

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 22 February 2007

**Public Authority:** Hertfordshire County Council  
**Address:** County Hall  
Pegs Lane  
Hertford  
SG13 8DE

#### Summary

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The complainant asked for information relating to a correction that was made in The Fire and Rescue Community Safety Plan Topic Group Report. Initially the complainant asked for evidence of the correction being made by the Executive Member and, following a letter of clarification from the Council, the complainant submitted a further request for evidence of both the Chief Fire Officer and the Executive Member having made the correction. The Commissioner investigated and found that Council had not met the duty to confirm or deny whether it holds information under section 1 of the Act in relation to either request. He asked the Council to review its response to both requests and it subsequently confirmed that it holds no records of the Executive Member making the correction but the Chief Fire Officer had sent an email about the correction which had not been retained. Following the Commissioner's request that the Council explain what checks had been made, the Council located a copy of the email and supplied it to the complainant.

#### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

#### The Request

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2. The complainant sent an email to the Council on 20 March 2006 further to on-going email correspondence about a correction made in the Fire and Rescue Community Safety Plan Topic Group Report. She made the following request:

“Could you please provide evidence of the Executive Member having corrected the comment marked \* before the draft final report and the action taken by the Topic Group as I would expect them to have asked for evidence to substantiate the correction.”

3. The Council responded in an email on 20 March 2006 and explained that:

“...the reference was initially corrected by the Chief Fire Officer in commenting on the draft minutes but his comments were received after the minutes had been published. It was an administrative oversight that this was not corrected within the minutes of the subsequent meeting. Officers I have interviewed have clarified my own recollection that this was mentioned by the Executive Member but it is correct that both the minute and the correction should be reflected in the final report...”

4. The complainant responded on 12 April 2006 stating that the explanation provided was not evidence that the correction was made. She made a further request for evidence of both the Executive Member and the Chief Fire Officer making the correction.

5. The Council responded on 15 April 2006 and stated that the question had already been answered. It referred the complainant to its complaints procedure and the Local Government Ombudsman.

## The Investigation

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### Scope of the case

6. In a separate complaint to the Commissioner about Hertfordshire Fire Authority, the complainant clarified on 6 October 2006 that she also wished to complain about the Council's handling of her request for information. The complainant specifically asked the Commissioner to consider whether the Council had complied with section 1 of the Act in relation to her requests for evidence of the correction being made by the Executive Member and the Chief Fire Officer.

7. The Commissioner has not considered information provided to the complainant about the actions of the Topic Group because this did not form part of the complainant's complaint to the Commissioner.

8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

9. The Commissioner wrote to the Council on 10 October 2006 and asked the Council to review its response to the complainant. He specifically asked the Council to confirm or deny whether it holds the information.
10. The Council wrote to the complainant on 3 November 2006. It explained that the Chief Fire Officer had emailed comments on the draft minutes of the meeting held on 24 January 2006 suggesting that the minutes did not accurately reflect what was said by the Executive Member. It stated that this correction had been received after the minutes had been formally issued. The Council stated that it had not retained a copy of the email and that the details of the email were clarified subsequently in discussions between the author of the report, the Democratic Services Officer, the Chief Fire Officer and the Executive Member. It confirmed that none of these discussions were recorded other than in the extract from the final report which had already been supplied to the complainant. The Council stated that it had explained this to the complainant during numerous telephone conversations.
11. Further to the complainant's expression of dissatisfaction with the response during a telephone conversation on 10 November 2006, the Commissioner wrote to the Council on 10 November 2006 and asked it to give an account of the checks it had made to ascertain that the information is not held. He asked the Council to confirm in particular that it had checked that the email from the Chief Fire Officer had not been stored, archived or backed-up. He also asked the Council to respond to the following:
  - What was the date of creation of the record and its deletion?
  - What is the Council's records management policy and was this followed?
  - If there is no relevant records management policy, can the Council demonstrate the way in which it has handled comparable records?
  - Are there any legal requirements which would relate to the retention of the information requested?
12. The Council contacted the Commissioner by telephone on 13 December 2006 and explained that the email had been found in the archived emails of the Democratic Services Officer. It stated that it did not consider that the complainant had specifically asked for a copy of the email but it agreed to supply the information to the complainant. The Council wrote to the Commissioner to confirm its position on 14 December 2006.
13. Further to a telephone conversation with the complainant on 9 January 2007, the Commissioner completed an assessment of the complaint and supplied a copy to the complainant and the Council on 10 January 2007. The complainant contacted the Commissioner on 23 January 2007 and maintained her position that the information had been withheld deliberately.

## Findings of fact

14. The complainant has alleged that the Council has not complied with section 1 of the Act because it neither confirmed nor denied holding the information in response to her information requests. Further to the provision of an email, she has also alleged that the Council deliberately withheld the information.
15. The Council has stated that it has attempted to clarify the circumstances surrounding the correction on a number of occasions and that the complainant did not specifically ask for the Chief Fire Officer's email.

## Analysis

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### Procedural matters

16. It is apparent that until the Commissioner's involvement, the Council had been attempting to deal with the complainant's requests for information as general queries to be answered within the normal course of business rather than as requests under the Act. If the Council had dealt with the initial request properly according to the provisions of the Act, the Commissioner considers that, as the request was not ambiguous, the Council should have been able to confirm or deny whether information was held on the correction being made by the Executive Member but it did not do this.
17. The Commissioner considers that the subsequent request made by the complainant for evidence of the correction being made by the Chief Fire Officer went beyond the terms of the first request and, as such, it would not have been reasonable for the Council to confirm or deny whether this information was held in response to the first request. However, the Commissioner also considers that as it was reasonably clear that evidence of another official having made the correction was also likely to have been of interest to the complainant, the Council correctly provided advice and assistance, albeit not consciously in line with the Act, which enabled the complainant to make a further request. Unfortunately, as the Council continued to respond according to the normal course of business, it also failed to confirm or deny whether it held information on the correction being made by the Chief Fire Officer.
18. The Council has confirmed that an email was sent on 26 January 2006 in which the Chief Fire Officer suggested that the minutes did not accurately reflect what was said by the Executive Member and this subsequently led to the correction in the report. The Commissioner considers that this email clearly falls within the scope of the complainant's request for evidence of the correction being made by the Chief Fire Officer. He has not considered as relevant arguments proposed by the Council that the complainant did not specifically ask for the email as the Act makes provision for access to information rather than specific documents. It seems likely that an effective search for the information was not conducted until following the Commissioner's intervention.

## **The Decision**

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19. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the Act. Although it is apparent that the Council attempted to clarify the circumstances surrounding the correction being made, by not identifying whether it held information within the scope of the requests, the Council breached section 1 of the Act. The Commissioner does not consider that there is evidence to substantiate the complainant's allegation that the information was withheld deliberately.

## **Steps Required**

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20. The Commissioner requires no steps to be taken.

## Right of Appeal

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21. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 22<sup>nd</sup> day of February 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**