

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2016

Public Authority: Cumbria County Council
Address: County Hall
Kendal
Cumbria
LA9 4RQ

Decision (including any steps ordered)

1. The complainant has requested a report relating to allegations of corruption. Cumbria County Council confirmed that the information was not held and advised the complainant to redirect their request to Allerdale Borough Council.
2. The Commissioner's decision is that Cumbria County Council has correctly confirmed that it does not hold the requested information and complied with section 1(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 August 2015, the complainant wrote to Cumbria County Council (the "council") and requested information in the following terms:

"In 2012 your council conducted an investigation into allegations of corruption in Allerdale Borough Council. Your Council then prepared a report. I request a full and complete copy of this report under the above Act. Will you also include in this request an explanation of why the Police were not asked to conduct the investigation...."
5. The council responded on 22 October 2015. It stated that the requested information was not held. The council advised that the information

might be held by Allerdale Borough Council and recommended that the complainant redirect their request accordingly.

6. Following an internal review the council wrote to the complainant on 12 November 2015. It stated that it was maintaining its position that the requested information was not held.

Scope of the case

7. On 18 November 2015, following the completion of the council's internal review, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly confirmed that it does not hold the requested information.

Reasons for decision

Section 1 – duty to provide information held

9. Section 1(1) of the FOIA states:

“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.”

10. In this case the council has confirmed that it does not hold a copy of the requested report. The complainant disputes this.
11. In scenarios where there is some dispute between a public authority's account of the information that it holds and a complainant's belief, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

13. To assist with this determination the Commissioner approached the council and sought details of searches it had taken for the information and clarification of other relevant factors.
14. The council explained that the requested report was commissioned by Allerdale Borough Council ("Allerdale"). The investigation which produced the report was undertaken by an employee of the council and the final report was provided to Allerdale on completion of this investigation in 2012.
15. The council confirmed that the person who conducted the investigation is no longer an employee. It explained that it had searched files accessed by the employee and, whilst electronic files contain information relating to the report, these relate to work being undertaken whilst the report was being prepared rather than constituent elements of the report itself. The council reiterated that it did not hold a copy of the requested "full and complete" report.
16. The council clarified that, in relation to information held which is associated with the report, some draft interview statements which are referenced in the report are held but, necessarily, they do not constitute the final, authorised versions. The council also confirmed that it holds no information referenced in the report with regard to files and documents which were to be incorporated as appendices.
17. The Commissioner appreciates why the complainant might believe that, given that the author was an employee, the council would hold a copy of the report. However, beyond this, the Commissioner has not been presented with any direct evidence which contradicts the council's representation of the facts.
18. The Commissioner also notes that, in accordance with part III of the code of practice issued under section 45 of the FOIA¹ (the "code"), the council advised the complainant in both its initial response and at internal review that it was possible that the report was held by Allerdale and that they should redirect their request accordingly. The Commissioner notes that the complainant has declined to take this step.

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<http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

He recommends that the complainant now consider doing this as a remedy, should they still be interested in accessing the information.

19. Having considered the council's explanations and the details of the searches it conducted for the requested information, the Commissioner is satisfied that, on the balance of probabilities, it is likely that the council has correctly confirmed that it does not hold the requested information. He has, therefore, concluded that the council complied with section 1(1) of the FOIA.

Right of appeal

20. 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

21. 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.
22. 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
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Water Lane
Wilmslow
Cheshire
SK9 5AF