

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

### **Decision notice**

**Date:** 29 October 2013

**Public Authority:** Sheffield City Council  
Town Hall  
Pinstone Street  
Sheffield  
S1 2HH

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

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1. The complainant has requested information relating to previous information requests and the expenditure of 'Going Local' money. The Commissioner's decision is that Sheffield City Council ('the council'), on the balance of probabilities, does not hold any further information within the scope of the request than that already provided. Therefore he does not require any steps to be taken.

#### **Request and response**

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2. On 20 March 2013, the complainant put the following questions, in writing, to Sheffield City Council Cabinet:

"2 This question concerns the Newton Report and the Sheffield Homes / Council finance report, both of which were disclosed after engagement of the Information Commissioner. As applied to each in turn:- (written response)

2.1 How much did it cost to defend against disclosure of these reports?

2.2 Were the futile attempts at preventing disclosure because of:-

2.2.1 What was in the reports, or:-

2.2.2 . . . because of what is not in the reports ?

2.3 IF the answer to question 2.2.2 applies, for each case:-

- 2.3.1 Please state what was omitted, and
- 2.3.2 Please provide the requisite information.
- 2.4 WHO instructed the Legal Department to withhold disclosure of the reports, and WHY ?

3 Sheffield Homes has repeatedly claimed that the expenditure of 'Going Local' money on revamping drying areas in Batemoor complied with a robust procedure. Despite exchanges of correspondence, Sheffield Homes has consistently failed to produce the evidence supporting its claim that the need for revamping the drying areas in Batemoor came from the citizens of Batemoor. Will this council now please arrange for the provision of that evidence?"

- 3. The council responded on 2 April 2013 and requested clarification as to the report the complainant referred to as the 'Newton Report'. It also provided narrative information in response to the questions posed. The complainant requested an internal review on 2 April 2013 and clarified that he was referring to the Newton Report into the demise of South Yorkshire Trading Standards Unit. He provided further comments on 4 April 2013 and clarified that the Sheffield Homes / Council finance report refers to the financial argument for the transfer of the Council Housing management function back in-house.
- 4. The council provided its internal review response on 4 April 2013 stating that it had answered point 3 and had nothing further to add.

## **Background**

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- 5. The reports referred to in the request for information have both been subject to previous decisions by the Commissioner. The 'Newton Report' was the subject of decision notice FS50425762 and the 'Sheffield Homes / City Council Finance Report' was the subject of decision notice FS50429553. In both cases it was decided that the information should be disclosed (subject to a small quantity of information contained within the Newton Report which constitutes an individual's sensitive personal data).

## **Scope of the case**

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- 6. The complainant contacted the Commissioner on 5 April 2013 to complain about the way his request for information had been handled.

7. During the Commissioner's investigation the council reviewed its response and disclosed the information it holds in relation to the Going Local proposals in the Batemoor area. As the information the council holds in relation to point 3 of the request has now been provided, the Commissioner has not deemed it necessary to consider that part of the request in this decision notice.
8. As the council's response to 2.2.1 was 'yes', and therefore the response to 2.2.2 was 'no', the Commissioner has not deemed it necessary to consider the questions at points 2.3, 2.3.1 and 2.3.2 in this decision notice.
9. The Commissioner has therefore considered whether the council holds information in relation to point 2.1 and 2.4 of the request.

## **Reasons for decision**

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### **Section 1 - Is the information held?**

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. 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 is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
12. In its initial response, the council said that it was not aware of any cost for the disclosure of the reports and that no independent legal advice was sought, all legal advice was taken from the council's legal team as part of the general service level agreement (point 2.1). It also said that no formal instruction was provided to the council's legal department (point 2.4).
13. In relation to point 2.1, the complainant has stated that it is immaterial whether the legal service provided was in-house or external; there was a cost involved in defending the position not to release the reports.

14. The Commissioner enquired as to the scope, quality, thoroughness and results of any searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.
15. In relation to point 2.1, the council explained that it does not record the costs of handling individual information requests and therefore it does not hold any recorded information in relation to this part of the request. In relation to point 2.4, the council, in its initial response, said that no formal instruction was provided to the legal department. It further explained to the Commissioner that Sheffield Homes refused to disclose the Finance Report and the council refused to disclose the Newton Report and that such refusals are part of the process of handling freedom of information requests. It said that because it does not hold such information it cannot provide any meaningful answers to the Commissioner's enquiries regarding searches carried out.
16. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council said that this question was not applicable and the Commissioner is not aware of any specific legal requirement for the requested information to be held.
17. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
18. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

## Right of appeal

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19. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

20. 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.
21. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**