

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2017

Public Authority: Wealden District Council
Address: Council Offices
Vicarage Road
Hailsham
East Sussex
BA27 2AX

Decision (including any steps ordered)

1. The complainant has requested the plan of a car-park made by a Community Officer whilst issuing Excess Charge Notices. Wealden District Council ("the Council") disclosed information in response. The complainant contested that the information provided was not that requested.
2. The Commissioner's decision is that the Council has disclosed all relevant held information in response to the request.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 26 October 2016, the complainant wrote to the Council and requested information in the following terms:

Q1. Thank you for your reply. It doesn't fully answer my query so please could you let me have a copy of the plan (I assume that is the term for it) which details the visit the parking attendant made to the car park at the time of booking me. Time of booking was 14.25 on 08/08/2016.
5. The Council responded on 8 November 2016. It disclosed a copy of the plan (with some information redacted under section 40(2)).

6. On 21 December 2016, the complainant requested an internal review on the basis that the map was not that which had been requested.
7. Following an internal review, the Council wrote to the complainant on 20 January 2017. It stated that its original response was correct.

Scope of the case

8. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled. The complainant specifically contested that the Council had not disclosed the information that had been requested. The Council's application of section 40(2) was not contested.
9. The Commissioner considers the scope of this case to be the determination of whether the Council has complied with the request.

Reasons for decision

Section 1(1) – General right of access to information

10. Section 1(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 relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
12. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council has complied with the request by disclosing all relevant held information.

The complainant's position

13. The complainant contests that the Council has not provided the information that has been requested.
14. The basis for this is that the map disclosed by the Council is understood to represent two times (noted on the map as being 11:20 and 14:30) that the Community Officer visited the car-park, and furthermore, that

the map does not contain the details expected in relation to the complainant's own Excess Charge Notice. The complainant considers that the Council should hold a map representing the exact time that he was issued an Excess Charge Notice (which was 14:25).

The Council's position

15. The Council has stated to the Commissioner that the disclosed document was the sole plan created by the Community Officer.
16. The Council has elaborated that the reason the content of the information is not that which was expected, is because the times noted on the plan relate to the times that the Community Officer was present in the car-park for the purpose of assessing 'overstaying'. These times, as noted on the plan, do not relate to assessing 'vehicles not parked wholly within a parking bay', to which the complainant's Excess Charge Notice relates.
17. The Council has also elaborated that documents relating to Enforcement Notices have a retention period of two years. This is stipulated by the Council's 'Retention of Documents' Policy. Consequently, no other recorded information that is relevant to the request will have been destroyed, and the plan represents the only held information that would fall within the parameters of the request.

The Commissioner's conclusion

18. The Commissioner has considered the submissions of both parties.
19. The Commissioner recognises that the complainant submitted the request in the expectation that a single map would be held that is specifically timed for 14:25. However, having considered the Council's explanation, there is no evidence to indicate that such a map is held. Instead, the Council has provided that recorded information that falls within its parameters of the request, namely a map that represents two visits by the Community Officer, and which are timed on the map for 11:20 and 14:30.
20. The terms of the FOIA only relate to information held in recorded form, and there is no requirement for a public authority to create 'new' information in order to respond to a request. Whilst that recorded information disclosed under the FOIA may not contain the specific detail expected by a requestor, such an issue falls outside the terms of the FOIA. Having considered the circumstances of this case, the Commissioner has concluded that it is likely the Council has disclosed all held recorded information that falls within the parameters of the request, and has therefore complied with section 1(1).

Right of appeal

21. 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

22. 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.
23. 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