 20 working days.
12. In this case the Council confirmed that it did not hold the requested copies of consultation responses. The complainant disputes this.
13. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is 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.
14. 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). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
15. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

### **The complainant's position**

16. The complainant confirmed that they had asked for details of responses to a consultation held by the Council which was used to inform a decision it made in December 2020 to dramatically reduce the winter gritting programme.
17. The complainant considers that it is unlikely that an important consultation of this nature, which would have such a dramatic effect on the ability of road users to travel freely and safely in winter weather, be carried out on a word-of-mouth basis with no records kept of responses.

### **The Council's position**

18. By way of background, the Council has explained that, from 1 April 2023 Cumberland Council replaced Cumbria County Council, Allerdale Borough Council, Copeland Borough Council and Carlisle City Council as a new unitary authority.
19. The Council has confirmed that only one of the six Highway Network Managers who were involved with the consultation are still employed by the Council and they have confirmed that they do not hold any records.

The Council has confirmed that it is not possible to access the emails of staff who left the Council some 4 years ago.

20. The Council has explained that the consultation in question was relatively informal and it was not considered that staff involved retain responses once the purpose for which the task was made was completed.
21. The Council explained that consultation responses were predominantly verbal and were passed on in the same way. The Council confirmed that the issues considered and conclusions reached were published in a Cabinet Report which was disclosed to the complainant<sup>1</sup>.

### **The Commissioner's conclusions**

22. Firstly, the Commissioner is mindful that the FOIA is not prescriptive about the types of records which should be made and retained by public authorities. The code of practice issued under section 46 of the FOIA<sup>2</sup> provides recommendations as to good practice in this regard, however, under section 1(1), the Commissioner can only consider what information has actually been recorded and retained at the time a request is made.
23. In this case, the Commissioner understands why it might be reasonable for the complainant to believe that the Council would have kept a record of consultation responses.
24. However, having considered the relevant background provided by the Council, its confirmation of the informal, verbal nature of the consultation and the searches it carried out for relevant information the Commissioner considers that, on the balance of probabilities, it is likely that it has correctly confirmed that the information is not held.
25. The Commissioner has, therefore, concluded that the Council complied with section 1(1) of the FOIA.

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<https://cumberland.moderngov.co.uk/Data/CuCC%20Cabinet/202012171000/Agenda/Agenda%20reports%20pack.pdf>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1010395/Freedom\\_Information\\_Code\\_Practice\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf)

26. However, in failing to provide some of the requested information (the consultation dates) until the time of its internal review, the Commissioner finds that the Council breached section 10(1) of the FOIA.

## Other matters

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27. Although they do not form part of this notice the Commissioner would like to note the following matters.

### **Section 45 code of practice – internal reviews**

28. The Code of Practice issued under section 45 of the FOIA (the “Code”) contains recommendations for authorities as to good practice in the handling of requests.

29. In relation to internal reviews, paragraph 5.4 of the Code states:

“Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.”<sup>3</sup>

30. In this case the complainant requested an internal review on 22 February 2024 and the Council provided its review response on 22 April 2024.

31. The Commissioner considers that it is unlikely that the Council’s practice in this respect conformed to the recommendations of the Code. He expects that, in future, the Council will ensure its responses follow the recommendations of the Code.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

## **Right of appeal**

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32. 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](mailto:grc@justice.gov.uk)

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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Christopher Williams**  
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