

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2013

Public Authority: Lancashire County Council
Address: PO Box 78
County Hall
Fishergate
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant requested various items of information relating to his email being blocked by Lancashire County Council ("the council"). The council supplied some information, said that some information was not held and withheld other information using section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). The complainant alleged that the council had not identified all the information that it held.
2. The Commissioner's decision is that on the balance of probabilities, no further information was held.
3. The Commissioner does not require any steps to be taken.

Background

4. The council explained that it provides ICT Services for Lancashire Police Authority ("LPA"). Towards the end of 2010, the LPA contacted the council's IT Services department to ask that the complainant's email address was blocked from sending emails to a number of specified employees. In the course of processing this request, the council's IT Services department noticed that the complainant's email address was the source of spam and malware linked to sites of a dubious nature. Those emails were identified as a potential security risk. As a result, the council decided to block the complainant's email address completely.

That decision prompted a large number of requests for information by the complainant which form the subject of this complaint.

Request and response

5. The complainant made various requests for information to the council. The details of these requests have been outlined below. For clarity, although the complainant did not set them out in this way originally, the Commissioner has separated out the individual elements of the request and numbered them for ease of reference.

Requests of 16 March 2012

- (1) *"Please provide the full policy, procedure or criteria that governs when Lancashire County Council (LCC) decides to block a specific email address".*
- (2) *"Please provide information as to how such decisions are made and who makes them and when...."*
- (3) *"Are the victims of any such blocking informed and is this part of the policy?"*
- (4) *"Are all members and officers of LCC informed as to which email addresses are blocked and is this part of a policy".*
- (5) *"Please provide all internal information as to how, if, when or why a totally separate public authority to LCC can possibly have its email traffic blocked by LCC without the knowledge of the separate public authority or the owner of that specific email address".*
- (6) *"Can LCC block email traffic at other public authorities without the knowledge of the other public authority? If this is possible provide all internal information in relation to this eventuality including whether the other public authority would be aware of this 'blocking' or not".*
- (7) *"Please provide a full explanation as to how (if indeed it is possible) a separate public authority that is absolutely nothing to do with LCC can have its email traffic unilaterally blocked by the LCC without its knowledge".*
- (8) *"In summary can another public authority that is unrelated to LCC have its email traffic blocked by LCC without its knowledge by quite simply blocking that email address from LCC specific systems".*

Requests of 23 March 2012 (repeated on 27 March 2012)

- (9) *"I require full explanations as to how, when and why Lancashire County Council blocked my email address due to my involvement with the Lancashire Police Authority".*
- (10) *"I also require a full written explanation as to why I was never told".*
- (11) *"Please also supply to me all detail as to who blocked my address and all the auditable information as to who authorised this blocking, when it was done and the documented reasons as to why".*
- (12) *"Please also supply a full list of exactly who was informed at Lancashire County Council that my email address was blocked and please indicate who else was informed of this including any other public authority".*
- (13) *"Please also supply all other information and relevant documentation in relation to my email address being blocked at Lancashire County Council apparently only at the behest of the Lancashire Police Authority. Indeed if some service level agreement exists whereas a citizen is blocked at the Lancashire Police Authority he/she is also blocked at Lancashire County Council. In summary I require details of all auditable internal information in existence at Lancashire County Council in relation to my email address being blocked when the problem I had was with Lancashire Police Authority".*

Request 3 of 4 April 2012

- (14) *"...can you please supply precise logs and auditable trails of information as recorded at the Council as corroborative evidence that my emails ever 'contained spam and potentially malicious links to sites of a dubious nature'...I am aware that every email received on any particular email address containing spam and/or malicious files etc is logged in full and recorded via the spam filtering software that Lancashire County Council uses. Therefore please supply that evidence..."*
- (15) *"Please supply the information as requested above via the Act and also outline in full the nature, strength and full identity of the spam filtering software that is used to protect the email systems at Lancashire County Council".*
- (16) *"Please also identify the 'sites of a dubious nature' via the response."*

Request 4 of 12 April 2012

(17) *"In his email, Mr Wilkinson stated:*

'As you are aware, the Council also provides services to the Lancashire Police Authority (LPA). In October 2010, the LPA requested that your e-mail address be blocked'.

Please provide via the Freedom of Information Act 2000 all records of the nature of the request made by the LPA including all correspondence exchanged between the LPA and the County Council re: the blocking of my email address. Please also provide all information that the County Council feels is relevant to this request. If the County Council feels that the information relates to personal data please deal with this request via the access provisions of the Data Protection Act 1998".

6. The council responded to the requests on 20 April 2012. It provided some information, said that some was not held and withheld other information using section 40(2) of the FOIA.
7. The complainant requested an internal review on 30 April 2012.
8. The council completed an internal review on 15 June 2012. The council provided a small amount of additional information but in the main considered that its previous response had adequately addressed the requests made.

Scope of the case

9. The complainant complained to the Commissioner about the following:
 - The council had not supplied all the recorded information it held. The complainant complained in particular about request numbers 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 17.
 - The council's internal review had not been completed within 20 working days.
 - The complainant alleged that a call log supplied by the council in response to the requests had been "fabricated" and the council had deliberately concealed information in this and other respects, which is an offence under section 77 of the FOIA.
10. For clarity, a small amount of information was withheld by the council using section 40(2) of the FOIA. The complainant did not specifically ask the Commissioner to consider this and it has therefore not been addressed in this notice.

11. During the Commissioner's investigation, the council identified that it held a number of internal emails that had arisen as a result of dealing with the complainant's requests and complaints. Having regard to the dates and nature of the correspondence, the Commissioner's view was that this correspondence fell outside the scope of the requests forming the subject of this particular complaint. However, in order to assist, the council provided this information to the complainant in any event.
12. The Commissioner would also like to highlight that having considered the terms of some of the requests, it was likely that if the information was held, it could or would constitute the complainant's own personal data. Information that is the requester's own personal data is exempt from public disclosure under the FOIA and it must be considered in accordance with the rights of subject access provided by section 7 of the Data Protection Act 1998 ("the DPA"). The Commissioner has therefore conducted a separate assessment under the DPA.
13. The Commissioner has made comments relating to the allegation of an offence under section 77 of the FOIA in the "Other Matters" section of this notice.

Reasons for decision

Section 1 – Was more information held?

14. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
15. 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 argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the

information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

16. The council confirmed to the Commissioner that it wished to maintain that no further information was held falling within the scope of the requests. The council said that appropriate searches were made by council staff within ICT services. The council said that when it received the request, staff members in ICT Services were contacted and asked to search for information regarding the request. Any relevant information would be held in the Call Logging System (in which all ICT-related service requests are saved). This information indicated the name of the technician that dealt with the matter and he was contacted to ascertain whether any further information about this matter was held. He confirmed that he held no further information. Additionally, the council's Information Assurance Manager was contacted for further information about the general process of blocking emails. One of the council's Senior Systems/Software Engineers was also contacted to provide technical information, particularly with regard to spam filtering software.
17. The council highlighted that the complainant made his requests for information in March and April 2012 on the subject of something that happened some 16 months earlier. The council said that this time lapse would obviously have a bearing on what information would be held by the time of the request. When the Commissioner asked the council to elaborate on this point, the council said that it is possible that some information falling within the scope of the requests may have been deleted but if it had, that would be in accordance with the council's records management procedures. The council referred to, as an example, the deletion of the actual emails from the complainant's email account that contained the spam. The council said there would be no business need to retain such information and also it would be inappropriate once it had been identified as a potential security risk. The council also highlighted that its general email policy is to delete emails once they are 60 days old. The council also referred to one member of staff who had left the council and whose email account had therefore been deleted. No evidence was provided to the Commissioner to suggest that any information had been mislaid.
18. The Commissioner has considered the concerns highlighted by the complainant more specifically below in relation to the requests.

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

Requests dated 16 March 2012

19. In relation to point 1 and 2, the council supplied a copy of relevant extracts from its Information Security Policy and provided a written explanation. The complainant said that he did not accept this response because he believed that there must be more material "verifying and showing how this is or can be done. This has to be a very prescriptive procedure and very auditable as is usual with computer systems". The council confirmed to the Commissioner that there was no additional information. The council explained that all aspects of Information Security including copies of information security policies are contained within the Information Security Management System (ISMS) manual, a copy of which was provided to the complainant. The council explained that this does not contain any information regarding the manual blocking of email addresses because there is no recorded policy or procedure relating to this. Manual blocking, as occurred in this case, is carried out by ICT technicians at the council who use their judgement as to whether an email address is the source of spam or worse. If it is, they will block the address unless there is a good reason not to. The council explained that because of the very large number of emails involved, it would be impossible to perform more detailed checks. It is an essential part of protecting the council's computer network.
20. In relation to point 3, the council's response was "no" and as already mentioned above, the council explained that due to the large numbers involved (up to 2 million each month), it would be unrealistic and unreasonable to expect the council to inform every individual when the email was blocked. Moreover, the council would not communicate via email addresses that had been identified as potential threats. When the Commissioner asked the complainant to explain why he was dissatisfied with the response, it appeared to the Commissioner that the reason for dissatisfaction was that the complainant was unhappy that the council had not informed him when the email address was blocked. That issue cannot be considered by the Commissioner and is not relevant to the Commissioner's considerations of whether or not the council has complied with the FOIA. The council has responded to the question that was asked.
21. In relation to point 4, the council said "no". Again, it pointed to the large numbers of emails involved and it said that informing all members and officers of the council every time an email was blocked would not be realistic or reasonable. The complainant said that as his email was sent to a councillor, the councillor should have been informed. The Commissioner would like to reiterate that the fact that the complainant is unhappy with the actions taken or not taken by the council is not relevant to the Commissioner's considerations under the FOIA. The council has responded to the question that was asked.

Requests on 23 March 2012 (repeated on 27 March 2012)

22. In relation to point 9, the council said that this was not a request for information under the terms of the FOIA. The complainant referred to the council's security arrangements and argued that it was not credible that it had not supplied more internal information about this matter. The Commissioner disagreed with the council's position that the request was not a valid one and he therefore asked the council to consider the request as a request for information. The council said that regardless of whether or not this request is valid under the FOIA, a full written explanation had been provided to the complainant. With further prompting, the council said that the only information that it actually held was the call log which it had provided.
23. In relation to point 10, the council said that this was not a valid request for information. The Commissioner disagrees. However, it is clear that from the council's previous explanations that this information was not held because the council does not have any policy or procedure governing this. Furthermore, the council has explained to the complainant that it is not reasonable to expect it to have told him that his email address had been blocked because of the large number of emails that the council has to deal with in this area.
24. In relation to point 11, the council said that the email address was blocked by its IT Services Department on 10 November 2012. It said that for the reasons it had already explained in response to the other requests, no auditable information was held. The council said that it had already explained in previous correspondence with the complainant on 30 March 2012 that it did not become aware that the email address had been compromised until a request was received from LPA to block emails from the complainant, emanating from several addresses. The council said that it had enclosed a copy of the call log made at the time, with the personal data of individuals removed because it was considered to be exempt under section 40(2) of the FOIA. The complainant said that he was dissatisfied with the council's response because he considers that information about "a very specific and prescriptive process" should exist. As already mentioned in the scope section of this notice, the complainant has not specifically asked the Commissioner to consider whether the exemption was correctly applied. Based on the explanation provided by the council about the process involved, the Commissioner was satisfied there was no reason to believe that the council would hold any more information.
25. In relation to point 12, the council referred back to its earlier response that indicated that it would not inform individuals when an email address had been blocked. The complainant said that he believed that the council should have taken steps to inform others in accordance with its

security procedures. The council said that the complainant appeared to believe that the fact that his emails got through the automatic filtering software means that there was a breach of security at the council that should have generated reports. The council clarified that this was incorrect. The council highlighted that its filtering processes are not 100% effective and because of the number of emails involved, it would not be practicable to treat every email that got through the system as a security incident. The council said that if this did happen, council officers would be spending all their time completing meaningless security breach reports as there would be between 5,000 and 10,000 per month before even considering the issue of informing every single person. The council highlighted that this would clearly not be the best use of the council's resources. The fact that the complainant is unhappy with the council's actions because he believes it should have taken steps to inform others is not a matter for the Commissioner to address. There is no evidence available to the Commissioner to indicate that the council has not responded accurately to the question asked.

26. In relation to point 13, again, the council reiterated for the reasons already provided that it does not hold any specific "auditable" information or service level agreement about the process because it was simply a matter of a particular technician at the council exercising his own judgement. The process is not governed by specific procedures and policies as the complainant has alleged.

Requests on 4 April 2012

27. In relation to point 14, the council said that it did not hold this information. The complainant argued that information falling within the scope of his request should be held if the council had complied with its own security procedures. He alleged that every email address containing spam and/or malicious files is recorded via the spam filtering software used by the council and he said he expected to receive that evidence. The council has already indicated to the Commissioner above that there is nothing in its security procedures that would mean that it needed to record this matter and it explained that approximately 0.5% of spam or junk emails are not detected automatically by the council's filtering software. The complainant's emails were not detected automatically and it is therefore incorrect for the complainant to allege that the council's filtering software would have recorded the fact that the email contained spam. The council also said that the complainant's original emails would have been deleted since they were identified as a security risk.
28. In relation to point 15, the council provided an internet link which it said contained full details about the council's spam filtering software. The complainant said that he did not consider that the council had provided any information of "substance" and it had not mentioned the GCSX

system and the stringent controls this imposes. The council said that it had responded fully to this request by providing details about the spam filtering software that it uses. It said that the complainant had not asked about the GCSX system, which would fall outside the scope of this particular request. The council said that it believed that the complainant had misunderstood what the GCSX system was. The council said it was merely a secure network between public authorities via which information is transferred. The system has no spam-filtering properties as alleged by the complainant and the Clearswift product is used on the GCSX network to filter spam in the same way that it is used on the regular network.

29. In relation to point 16, the council has made it clear that this information was not held because it would have deleted the emails concerned since they were deemed to be a security threat and there was, as established, no specific policy governing manual blocking of emails that would have led to the creation of the record being sought by the complainant.

Requests on 12 April 2012

30. In relation to point 17, the council said that the only information that it held was the call log already provided. The council said that it had retrieved the "original emails" from the LPA to refute the complainant's allegation under section 77 (discussed in the Other Matters section of this notice) but these were exactly the same as recorded on the call log. The complainant said that it was unreasonable that the council had not supplied more information. The council said that no information was held regarding any correspondence with LPA to confirm that the block had been put in place. The council said that given how long ago it occurred the council's ICT technicians cannot recall whether any confirmation was made by telephone or email however it is clear that no relevant emails are held by the council. The council also said LPA did not provide any information about why it wanted the email address blocked and ICT services would not require any explanation, provided that the request was made by a sufficiently senior individual.
31. The complainant highlighted an email that he had received as a result of another request to LPA that was about the unblocking of his email address. The council told the Commissioner that it considered that this fell outside the scope of the request because the complainant had not specifically asked about the unblocking of his email address. The Commissioner disagrees with the council on this point. Although he accepts that the complainant did not specify that he wanted to receive information about the decision to unblock his email address, it is a national interpretation of his request for all records of correspondence between the LPA and the council on the subject of the blocking of his

email address. It is clearly what the complainant intended and in the Commissioner's view it is an objectively reasonable interpretation of this particular request. However, that information has now been provided to the complainant by another public authority, thereby informally resolving that particular issue and no further information was held.

32. In view of the above, the Commissioner accepts that on the balance of probabilities, no further information falling within the scope of the complainant's requests was held by the council. It appears to the Commissioner that on this occasion, the complainant has significantly overestimated the volume of information that would be held by the council about a matter such as this. The council has been able to provide reasonable explanations to the Commissioner in respect of all of the requests to justify its position that no more information was held.

Other Matters

Section 77

33. The Commissioner was not satisfied that the complainant had provided sufficient evidence to prove that the authority had committed an offence under section 77 of the FOIA. For clarity, this offence relates to the deliberate attempt to conceal information that is the subject of a request for information. The standard of proof required is beyond reasonable doubt, which is clearly a very high threshold. The complainant is suspicious that the information on the call log provided had been altered, but he has not provided sufficient evidence to demonstrate that the information was altered, and that it was altered after his request had been made in a deliberate effort to conceal information. The council was able to provide copies of the original emails recorded on the call log to show that there had been no alteration as alleged by the complainant. Furthermore, no evidence was provided during the course of the Commissioner's investigation that would lend support to the complainant's additional allegation that the council had deliberately concealed information. The council's failure to identify one email that the complainant subsequently obtained via a request to another authority appears to have arisen due to the way in which the authority interpreted the request, rather than any deliberate attempt to conceal information from the complainant.

Internal reviews

34. There is no statutory time limit for conducting internal reviews however the Code of Practice under section 45 states that they should be completed "promptly". The Commissioner's guidance is also that internal reviews should generally be completed within 20 working days. The

Commissioner notes that the council took longer than this on this occasion. He trusts that the council will make improvements in the future.

Right of Appeal

35. 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

36. 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.

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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