

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2021

Public Authority: Felton Parish Council
Address: 65 Main Street
Felton
Morpeth
Northumberland
NE65 9PT

Decision (including any steps ordered)

1. The complainant requested from Felton Parish Council ("the Council") information relating to a printer bought by the Council in 2013 and disposed of in 2019. The Council subsequently located some information which related to part 2 of the request and provided this to the complainant. With regard to the remaining parts of the request, the Council stated that this information was not held.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any recorded information falling within parts 1 and 3 of the request. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Background

3. The Commissioner is aware of the background to this request, which is that the complainant believes the Council unlawfully purchased a £7000 printer on behalf of an external organisation [name redacted]. The complainant argued that "*the purpose of this unlawful transaction is to allow [name redacted] to benefit from a large government discount to which they were not entitled and to unlawfully avoid paying VAT.*"

4. The complainant stated that [name redacted] avoided paying VAT by entering the purchase of the printer through the Council's accounts. He said that the Council received the full price of the printer purchase excluding VAT as a matching payment from the external organisation [name redacted] and that this organisation described this within its accounts as either miscellaneous or a donation. He added that [name redacted] has full possession and control of the printer, pays all running costs and had paid the insurance premium. The complainant is of the view that these are serious matters which the Council had disputed. He said that [name redacted] continues to trade unlawfully, publishes no public accounts and derives income from a council asset.
5. The complainant strongly believes that the information requested "does exist" and he considers duplicates can easily be obtained from Konica Minolta Sales who supplied and maintained the current and previous machines.

Request and response

6. On 22 November 2019, the complainant wrote to the Council and requested information in the following terms:

"This is a FOI request for the following information which Felton PC hold.

- 1. Copy of the current asset register which is not on the PC website.*
 - 2. Details of model and serial number of old Konica/Minolta bizhub disposed of in 2019. It was purchased in 2013 and appears on old asset register as item ref 013*
 - 3. Details of where it was disposed of and what residual value it had."*
7. On 30 January 2020 the Council responded. With regard to question 1 of the request, the Council stated that the information was available on its website. With regard to the remaining parts of the request, the Council said that it does not intend to make any further response in respect of the printer and treated these requests as vexatious under section 14(1) of the FOIA.
 8. On 23 February 2020 following our involvement, the complainant asked the Council for an internal review.
 9. On 21 April 2020 the Council provided its internal review response. It maintained its position to apply section 14(1) to the request as it deemed the request to be vexatious.

Scope of the case

10. The complainant contacted the Commissioner on 28 April 2020 to complain about the way his request for information had been handled. Specifically, regarding his concerns about the Council, as he believes that the Council engaged in unlawful financial transactions in connection with the purchase of the printer and of its disposal. He also considers that the Council had not satisfied his original FOI request in its entirety.
11. During the course of the Commissioner's investigation, the Council decided to withdraw its reliance on section 14(1) (vexatious requests) as a basis for refusing to comply with the request, and stated that the Council does not hold information to this request. The Council informed the complainant of its change of position on 21 December 2020. The complainant was also informed by the Commissioner, that her investigation would not include the Council's previous application of section 14(1) of the FOIA to his request, but that it would relate solely on information "not held".
12. Also, during the course of the investigation on 13 February 2021, the Council provided the complainant with information relating to part 2 of his request. The Council stated that it had located the original invoice for the purchase of the 2013 printer which included the serial number for that printer. It explained that the invoice was stored in a folder in amongst two boxes of planning folders, and not within the other financial records which it holds. The Council said that it had not originally searched through the planning boxes as the folders within them related to planning matters.
13. The following analysis focuses on whether the Council holds any recorded information to parts 1 and 3 of the request.

Reasons for decision

Section 1 – information held/not held

14. Section 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 the information within the scope of the request,

b) and if so, to have that information communicated to him."

15. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The complainant's position

16. The complainant stipulated that he is seeking information relating to the disposal of the Council's old printer and its residual value. He made it clear within his submissions to the Commissioner, that he does not accept the information requested is not held by the Council, as he considers any local authority could be reasonably expected to hold this information.
17. The complainant believes that the Council's accounts should contain recorded information about how or why the printer was disposed. He is of the view that the Council has a legal duty to record all financial transactions including disposal of assets. He said that "*asset registers should provide unique item identifiers and record disposal as well as acquisition, whereas the 2013 printer has disappeared completely with no record of it on this copy of the asset register.*" During the Commissioner's investigation of this case, the complainant informed her that he had obtained information relating to part 1 of his request – copy of the current asset register, by other means and that it was not supplied to him by the Council.
18. The complainant argued that if this information is not held by the Council (or it cannot be located) he believes that there is something "*seriously wrong with the Council's bookkeeping, or someone has disposed of this document unlawfully.*" He also expressed his view and stated that "*the purpose of the Council hiding the asset register appears to be linked to the fact that the asset register record of the unlawfully purchased 2013 printer, item 13 has disappeared and replaced with the printer purchased in 2018, now listed as item 13.*" The complainant said that an asset register is a separate legal document with a specific purpose, it should be updated annually and be published as part of the annual audit documentation within the accounts.
19. With regard to the Council initially stating to the complainant that the information to part 1 of his request – current asset register is available on its website, this has been searched and it is not readily available on the site. The complainant said that it was historically listed in the audit section of the website but that it is no longer available, nor does the information appear in the accounts section.

20. The complainant provided the Commissioner with a link to the Council's website and referred to its "*property management and risk assessment working group policy document*" which resides in the Policy and Procedure section of the website. He argued that this document is a policy document for a working group and is not an asset register. Therefore, the information to part 1 of his request, the complainant considered had not been provided.
21. With regard to part 3 of the request relating to the residual value of the printer, the complainant said that the disposed printer was less than five years old, was in full working order and fully maintained throughout its period of ownership with a contract with Konica Minolta. Therefore, the complainant argued that this printer had a residual value and that the Council has a duty to safeguard the value of its assets, even at the point of disposal.
22. The complainant argued that the Council had not provided him with satisfactory answers to parts 1 and 3 of his original request. He said that information was not provided nor was an explanation given on how "*a five year old £7000 printer, maintained in good working order and with a quantifiable and achievable street value and listed on the Council's asset register, was disposed of and its intrinsic value released for the benefit of the Council.*"
23. The complainant believes that the reason why the Council had stated information (record of disposal) is not held is because "*the printer is operated, maintained, housed, insured, paid for and owned by the external organisation [name redacted] and not the Council.*" He is of the view that [name redacted] hold all the maintenance contract documents directly with the supplier – Konica Minolta, and dealt with every aspect of its physical removal. He also believes the printer is held at [name redacted] to which the Council does not have access to.
24. Although the Council provided the complainant with information relating to part 2 of his request – the invoice containing the serial number of the printer, the complainant expressed his opinion about this. Within his argument he referred to the Council's previous response to the request in which it stated information was not held. He does not consider it credible that the Council later affirmed it had found the document in the "*wrong box*", and he said "*unless of course it was removed from the financial records deliberately as an attempt to hide any documents relating to the unlawful purchase of a £7000 printer in 2013 on behalf of an outside organisation, [name redacted].*" The complainant believes that the purchase of the printer was hidden, and said that it did not appear within the Council's accounts, budget or minutes for 2013.

The Council's position

25. The Commissioner asked the Council a series of questions to determine whether any relevant recorded information was held. This included questions about the searches the Council conducted to locate the requested information and she asked for details about the possible deletion or destruction of information which might be relevant to the complainant's request. The Commissioner also asked the Council to provide any general explanations or arguments as to why it should not be expected to hold information relating to the request.
26. The Council stated that it had not been able to locate any recorded information relating to the disposal of the 2013 printer – part 3 of the request.
27. The Council was asked whether it had checked with its financial accounts department for the information requested. It said that it does not have a separate financial accounts section, and that the Parish Clerk is responsible for accounts, setting up payments and maintaining financial records. The Council was also asked whether or not duplicate information regarding the printer could be obtained from the original supplier (Konica Minolta) and it stated that it could not provide a definitive answer to this question. The Council considered that as the supplier is a large company, that it would hold records of financial transactions. However, the Council said that it does not know whether the supplier would hold any record of the disposal of the 2013 printer, when the Council purchased the current printer. The Council also considered that it could be possible to obtain information or records from the original supplier which would include information the complainant is seeking.
28. The Council, when asked about its searches, explained that it holds three files containing all financial paperwork since the current Parish Clerk was appointed in 2017. The Council said that it searched through the relevant files for any paperwork relating to the current printer which might hold recorded information regarding the disposal of the 2013 printer. It said that it also holds several boxes of paperwork which preceded the Parish Clerk's appointment. The Council further explained that one of the boxes contains folders (2014/2015 onwards) for financial documents i.e. invoices. The Council said that a search was carried out through these papers for any records relating to the printer in question.

29. A search, the Council said, for electronic records was also conducted using the terms: "*Konica, Minolta, Printer, the name of the sales representative at Konica Minolta*". The Council confirmed that there had not been any emails received detailing the record of the 2013 printer or information regarding disposal of the printer. A document search on the Council's laptop using the same search terms was also carried out. The Council said that did not find "*any recorded information as to where the printer was disposed to by Konica Minolta or what the residual value was*". This information was not included in any email correspondence or on the invoice for the current printer, or the order form, or the quote. The Council reiterated that it does not hold any other paperwork on which the information requested may be recorded. The Chairman of the Council was also asked by the Clerk to carry out similar searches on his personal computer and email address, and the Council confirmed that he did not find any recorded information relating to the request.
30. The Council stated that the other boxes which it holds are archive record boxes. These boxes, it explained, were stored in a filing cupboard at the village hall and a review of the contents was conducted. The Council discovered two further financial folders amongst the planning folders, and one of the folders related to the year of purchase of the 2013 printer. Following its searches through the additional storage boxes, the Council said it was able to locate in a financial folder, which had been stored in a box with planning papers, the invoice for the printer. This document included the serial number for the printer and this information, as it related to part 2 of the request, was provided to the complainant.
31. With regard to recorded information destroyed/deleted, the Council confirmed that it had not destroyed or deleted any information relevant to the scope of the request.
32. The Council said that the information requested is not specifically listed on its document retention policy. It confirmed that the serial number for the printer in question has now been located on the purchase invoice, and the document retention policy stated that copy invoices should be kept for 7 years.
33. The Council also confirmed that there is no statutory obligation to retain serial numbers or details of where the printer has been disposed to. It said that copy invoices (which in this case included the serial number) should be kept for six years for VAT purposes.
34. The Council informed the Commissioner that going forward, the Council has decided to record the serial numbers of assets where appropriate in case of, for example, theft.

The Commissioner's view

35. The Commissioner's view is that the Council does not hold the requested information.
36. 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. She will also consider the actions taken by the public authority to check that the information was not held and any other reasons offered by the public authority to explain why the information was not held.
37. The Commissioner's remit is not to determine whether information should be held, she is also not expected to prove categorically whether the information was held. The Commissioner is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. She will reach a decision based on the adequacy of the public authority's search for the information and any other reasons explaining why the information is not held, such as there being no business need to record it.
38. The Commissioner has investigated whether the Council holds recorded information relevant to the request by asking the Council questions about the searches it has made to locate the information which the complaint seeks, and questions about the possible deletion or destruction of information which might be relevant to the request.
39. The Council advised the Commissioner that it carried out searches of all of its existing paper sources and relevant electronic records, in order to locate the information specified by the complaint in his request.
40. The Commissioner recognises that the complainant strongly believes the Council needs to account for this assets disposal. He clearly has concerns about the printer being previously listed as item 13 on its asset register, and that currently the item is no longer listed on the asset register. Therefore, this has contributed to the complainant being sceptical about the Council stating the information requested is not held. The Commissioner is not however, in a position to make any sort of judgement of his claims. The complaint made it known to the Commissioner that he suspects improper conduct of this matter, and he believes that there has been an "*unlawful transaction*" regarding the printer. He also disbelieves that the information was "*in the wrong box*" regarding part 2 of his request (the invoice with the printer's serial number). He argued that the invoice should be stored in a file with the accounts for the total year, and not filed separately.

41. It is not the Commissioner's role to make a judgement on these arguments. The complainant has the right to make a complaint to the Local Government Ombudsman if he believes that there had been any maladministration by the Council in its actions. As the Commissioner has no remit or powers to investigate and make a judgement on such matters, she is not in a position to take these allegations into account in her deliberations over these concerns.
42. The complainant is of the view that disclosure of the information would confirm his suspicions that the printer was sold privately or as a part exchange. The Commissioner understands that the complainant is not satisfied with the Council's explanation relating to his request, and that he does not believe the information is not held by the Council. Whilst the Commissioner notes the complainant's scepticism, the Commissioner has not seen any evidence to contradict the Council's assertions.
43. The Commissioner accepts that it was entirely reasonable for the complainant to expect the Council to hold information about the printer at the date of the request. However, the Commissioner considers that the Council carried out adequate and appropriately-targeted searches in response to his request, which would have been likely to retrieve information if it was held.
44. Having considered the Council's response, she is satisfied that the Council's searches for information falling within the scope of questions 1 and 3 were focused, logical and sufficiently thorough to ensure that all relevant information was located. On the basis of the evidence provided to her, the Commissioner is therefore satisfied that on the balance of probabilities, the Council does not hold any further information beyond the information already located and provided to the complainant. The Commissioner does not require the Council to take any steps as a result of this decision.

Right of appeal

45. 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

46. 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.
47. 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

Phillip Angell
Group Manager
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