

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2019

Public Authority: Medway Council
Address: Gun Wharf,
Dock Road
Chatham
Kent
ME4 4TR

Decision (including any steps ordered)

1. The complainant has requested information from Medway Council ("the Council") regarding extracts from the "Traffic Regulation Orders", that covers "Special" permits.
2. The Commissioner's decision is that on the balance of probabilities the Council does not hold any further requested information than has already been provided.
3. The Commissioner requires no further action to be taken by the Council.

Request and response

4. On 25 April 2018, the complainant wrote to the Council and requested information in the following terms:

"Further to information received from the Local Government Ombudsman, could you please supply the extract from the "Traffic Regulation Orders" that covers the "Special" permits that have been issued to MHS and Mears for many years?."

5. The Council responded on 24 May 2018 and provided extracts from its "Consolidation Orders (Traffic Regulation Orders)" that relate to "special (Special Staff) Permits".

6. Following an internal review the Council wrote to the complainant on 5 June 2018. It stated that

"Whilst the copy of the TRO's given to you does cover the provision for Mears...It does not cover the provision for MHS, this is covered by a separate agreement, not documented. The Special Permits issued to MHS is a historical agreement based on the fact that a number of years ago, MHS took over the Council's Housing Stock. As the permit is historical and MHS continues to work with Medway Council, the permit has therefore remained in place and continues to do so."

Scope of the case

7. The complainant contacted the Commissioner on 13 September 2018 to complain about the way his request for information had been handled. He believes that the Council would hold a document regarding an agreement for a "Special" parking permit.
8. The Council has provided copies of the information that it holds regarding parking permits.
9. The Commissioner considers the scope of the case to be whether the Council is correct in its assessment that it does not hold information on the specific parking permit, and thereby complied with its duties under section 1 of the FOIA reasons for decision.

Reasons for decision

Section 1 – information held / not held

10. Section 1 of the FOIA states:

*'(1) 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'*

11. In this case, the complainant considered that the Council would hold further information regarding the "Special" parking permit.
12. The Council's position is that it does not hold any further recorded information relevant to the request and that it has responded in full.

13. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
14. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

15. The complainant has informed the Commissioner that he does not believe that the separate agreement that the Council has regarding the different charges for the "Special" Permit is not documented.

The Council's position

16. The Council has explained to the Commissioner that it has searched for information which may be relevant to the complainant's request but has been unable to locate anything other than information which has already been provided.
17. The Commissioner has asked the Council to detail the searches that it has carried out and the Council provided the following details:

"Copies of TRO'S (Traffic Regulation Orders) that we hold have been searched, all electronic and paper parking information folders that we hold and previous emails have been searched. All of these searches would be able to retrieve relevant information. Extractions of the TRO's relevant to [named person] request under 'special permits' were provided to him in the original response."

18. The Council has advised, by way of background, when MHS took over the old Council Housing Stock, as the permit was historical and MHS was continuing to work with the Council, it remained in place. The agreement was never put formally into writing. As such, it has not been documented and the Council does not hold it.

The Commissioner's conclusion

19. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in paragraphs 13 and 14, above, the Commissioner is required to make a finding on the balance of probabilities.
20. With regard to the request, the Commissioner is satisfied that the Council has carried out adequate, appropriately-targeted searches, which would have been likely to locate all the information falling within the scope of the request. The Commissioner is satisfied that nothing else relevant to this request is held by the Council.
21. The Commissioner is satisfied in this case that the Council has demonstrated that it has reasonable grounds for considering that it does not hold any further information falling within the scope of the request, and therefore that it has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

22. 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

23. 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.
24. 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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