

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 November 2019

**Public Authority:** Fareham Borough Council  
**Address:** Civic Offices  
Fareham  
PO16 7AZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Fareham Borough Council (the Council) information relating to meetings held between the Council and a company called "Cratus Group". The Council provided some information in their initial response. The Council disclosed additional information during the Commissioner's investigation and confirmed that it did not hold any further information. The complainant considered that more information must be held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further information beyond that already disclosed and has therefore discharged its duty under section 1(1) of the FOIA. However, it failed to discharge this duty within 20 working days and thus breached section 10 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

## Request and response

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4. On 6 November 2018 the complainant wrote to the Council and requested information of the following description:
- "1. Please can you inform me how many events have been held between Cratus Group and Fareham Borough Council members in the last 24 months and what dates were they held?"*
  - 2. Please can you inform me who attended from Fareham borough council (including councillors if in attendance)?"*
  - 3. What were the aims and agenda of each meeting and what were the outcomes?"*
  - 4. Were there any expenses incurred by council members (including travel expenses)?"*
  - 5. Prior to planning applications reviews are councillors informed that Fareham borough planners have been holding meetings with potential developers?"*
  - 6. Who chairs the meetings hosted by the Cratus Group?"*
  - 7. What developers were in attendance?"*
  - 8. Are councillors invited to these events?"*
5. On 10 December 2018 the Council responded. It provided him with a response in relation to questions 1, 2, 4, 5 and 8:
- In relation to question 1, it stated: *"Only one to our knowledge on 1 November 2017."*
  - In relation to question 2, it stated: *"The Executive Leader Councillor S D T Woodward, the Executive Member for Planning and Development Councillor K D Evans and the Director of Finance and Resources Andrew Wannell."*
  - In relation to question 4, it stated: *"There was no cost to the Council for Members or Officers attending this Dinner Party."*
  - In relation to question 5, it stated: *"There were no planners in attendance at the meeting listed in question 1 above so we are unable to provide you with an answer to this question."*

- In relation to question 8, it stated: *"Please see answer to question 2 in relation to the Councillors who attended the Business Dinner referred to in question 1."*

The Council stated that it did not hold information in relation to questions 3, 6 and 7.

6. Remaining dissatisfied with the Council's response, on 12 December 2018 the complainant requested an internal review, where he explained the reasons why he believed his questions had not been appropriately responded to.
7. The Council provided him with the outcome of its internal review on 10 January 2019, providing him with additional explanations. However in relation to the substance of its response of 10 December 2018, the Council did not change its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 1 February 2019 to complain about the way his request for information had been handled. The complainant was not satisfied with the amount of information disclosed by the Council in response to his request for information.
9. During the course of the investigation, the Council uncovered additional information which fell within the scope of the complainant's request.
10. The Council provided the complainant with a revised response. This response consisted of information which supplemented the previously provided answers to questions 1, 2, 5 and 8 and information falling within the scope of questions 3, 6 and 7, in response to which the Council had previously stated that no information was held.
11. However, the complainant remained dissatisfied with the amount of the information received and the time the Council took to identify all the information it held.
12. Therefore, the following Commissioner's analysis will consider whether the Council provided all the information it held within the scope of the request and whether it discharged its procedural obligations deriving from the FOIA.

## Reasons for decision

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### Section 1 – Determining whether further information is held

13. 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."*

14. In this case, the complainant disputes that the information that was disclosed is all the information that the Council held that is within the scope of the request.

15. 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.

16. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the Council to check whether the information is held and any other reasons offered by the Council to explain why the information is not held. In addition, she will consider any reason why it is inherently likely or unlikely that information is not held.

17. 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.

18. As part of her investigation, the Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The Commissioner's questions were focused on the Council's endeavours in providing the requested information to the complainant, its searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.

19. In its response the Council explained its procedure for handling requests for information received by members of the public, stating that *"When an FOI request is received, it is logged centrally using an excel spreadsheet and the request is forwarded to the appropriate team in order for those officers to gather the information."*
20. The Council stated that *"in this instance, the officers searched e-mail accounts to retrieve the requested information and the Council's corporate filing system (via Windows Explorer) and Sharepoint filing system to locate notes, agendas and reports saved in relevant folders pertaining to the dinner."*
21. The Council asserted that following the Commissioner's investigation letter it revisited the case and contacted the Councillors who participated in the dinner which was the subject matter of the complainant's request in order to ascertain whether further information was held. The Council also checked relevant Councillors' calendars using the search term "Cratus". These additional efforts did not result in any further information being identified.
22. The Council explained that in all searches it used the keyword "Cratus" *"as the wording of the original FOI request was 'business dinners hosted by Cratus Group' and it was therefore reasonable to assume that this would have the most accurate result."*
23. However, the Council stated that following a thorough and expanded search it managed to identify an email with the subject "Invitation to Dinner Party hosted by Cractus 19/09/17". The Council argued that this misspelling of the word "Cratus" *"meant that in the original search did not return this information."*
24. As described above in paragraph 10 of this decision notice, the Council provided the complainant with a copy of this e-mail and the attachment included.
25. The Council explained that its policy does not allow individual officers to store data locally on personal computers and it confirmed that *"all data is stored within the corporate filing system (via Windows Explorer) or within a library store using Sharepoint."* Further, the Council informed the Commissioner that all of the Council's data, *"including e-mail accounts are accessible by at least two officers, the internal audit team and the systems administrators in ICT."*
26. The Council confirmed that no information held within the scope of the request was deleted or destroyed.
27. The Council stated that its retention policy requires that *"All records created must have a review and retention period assigned to them,*

*regardless whether they are electronic, paper or any other media. This included emails created and held as evidence of business activity.”* The Council confirmed that correspondence files have a minimum retention period of 3 years after which they are destroyed.

### ***The Commissioner's Conclusion***

28. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
29. Having considered the scope of the request, the Commissioner is satisfied that the Council carried out adequate searches to identify the requested information that was held at the time of the request.
30. In the absence of evidence to the contrary, the Commissioner is satisfied that the Council has provided the complainant with all of the relevant information which it held falling within the scope of the request.
31. Therefore, on the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided and so concludes that the Council complied with section 1(1) of the FOIA.

### **Section 10(1) – Time for response**

32. Section 10(1) of the FOIA requires a public authority to respond to an information request promptly and in any event not later than the twentieth working day following the date of receipt.
33. In this case, the complainant made the request on 6 November 2018 and the Council only disclosed all the information it held in October 2019.
34. This is outside the statutory deadline and therefore the Commissioner finds that the Council breached section 10(1) of the FOIA.
35. As the Commissioner found that the Council has disclosed all the information it held within the scope of the request, she does not require it to take any steps as a result of this decision notice.

## Other matters

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36. Although not forming part of the formal decision notice the Commissioner uses this section to highlight issues that have arisen during her investigation.
37. Whilst the Commissioner has found above that the Council holds no further relevant information, it remains the case that it stated incorrectly at both the initial response and internal review stages that it did not hold any further information. Had the Council identified the relevant information it held at either of the earlier opportunities it had to do so, this complaint to the Commissioner may have been avoided.
38. The Council must ensure that its request handling procedures are fit for the purpose in identifying all the relevant recorded information it holds whenever it receives an information request.

## Right of appeal

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39. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**