

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2018

Public Authority: Hampshire County Council
Address: The Castle
Winchester
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested a copy of communications specific to the Home Education Bill. Hampshire County Council stated that the information was not held for the purposes of the FOIA under the provisions of section 3(2).
2. The Commissioner's decision is that the requested information is not held by Hampshire County Council for its own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).
3. The Commissioner requires no steps to be taken.

Request and response

4. On 29 November 2017, the complainant wrote to Hampshire County Council ('the council') and requested information in the following terms:

"In the second reading of the Home Education bill in the House of Lords. <https://goo.gl/kBXzgJ>

Lord Soley stated:

"I have had help from across the board, but two of the councils that have been most helpful to me on this are Hampshire and Kent. They have given me information that I hope that the Government will see in due course."

Please provide a copy of all communications (if any) specific to the Home Education bill from or to your local authority between 2016 - 2017. This includes, but is not limited to; Lord Soley, the House of Lords, other local authorities and MPs.

Please redact any identifiable information under S40."

5. The council responded on 21 December 2017. It denied holding the requested information. However it provided advice and assistance in line with Section 16 of the FOIA: *"information about the increase in the number of Electively Home Educated pupils was shared with Lord Soley verbally. This verbal information confirmed that in Hampshire we currently have 1224 electively home educated children and that the figure has tripled over the last five years."*
6. Following an internal review the council wrote to the complainant on 27 February 2018. It stated that it had spoken to the officers concerned and remained satisfied that *"the searches undertaken are sufficient and that the information provided in the response to you is what the County Council holds. As advised in your original response, information about the Home Education Bill was given verbally and no records are available for disclosure."*

Scope of the case

7. The complainant contacted the Commissioner on 3 March 2018 to complain about the way his request for information had been handled. Specifically that the council had provided a partial response.
8. The reasoning behind the complaint is outlined in the internal review request:

"It is accepted that some information has been provided. However, it is also clear from Freedom of Information requests submitted to other local authorities, that there has indeed been written correspondence in relation to this bill both to and from Hampshire County Council... I am requesting an investigation as to why records of this written correspondence and/or documentation have not been kept by Hampshire County Council.

If it is found that written records have been kept, I am requesting a further investigation as to why these records have not been included as part of this freedom of information request."

9. During the course of the investigation the council further explained that information within the scope of the request is held on council systems by a member of staff in another capacity and not in their role as council officer. As such the council states that the information *"is held by the authority on behalf of another person."*
10. The Commissioner considers that the scope of the case is to determine if the requested information is excluded from FOIA because it is not held for the council's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

Reasons for decision

Section 3(2) – information held by a public authority

11. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
12. Section 3(2) sets out the criteria for establishing if information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if

- (a) it is held by the authority, otherwise than on behalf of another person, or*
- (b) it is held by another person on behalf of the authority."*

13. The Commissioner's guidance "*Information held by a public authority for the purposes of the FOIA*"¹ states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.
14. The Commissioner's guidance identifies a number of factors that would indicate that the information is held solely on behalf of another person:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information;
 - the authority is merely providing storage facilities, whether physical or electronic.

The complainant's position

15. The complainant states that he has received information from other councils in response to a number of similar information requests. His position is that some of the information includes emails with the council in relation to the bill, which were not included in the response and are therefore in-scope of the request.

The council's position

16. The council advised that information falling within the scope of the request would only be held by the EHE (Electively Home Educated) Officer ('the officer').
17. The council confirmed that it had undertaken an electronic search of the officer's emails and had only found emails sent the officer's capacity as a Chair of the Association of Elected Home Education Professionals (the 'AEHEP'), which is not as part of the individual's role within the County Council.

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https://ico.org.uk/media/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

18. The Commissioner notes that the AEHEP is a national body of local authority officers, which was set up to share good practice.
19. The council clarified that the AEHEP role is not included in the officer's job description with the council. *"Although not part of County Council functions, this role supports the County Council's commitment to all children, and many officers are part of other national organisations or contribute to Department For Education thinking in a variety of ways, and helps shape policy on a national scale."*
20. The Council explained: *"The AEHEP includes professionals from a number of local authorities, and represents the collective professional views of all individual members in any correspondence, not the views of the County Council."*
21. It stated: *"The information sent was on AEHEP headed paper. Although the individual provides the County Council's address as the AEHEP address on the headed paper, this is because there is no other address for this group."*
22. The council confirmed that it does not provide clerical and administrative support, nor deal with enquiries about information in scope of the request, on behalf of the officer in his AEHEP role *"The County Council does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information. As all the information is held within the individual's email account, this is controlled by the individual. The County Council merely provides storage for these emails."*
23. The council provided the Commissioner with copies of information held by the officer in his role as chair of the AEHEP. The Commissioner notes the use of AEHEP headed paper, and that emails are clearly written on behalf of AEHEP, rather than the council.

The Commissioner's position

24. The First-tier Tribunal (Information Rights) decision in the case of *McBride v Information Commissioner and Ministry of Justice* (EA/2007/0105, 27 May 2008) stated that *"the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence...."*
25. Based on her own research the Commissioner has confirmed that the AEHEP is a national body. It involves officers from various local authorities, including the chair who, as stated, is also an officer for the council.

26. The Commissioner has confirmed that the correspondence reported by the complainant between the council and other authorities, relates to information shared by the officer in his role as AEHEP chair.
27. Having reviewed information in scope of the request, held by the officer, the Commissioner is satisfied that it relates to AEHEP matters, and is not held by the officer in his role as a council officer.
28. Based on her guidance the Commissioner considers that:
 - Although the information is held on the council's system, it is contained within the officer's account. Access to the in-scope information is controlled by the officer.
 - The Commissioner accepts that the council has no use for or interest in the information for its own purposes.
 - The council does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information.
 - The council merely provides electronic storage facilities.
29. Having considered the factors in her guidance and the arguments presented by both parties the Commissioner is satisfied that, on the basis of the evidence presented, the requested information is excluded from FOIA. The information requested was not held for the council's own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

Right of appeal

30. 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

31. 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.
32. 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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