

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2012

Public Authority: Wirral Metropolitan Borough Council
Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision

1. The complainant has requested information relating to Wirral Metropolitan Borough Council's (the "council") review of its approach to handling requests for information made to its Department of Adult Social Care (DASS). The complainant also asked for the names of staff involved in this review.
2. The council confirmed that discussions regarding this matter were conducted exclusively verbally and it did not hold any recorded information. However, during the course of the Commissioner's investigation, the council provided the complainant with the names of staff involved in the review. As this information had not been recorded but recalled from memory this disclosure was made outside the scope of the FOIA.
3. The Commissioner's decision is that the council has correctly confirmed that it does not hold the information.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 14 July 2011 the complainant made the following request for information under the FOIA:

"You have previously disclosed that you have reviewed the way DASS handles Freedom of Information Requests. Please disclose minutes of the meetings, documents relating to reviews of the process and the

new system in place that will make it more responsive to Freedom of Information Requests.

Could you disclose the lead officer(s) involved in the review."

6. The council responded on 15 July 2011 and confirmed that it did not hold any recorded information.
7. On 1 December 2011 the complainant asked the council to conduct an internal review of its handling of the request. At the time the complainant submitted their complaint to the Commissioner the council had not carried out an internal review.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. At the time of their complaint to the Commissioner the council had not conducted an internal review. Despite being given several opportunities to conduct a review, initially by the complainant and subsequently by the Commissioner, the council declined to do this. The Commissioner has, therefore, assumed that the council has not provided an internal review and has proceeded with his investigation and made a decision.
10. The Commissioner confirmed with the complainant that his investigation would look at whether the council is correct when it says that it does not hold the requested information.

Reasons for decision

Section 1(1) – General right of access

11. Section 1 of the FOIA provides 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 of the description specified in the request, and if that is the case, to have that information communicated to them.
12. In its response to the request the council explained "There is no recorded information to disclose to you as the discussions that took place were initially verbal over the telephone; and also discussions took place face to face with no minutes being taken."

13. In correspondence with the council the complainant expressed their incredulity that no recorded information was held and stated "I can only conclude from this request, that in trying to improve the performance of DASS in answering FOI requests DASS have failed to create any formal procedure, failed to minute any discussion, or disclose who met with whom."
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.
15. In order to assist with this judgement the Commissioner wrote to the council and asked it to explain what searches had been carried out for information falling within the scope of the request.
16. The council confirmed that no search was carried out as the officer handling the request also attended the informal meetings which discussed the review of DASS FOI procedures referred to in the request. The officer was, therefore, able to unequivocally confirm that no record had been taken of the review process referred to in the request.
17. The council confirmed that the revised process for handling requests in this department was prompted by the departure of an officer formerly dealing with FOI requests.
18. The council explained to the Commissioner that the revised process involved no changes to officers' job description and it was agreed verbally to test a new approach and see how it performed.
19. The Commissioner notes the complainant's concern that no record had been kept of this new request handling process. The code of practice issued under section 46 of the FOIA (the "section 46 code") contains recommendations for public authorities as to good practice in respect of

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072.

the making and maintenance of records². Conformity with the section 46 code is not a statutory requirement and there are no explicit prescriptions regarding the information which authorities should hold.

20. In general terms, the section 46 code recommends that authorities should ensure that they maintain such records as they see fit in order to document decision making or to account for actions. However, the Commissioner recognises that it is for authorities to decide what records should be kept in order to facilitate their public functions.
21. For the purposes of determining compliance with the duty to provide requested information which is held, it is only necessary for the Commissioner to be satisfied with the veracity of an authority's confirmation in this regard. In this instance, on the basis of the council's explanation that the revised approach to request handling referred to in the request was a minor, apparently ad hoc decision, he is satisfied that the council has correctly confirmed that no record was made and that no relevant information is, therefore, held.
22. The Commissioner has, therefore, concluded that the council has complied with its duty under section 1(1) of the FOIA.

Other matters

23. Although they do not form part of this notice the Commissioner would like to record the following matters of concern.
24. The code of practice issued under section 45 of the FOIA (the "code") recommends that any expression of dissatisfaction with an authority's handling of a request for information should be dealt with as a complaint and progressed through an authority's complaints or 'internal review procedure'³. The Commissioner's guidance recommends that internal

² The section 46 code is published here: <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

³ The code is published here: <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

reviews should, ordinarily, take no longer than 20 working days to complete⁴.

25. In this instance, the council failed to conduct an internal review within the timeframe recommended by the code and the Commissioner's guidance. In future, the Commissioner expects that the council will deal with requests for internal review promptly and within the timescales he has set.

⁴ The ICO guidance is published here:
http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/refusing_a_request.aspx

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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