

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2019

Public Authority: North Lincolnshire Council
Address: Civic Centre
Ashby Road
Scunthorpe
South Humberside
DN16 1AB

Decision (including any steps ordered)

1. The complainant has requested information from North Lincolnshire Council ("the Council") about the cost of printing and posting a specific leaflet. He also requested a copy of members' expenses for the last financial year. The Council responded to say that it did not hold the information requested.
2. The Commissioner's decision is that on the balance of probabilities the Council does not hold the specific information that was requested.
3. The Commissioner requires no further steps to be taken.

Request and response

4. The complainant advises that he submitted a request in June 2018 but had received no response. Upon asking the Council for a response it was found that his request may have been misdirected, so he resubmitted the request on 16 July 2018.
5. On 16 July 2018, the complainant wrote to the Council and requested information in the following terms:

"1. Under the above legislation, could I enquire RE the cost of a leaflet sent out by N.Lincs Council at the end of May to each resident of Brigg. This leaflet was, I understand, sent out in the name of the three Brigg district Councillors and mentioned joint activity with the local member for parliament. I imagine there would be a cost of postage, printing and officer time. (I have been asked by a member of public to enquire and was surprised not to get a reply within 20 working days, though I understand a Broughton Town Councillor has waited around six weeks for a reply).

2. As the financial year has now ended, I wondered whether I could request, also a copy of all members expenses for the last financial year. These should now be in the public domain and I am surprised they have not yet appeared in our local newspaper."

6. The Council responded on 30 July 2018. It stated that it did not hold any information within the scope of the first part of the complainant's request and that the second part of the request was due for publication in September 2018.
7. Following an internal review the Council wrote to the complainant on 3 September 2018. It maintained its position on the matter but also quoted section 3 of the FOIA to explain why the Council did not hold the information the complainant requested within the first request.

Scope of the case

8. The complainant contacted the Commissioner on 3 September 2018 to complain about the way his request for information had been handled. In particular the complainant did not agree that the requested information was not held by, or on behalf of, the Council.
9. After clarification from the complainant, the Commissioner will consider the Council's actions in regard to the first part of the request as this is the only remaining focus of the requester's concerns.
10. Therefore, the Commissioner considers the scope of the investigation is to determine whether the Council handled the request in accordance with the FOIA and whether the Council was correct in stating that it does not hold the information the complainant requested on 16 July 2018.
11. In light of the Council's internal review, the Commissioner will also consider if the requested information is excluded from the FOIA because the information was not held for the Council's own purposes and therefore falls outside of the definition of information held for the purposes of the FOIA under section 3(2).

Reasons for decision

Section 1 of the FOIA – Information held/not held

12. Section 1 of 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 within the scope of the request, and

(b) if that is the case, to have that information communicated to him."

13. The Council argues that it does not hold any recorded information which falls within the scope of the complainant's request. The complainant considers that further information must be held as he says the leaflets in question were printed and posted from Council offices.
14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. The Commissioner enquired if the Council had knowledge of the leaflet referred to by the complainant, to which the Council advised that the leaflet was Conservative Group Office business. It explained that it was printed on Conservative Group headed paper and signed by ward councillors. It did not have a copy of the leaflet in question nor did it have knowledge of what was within it.
16. The Council explained further to say that within its internal review, it described the roles of a councillor to the complainant and that although a councillor may be part of the Council, the information they hold may not be for Council business, therefore would not be held by the Council. In this case it appears that as the information requested may be related to ward business or related to being a representative of a political party, even if a councillor did hold this, it would not be held by the Council.
17. The Commissioner had also made some enquiries to the Council asking it to explain the nature of the relationship between the Council and the third party which may physically hold the requested information in order to determine whether this information is held on behalf of the Council.

18. In the Council's response to the Commissioner's enquiries, it outlined that the request was specific to a certain leaflet that was sent by the Conservative Office to a ward. As it is ward business, the Council does not hold the information requested.
19. The Council explained that it has an agreement with the Conservative Group where the Conservative Group Office would have carried out the general administration for inserting the letters or leaflets into the envelopes and sealing them, and the Support Services Team within the Council would have then made sure that the post was dispatched or collected by Royal Mail with the other post.
20. The Council also explained that the Conservative Group Office would request the Support Services Team to provide a total number of pre-paid envelopes required to cover all postage, for several different wards, then a recharge would be made to the Conservative Group Office for a total amount.
21. Because of this agreement, the Council explained that it would not hold cost details concerning the specific leaflets the complainant had requested information about.
22. The Commissioner asked the Council to explain what searches were carried out for any relevant information that it may hold regarding the request including any more general information that it might hold in relation to the request the complainant made on 16 July 2018.
23. The Council replied to advise it had carried out a search of information held by the Support Services Team to see what information it holds about the letters it posts. The Council confirmed that this search could have retrieved relevant information because the Support Services Team may have held some information about the post it sent on that day. However, it did not hold any information relating to what was in the envelopes and where each piece of post was going.
24. However, after the Commissioner asked if the Council held any general information in terms of costs for printing and posting leaflets, the Council responded to say that the Support Services Team does hold information relating to postage for administrative purposes so that recharges can be made to parties such as the Conservative Group Office. Although the Support Services Team is aware of this, it is only aware of the total cost for that day and does not hold a log of the addresses anything was posted to. For that reason, the Council has confirmed that even though it does hold some general information, it does not hold anything specifically related to the complainant's request.

25. The Commissioner is satisfied with the Council's explanation and the searches it performed. Therefore, the Commissioner finds that the Council does not hold the specific information requested by the complainant.

Section 3 – Public authorities

26. To consider whether the information is either held on behalf of the Council or whether the information is held by another public authority, section 3(1) of the FOIA states:

"In this Act "public authority" means—

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1, or

(ii) is designated by order under section 5, or

(b) a publicly-owned company as defined by section 6."

27. Section 3(2) of the FOIA states:

"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."

28. While it has been determined that on the balance of probabilities, the Council does not hold the requested information as it is not relating to Council business, it has explained that the information was more likely to be held by a councillor relating to ward business on behalf of the Conservative Group Office.

29. The Council confirmed that it described the roles of a councillor to the complainant and when information a councillor may hold be covered under the FOIA. The Commissioner has also issued guidance on this topic¹ and her view accords with the explanations that the council have provided. According to the FOIA, the Conservative Group Office is not

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

considered to be a public authority as it is does not fit the definition of a public authority in section 3. If the Council did hold the requested information on behalf of the Conservative Group Office, it would still not be covered under the FOIA.

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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