

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 02 August 2012

Public Authority: Monmouthshire County Council

Address: County Hall
Cwmbran
NP44 2XH

Decision (including any steps ordered)

1. The complainant requested a copy of information from Monmouthshire County Council it had received from [named specialist computer company] which confirms that the contents of a disputed hard drive definitely did not record any data on 16 November 2010. The Council informed the complainant that it did not hold information falling within the scope of the request.
2. The Commissioner's decision is that Monmouthshire County Council has complied with its obligations under section 1(1) of the Act.

Request and response

3. On 2 April 2012, the complainant wrote to the Council and requested:
"...a copy of the information you have received from [named company], which you have indicated to others confirms that the hard drive...definitely did not record any data 16 November 2010 when on vehicle..."
4. The Council responded on 13 April 2012 informing the complainant that:
"The Council's only communication with [named company] was by telephone, and no recorded information exists. However the information was conferred verbally to me by [named Council official], and I subsequently passed this information by e-mail to the Case Officer at the Information Commissioner's Office."

5. The Council also quoted the above mentioned email in its response to the complainant.
6. The complainant was not satisfied with this response and requested an internal review, the outcome of which was communicated to him on 14 April 2012. The review upheld the Council's original response.

Scope of the case

7. The complainant contacted the Commissioner expressing dissatisfaction with the Council's response. The Commissioner has therefore considered whether the Council's response is compliant with section 1(1) of the Act.

Reasons for decision

8. Under section 1(1) of the Act, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
9. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any requested information the normal standard of proof to apply is the civil standard of the balance of probabilities.
10. The hard drive at the centre of this complaint has previously been the subject of two related decision notices (FS50402885 and FS50435215) issued by the Commissioner. In the course of his investigation of FS50435215 the Council informed the Commissioner that:

"[Named Council official] contacted [name company] on 4th January without identifying the case and enquired about [named company's] capability to access information from a drive which had apparently ceased to record. [Named individual] told [named Council official] that he knew the case in question because [complainant's name] had approached him. The advice given to [named Council official] by [named individual] was that it was extremely unlikely that there would be any accessible files after the date when the drive appeared to stop recording."
11. Given the nature of the exchange described by the council and the Commissioner accepts that on the balance of probabilities, the Council is unlikely to hold any information relevant to the complainant's request.

Whilst there appears to be little doubt that an exchange took place between the council and the third party the Commissioner is satisfied that there was no written follow up confirming the contents of the discussion. The Commissioner has therefore concluded that the Council's 'information not held' response is compliant with section 1(1) of the Act.

Right of appeal

12. 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

13. 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.
14. 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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