

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

### **Decision notice**

**Date:** 30 September 2022

**Public Authority:** Essex County Council

**Address:** County Hall

Chelmsford

Essex

CM1 1QH

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

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1. The complainant requested from Essex County Council ("ECC") information relating to the due diligence checks in relation to its role with the South England Local Enterprise Partnership ('SELEP'). The information relates to SELEP awards made to Seachange Sussex (SCS). ECC denied that the requested information was held. The complainant argues that it must hold it.
2. The Commissioner's decision is that ECC does not hold the requested information.
3. The Commissioner does not require ECC to take any steps.

## **Request and response**

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4. On 5 September 2021 the complainant made the following request for information under the FOIA:

“FOI QUESTION:

To comply with the minimum Public Procurement due diligence checks & balances described above, prescribed by the existing accountability system and both Essex and East Sussex Local Authorities’ statutory responsibilities, and required for compliance with the National Local Growth Assurance Framework - the following information must be held by, or available to SELEP and/or its partner authority, East Sussex County Council – as vetted in the SELEP award of £63.04 million public money to SeaChange Sussex.”

5. The complainant then set out a table of the information she was requesting. This, in short, requested a list of members of the organisation in question and their grading.
6. ECC responded on 30 September 2021 and said that it did not hold the requested information.
7. ECC provided an internal review on 17 November 2021. It maintained its position that the council does not hold the requested information. It suggested, however, that East Sussex County Council (ESCC) may hold the relevant information.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 20 November 2021 to complain about the way her request for information had been handled. She argues that if ECC was acting in accordance with its duties it must hold the requested information.
9. The scope of this case and of the following analysis is therefore whether ECC is likely, on the balance of probabilities, to hold the requested information for the purposes of section 1.

## Reasons for decision

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### Section 1 – General right of access to information

10. 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.*

11. 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.

12. 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 ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the ICO 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).

### The complainant's position

14. The complainant argues that her information request relates to the pre-contract due diligence stage of the SELEP grant award process; essentially, the checks and balances which are the responsibility of SELEP in order to ensure that public money is awarded to suitable and appropriate organisations. She argues that ECC should hold the information she has requested as part of its due diligence on SCS prior to contracts which amount to over £60 million being awarded to it.

15. She argues that it must hold this information as, under the SELEP Assurance Framework and associated legal agreements, ECC is accountable for overseeing the award of millions of pounds of public money granted by SELEP, and it must ensure that all grant awards are regular, proper and comply with all government requirements.

ECC's position

16. ECC argues that neither it, nor SELEP have any form of contractual relationship with SCS; it therefore has no requirement to hold the information requested on the membership of the SCS Board.
17. It argues that ESCC was awarded SELEP funding by ECC to support the delivery of agreed business cases within their region. A number of these business cases are being delivered with SCS as the delivery partner of ESCC, and ESCC therefore has a contractual relationship with SCS to deliver the agreed programmes funded with the grants awarded by SELEP.
18. The agreement requires that ESCC ensures that it undertakes the appropriate due diligence and manages the SELEP funding in accordance with the requirements of the SELEP Assurance Framework. ESCC then provides ECC with an annual declaration to confirm that any funding allocated has been applied in accordance with the requirements of the SELEP Assurance Framework. It considers, therefore, that ESCC may hold the information which the complainant requested, but confirmed that ECC does not hold it because of this arrangement.
19. It said that it advised the complainant that ESCC may hold the requested information as it is aware that an ESCC Member is a Director of the SCS.
20. It said that the business cases that supported applications to SELEP for funding are set out on the SELEP website. These describe the proposed governance arrangements of the respective programmes and set out the high-level summary membership arrangements of SCS at the time of application. They do not, however, include the full details requested by the complainant.
21. Finally, it confirmed that after carrying out appropriate consultation with the relevant departments within ECC, and given the above explanation, it has concluded that no information is held by ECC falling within the scope of the complainant's request.

The Commissioner's analysis

22. It is not the Commissioner's role to ensure that authorities comply with the SELEP requirements. The question for the Commissioner is simply whether the requested information is held by ECC or not.
23. The Commissioner has considered the Council's position, in conjunction with the request.

24. The complainant considers that the council must hold this information if it has complied with the Local Growth Fund Accountability System and associated government requirements. ECC has, however, clarified that the due diligence process is carried out by ESCC in regard to the SELEP awards to SCS. It has further explained that this is why it suggested to the complainant that she remake her request to ESCC. ECC has also confirmed that, for this reason, it does not hold the requested information.
25. There is no contradictory evidence available to the Commissioner that indicates ECC's position is wrong.
26. On the basis of ECC's explanation of the arrangements which it has in place with ESCC, the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**