

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2015

Public Authority: East Devon District Council
Address: Council Offices
Knowle
Sidmouth
Devon
EX10 8HL

Decision (including any steps ordered)

1. The complainant has made a request to East Devon District Council ("the council") for information about the officers and members involved in a previous information request. The council disclosed held information, but the complainant contested that further information was held.
2. The Commissioner's decision is that the authority has disclosed all relevant held information. However, in failing to provide held information within the time for compliance, it has breached section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 13 April 2014 the complainant wrote to the authority and requested the following:
 - 1) *Which Officers and Members have been involved, and at which stages, in the original FOI request:*
https://www.whatdotheyknow.com/request/unredacted_minutes_and_reports_o%20-%20incoming-501069
 - 2) *Which Officers and Members have decided to appeal against the decision notice issued by the Information Commissioner with regard*

to this request, the case about to come before the Information Tribunal.

5. The council responded on 15 April 2014 that no relevant information was held in relation to either part.
6. The complainant requested an internal review on 16 April 2014, and made a further request for this on 11 January 2015.
7. The council subsequently responded on 10 February 2015 with some held information that it had since identified as being relevant to part 2 of the request.
8. The council provided an internal review on 26 February 2015. It confirmed that no further information was held.

Scope of the case

9. The complainant contacted the Commissioner on 22 February 2015 to contest the authority's response.
10. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely, on the balance of probabilities, to hold further information relevant to the request.

Reasons for decision

Section 1(1) – Duty to make information available on request

11. Section 1(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 them. This is subject to any exemptions or exclusions that may apply.
12. The FOIA provides a right of access to information in recorded form, and only that which exists at the time of the information request. The FOIA does not require a public authority to generate new information, such as in the form of an explanation or opinion, in order to respond to a request.

Part 1

13. For part 1 of the request, the complainant has sought the identities of council officers and members who had been involved in responding to an earlier information request he had made.

14. The council has advised the Commissioner that its information request management system only records the subject of the request and the council's response, in addition to any associated case notes. All requests are recorded and responded to by the Information and Complaints Officer, but any number of officers and members could be involved with the request depending on its subject matter. However the identity of these individuals are not recorded as a matter of routine.
15. The complainant contests that regardless of whether the identities are recorded on the council's request management system, it should still be possible to determine who was involved in the request by liaising with all relevant council officers.

Conclusion

16. It is evident to the Commissioner that the identity of the Information and Complaints Officer (who is responsible for recording and responding to information requests) has already been disclosed to the complainant as part of the council's response to his request. However there is no evidence to suggest that further relevant information is held in recorded form. It is reasonable for the Commissioner to consider that the identity of every council officer involved in a request would only be recorded and held should there be a business purpose requiring this. Whilst the complainant suggests that the council could identify and record this information by liaising with relevant officers, the terms of the FOIA do not impose an obligation on the council to undertake this.
17. On this basis, and in the absence of any conflicting evidence, the Commissioner must conclude that no further recorded information is likely to be held.

Part 2

18. For part 2 of the request, the complainant has sought the identities of council officers who had decided to submit an appeal to the First Tier Tribunal in respect of a previous decision notice issued by the Commissioner.
19. The council's position is that the identity of the deciding council officer is recorded on the Notice of Appeal, of which a copy has been provided to the complainant. In response to the complainant's request for an internal review, the council also considered whether any email correspondence was held that may be relevant to this part of the request. As a result, the council identified correspondence between council officers in which the Commissioner's earlier decision notice is discussed, as well as the option to appeal. The council proposes that

these emails would be exempt under regulation 12(4)(e) of the Environmental Information Regulations 2004.

Conclusion

20. The request specifies that it seeks the identities of council officers and members who had "*decided*" to appeal. The Commissioner interprets this as seeking the identity of the accountable decision maker (or makers).
21. On this basis, the Commissioner has reviewed the related email correspondence that the council has submitted. It is clear that this correspondence represents discussion about the prior decision notice and the option to appeal. However the Commissioner does not consider that this information represents either the 'decision' to appeal, or the identity of the decision maker. As outlined in previous decision notices¹, there is a distinction between a decision by an accountable decision maker, and the advice and background discussion that may have informed it. As such, the Commissioner does not consider that the correspondence identified by the council represents the information requested by the complainant.
22. Having identified that the Notice of Appeal was signed by the council's Deputy Chief Executive Officer (in the role of Monitoring Officer), the Commissioner must conclude that this individual was the accountable decision maker, and that this information is that sought by the complainant. On this basis, and in the absence of any conflicting evidence, the Commissioner must conclude that no further recorded information is likely to be held.

¹ FER0555744 and FER0564588

Right of appeal

23. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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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