

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2012

Public Authority: Devon County Council
Address: County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Decision

1. The complainant has requested information relating to a pedestrian footbridge. Some information was disclosed but the complainant remained dissatisfied and is of the view that not all information held by the public authority has been disclosed in response to his request.
2. The Commissioner's decision is that Devon County Council has disclosed all the information it holds which is described in the complainant's request.
3. The Commissioner does not require the public authority to take any further steps to ensure compliance with the legislation in this case.

Request and response

4. On 2 July 2011, the complainant wrote to Devon County Council (the council) and requested information in the following terms¹:

"Could you please supply details of costs in total for repair/replacement to the footbridge in Higher Mill Lane to cross towards the Town Leat and public footpath that has been carried

¹ See http://www.whatdotheyknow.com/request/footbridge_higher_mill_lane_cull#outgoing-187723 (this case relates to the requests dated 2 July and 29 July 2011, later requests are dealt with under case references FS50430723 and FS50430745 respectively)

out in the last couple years.

Please break down the costs to show

- 1.Full Cost*
- 2.Contribution by Devon County*
- 3.Contribution by Cullompton Town Council*
- 4.Grant money amount and where from*
- 5.Please confirm footbridge is privately owned*
- 6. What contribution was made by owner of bridge and adjoining property owner.*

What agreement/plan is in place for routine maintenance. Please provide any correspondence showing if owner of bridge declined/offered to pay and costs or threat to close bridge."

5. The council responded on 29 July 2011. It provided information about the costs of the bridge in answer to parts 1, 2, 3 and 4 of the request, and stated that the bridge was a Devon County Council structure and would be maintained as part of its bridge maintenance programme.
6. The complainant responded on the same day, stating that the bridge is in private ownership. He disputed the council's response to his request and requested further information in support of its stated position, requesting:

"the bridge and access over the leat is on Land Registry DN423936 as in private ownership, as the bridge is private , please confirm this fact and were owners asked to contribute to the repair/replacement costs.

As a former councillor I am aware that there was correspondence on these facts, please produce those documents."

7. The council wrote to the complainant on 5 August 2011². It restated its belief that the bridge is not privately owned and, in light of this, sought clarification as to the nature of the correspondence he was requesting.

² The sequence of events comprises six requests and associated responses, with internal reviews conducted, in the main, towards the end of the correspondence. The Commissioner is satisfied that, in the context of the end-to-end process, the complainant has exhausted the council's internal complaints processes and complaints have been accepted on this basis. The requests fall into three pairs of related enquiries, dealt with as three separate requests by the council. These have been dealt with by the Commissioner in cases FS50430733, FS50430723 and FS50430745 respectively.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the council had not disclosed all the information it held related to his requests.
9. The Commissioner considers the scope of this case to be to determine whether Devon County Council has disclosed all the information it held which is described in the complainant's requests.

Background

10. A footbridge in Cullompton was replaced as part of a development to build a new supermarket in Cullompton town centre. The footbridge was replaced using funds provided by the developer ('section 106 monies') via an agreement reached under section 106 of the Town and Country Planning Act 1990³ which provides that developers may be required to undertake other works or provide funding for works, by agreement, in the course of that development. The council explains that the bridge was replaced to improve public access.
11. The complainant understands that the footbridge is privately owned. The Commissioner recognises that he therefore questions the use of funding derived from section 106 monies to replace or improve what he believes is a private asset.

Reasons for decision

Section 1(1) provides 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."

³ <http://www.legislation.gov.uk/ukpga/1990/8/contents>

12. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities.
13. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information is held, including whether it is inherently unlikely that the information so far located represents the total information held.
14. The council holds a manual file on the footbridge, which contains information such as maintenance records. It explains that the footbridge supports a public highway, which, under the Highways Act 1980, falls to be maintained at public expense. It has confirmed to the Commissioner that its searches were confined to this manual file, as it was considered reasonable that all information held in respect of this bridge would be held in that manual file.
15. The council's response to the initial request states that the entire cost of the replacement footbridge was met from section 106 monies provided by the developer (Tesco) and, consequently, no financial contribution was made by either Devon County Council or Cullompton Town Council. This has not been disputed by the complainant. (It is therefore also clear that no financial contribution will have been made by the owner of the bridge, pursuant to part 6 of the complainant's request).
16. The Commissioner is satisfied that the latter elements of the request relating to maintenance are likely to be held within the file on the bridge held by the council.
17. With specific reference to the complainant's follow-up request about ownership of the bridge, however, the council subsequently confirmed that its belief that the bridge was in council ownership was mistaken, based on an assumption that as there was a public highway over the bridge, it followed that the bridge was itself a public structure. This was shown by the complainant to be an error, which the council later accepted. The Commissioner notes that the council has confirmed to the complainant that the bridge is privately owned.
18. With reference to the complainant's assertion, in his 29 July follow-up request, that he was aware of additional correspondence, the Commissioner requested the complainant to indicate his grounds for the belief that additional correspondence existed. The complainant explained that he had served as a Cullompton town councillor and recalled being present when matters relating to the condition of the bridge had been

notified by Cullompton Town Council to Devon County Council. He was, however, unable to be specific about this correspondence. The Commissioner nevertheless put this to the council, asking it to conduct additional searches for correspondence from Cullompton Town Council about the footbridge.

19. The council responded, confirming that it had undertaken a thorough review of the full contents of the file which is held on the bridge, and had not located any additional correspondence which falls within the scope of the complainant's request. It had located correspondence between it and the owners of the property to which the bridge belongs, but that it was not information which fell within the scope of the complainant's requests. The Commissioner reviewed this correspondence and agrees that it does not contain information described in the requests.
20. The Commissioner agrees that the requested information would be likely to be held within the dedicated file held on this bridge, and is satisfied that the council has conducted sufficiently thorough and well-directed searches for the requested information.
21. The complainant had provided the Commissioner with anecdotal evidence which suggested the possibility that further information might be held, but was unable to be more specific. This anecdotal evidence might suggest that it was inherently unlikely that the information disclosed was all the information held. But, in the absence of information to suggest any new lines of enquiry or alternative locations for searches, the Commissioner accepts that the council would not be expected to trawl its records for material when it has failed to locate it in the appropriate location where it might reasonably expect such information to be found.
22. It is not unreasonable to assume that there may be a considerable body of correspondence from Cullompton Town Council to Devon County Council, on any number of diverse subjects. That correspondence would be likely to have been passed to the relevant departments within Devon County Council, depending on the subject material. Given that the complainant's evidence for the existence of correspondence on this matter is not definitive, the Commissioner is satisfied that Devon County Council has conducted a reasonable search for that correspondence.
23. It is seldom possible to decide with certainty that information is not held, undiscovered, in some obscure location within a public authority, hence the requirement to determine whether information is held based on 'the balance of probabilities'. Given that the council has searched diligently in the locations where the requested information is likely to be found, and has disclosed information where any was found, the

Commissioner is satisfied that it is entitled to conclude that no further information is held.

24. The Commissioner accordingly finds that, on the balance of probabilities, no further information is held by the council which is described in the complainant's 2 July 2011 request, or his follow-up request of 29 July.

Right of appeal

25. 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

26. 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.
27. 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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