

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 August 2018

**Public Authority:** St Edmundsbury Borough Council  
**Address:** College Heath Road  
Mildenhall  
Suffolk  
IP28 7EY

#### Decision (including any steps ordered)

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1. The complainant requested information from St Edmundsbury Borough Council (the Council) relating to a letter dated 31 July 2003. The Council confirmed it held a copy of the letter, but denied holding the specific requested information in recorded form.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold the requested information and it had therefore complied with the duty set out at section 1(1) (general right of access) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

#### Background

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4. The request in this case relates to correspondence between the complainant and his solicitor dated 31 July 2003.
5. The Commissioner acknowledges that the disputed correspondence dated 31 July 2003 was variously referred to by the Council in its dealings with the complainant both as a letter and as an email.
6. During the course of her investigation, the Council told the Commissioner:

*"We only hold a photocopy and upon first appearance it looked like a copy of an email. However looking at this further, it is clear that it*

*is a copy of a letter and not an email. I apologise to [the complainant] for any confusion caused as a result of this error".*

7. In light of the above clarification from the Council, for the purposes of this decision notice the Commissioner considers the requested information relates to a **letter** dated 31 July 2003.

## **Request and response**

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8. Following earlier correspondence, on 14 December 2017 the complainant wrote to the Council and requested information in the following terms:

*"Further to my letters of 27th November and 6th December and your replies dated 1st and 8th December 2017, would you please confirm the name of the person who sent you the email dated 31/07/2003 and when you received it".*

9. Following the Commissioner's intervention, the Council responded on 12 February 2018. Noting that he had made similar requests in the past, the Council responded by referring the complainant to correspondence it had sent to him in 2014 which stated:

*"My finding is that on various occasions since 2009 you have attended meetings at these offices, or have come into Reception, bringing with you and leaving for our attention numerous documents.....The letter [dated 31 July 2003] was one of those copy documents and was not obtained by any other means".*

10. It provided him with a copy of the correspondence it held dated 31 July 2003.

11. The complainant subsequently wrote to the Council on 8 March 2018 asking, amongst other things:

*"... how and by whom did this confidential correspondence come into the Council's possession".*

12. Following an internal review the Council wrote to the complainant on 23 March 2018. It stated that it had responded on numerous occasions and had nothing further to add.

## **Scope of the case**

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13. Following earlier correspondence, the complainant contacted the Commissioner on 6 April 2018 to complain about the Council's handling

of his request for information. He disputed that he had given the letter to the Council. He told the Commissioner:

*"My query is 'How this email came to be in the possession of the Council, when it was received and whom it was sent by'".*

14. The Commissioner's website states<sup>1</sup>:

*"The Information Commissioner's Office (ICO) recognises that some public authorities may initially respond to questions informally, but we will expect you to consider your obligations under the Act as soon as it becomes clear that the applicant is dissatisfied with this approach. Ultimately, if there is a complaint to the ICO, the Commissioner will make her decision based on whether recorded information is held and has been provided".*

15. The Commissioner acknowledges that the Council explained to the complainant how it obtained the letter dated 31 July 2003 and that it provided him with a copy of the letter.

16. However, despite the Commissioner's intervention, the complainant remained dissatisfied with the responses he received from the Council.

17. The Commissioner accepts that the complainant was specific in his request for information about the information he wanted ie the name of the person who sent the Council a particular piece of correspondence dated 31/07/2003 and when the Council received it.

18. During the course of her investigation, the Council confirmed that it did not record the requested information – that is the name of the person who sent the Council the letter dated 31/07/2003 and when the Council received it.

19. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (FOIA).

20. In the course of his correspondence with the Commissioner the complainant raised a number of issues that are not addressed in this Notice because they are not requirements of Part I.

21. The Commissioner's role in this case is to determine whether the Council handled the complainant's request for information dated 14 December

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>

2017 in accordance with the FOIA. Specifically, the Commissioner has considered the Council's assertion that the requested information is not held.

## Reasons for decision

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### *Section 1 general right of access*

22. Section 1 of the FOIA states that:

*"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."*

23. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.

24. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held the requested information at the time of the request.

25. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and results the searches yielded. She will also consider any other information or explanation offered by the public authority which is relevant to her determination.

26. In progressing her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held the requested information.

27. In its substantive response to the Commissioner, the Council stated:

*"I am unsure as to what further information I am able to provide in this matter in order to reassure [the complainant] that we do not hold the information he is seeking, i.e. how we came to be in*

*possession of a letter/email from his solicitors dated the 31 July 2003".*

28. The Council also told the Commissioner:

*"When [the complainant] first asked this information in 2013, the officer dealing with the matter at the time recalled that the information had been provided by him along with several other items of recorded information we hold".*

29. The Council confirmed that:

*"... we do not hold any recorded information which informs the Council the date it received the letter dated 31 July 2003 and nor do we hold any recorded information which confirms who provided the said letter".*

30. The Commissioner is mindful of the wording of the request for information in this case.

31. She is also mindful of the guidance on her website about when information is caught by the FOIA. That guidance<sup>2</sup> states:

*"The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it".*

32. The Commissioner acknowledges that the requested information is of interest to the complainant. She is also aware that the complainant and the Council have been corresponding about this matter for some time.

33. In that respect, she notes that the complainant told the Council on 8 March 2018:

*"... as you are aware, I have enquired on numerous occasions as to how the Council acquired confidential correspondence between my solicitor and myself dated 31 July 2003".*

34. While appreciating the complainant's frustration that the Council did not hold the requested information, having considered the Council's response, and on the basis of the evidence provided to her, the

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<sup>2</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/>

Commissioner is satisfied that, on the balance of probabilities, the Council did not hold the requested information at the time of the request.

35. The Commissioner therefore considers that the Council complied with its obligations under section 1(1) of the FOIA.

### **Other matters**

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36. The Commissioner's website includes a section entitled '*Information request dos and don'ts*'. She recommends that quick reference tool<sup>3</sup> to requesters who are considering making a request for information.

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<sup>3</sup> <https://ico.org.uk/your-data-matters/official-information/>

## Right of appeal

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37. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Deborah Clark  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**