

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2019

Public Authority: Harrogate Borough Council
Address: Civic Centre
St Lukes Avenue
Harrogate
HG1 2AE

Decision (including any steps ordered)

1. The complainant has requested information regarding a server failure. Harrogate Borough Council (the council) responded to parts of the request that it had already provided what it holds from the complainant's previous requests and that it holds no information to the remaining parts of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further information falling within the scope of the request.
3. The Commissioner does not require the council to take any steps but has addressed its refusal to carry out an internal review in the 'other matters' section at the end of the decision notice.

Request and response

4. On 24 August 2018 the complainant made the following request to the council with regards to a server failure:

"As it has not been possible to ask the officer involved direct questions there are a number of documents that would aid me in answering some of those questions.

Firstly to recover the tape from of[sic] site would require[sic] a formal request.....Please provide this request and the log to show the dates the tape was out of secure storage .

Secondly to recover the data from the backup tape would require an incident, change control document .

Please provide these documents

Thirdly The recovered file was sent to yourself prior being forwarded on to me please provide the email or communication that explained to you what they were sending and why.

The work required[sic] to recover the data from the tape in the way describe[sic] in the note/ report by MR [ICT Business Analyst] needed specialised comvault support " at a cost" Please provide the invoice for the work carried out ,the request for this help and the support and guidance given and by whom(company) .

This work would also require[sic] clearance for the personal to work on a government system.

Please provide this document.

The meeting of the 22nd of August 2017 created actions please provide all documents relating to those actions and communications relating to those actions .

It has previously been stated that the indexes to the backup tape and file had been lost.

Please provide the record of this fact "where this is recorded ".

Mr [ICT Business Analyst] worked on this server failure and it appears was unaware of the loss of the indexes"

5. The council acknowledged receipt of the request on the 28 August 20018 and then responded on the 7 September 2018. The council's response stated:

"1) I am informed that no formal written request or log was required and no such documents are held by the Council

2) Similarly there is no 'incident control change' document because the work carried out by the council's ICT Business Analyst did not affect a live system.

3) The only documents produced by the council's ICT Business Analyst have already been sent to you.

4) There is no invoice of the type to which you refer. The work was done at no cost. There was no external intervention by any 'company'

5) The work was done by authorised personnel within the Council and employed by Harrogate Borough Council. There is no requirement for any 'government' clearance and no documents exist in relation to this.

6) The meeting of 22 August 2017 created no 'actions' for the Council and there is no record of the same. Following the meeting the police went away to consider how, if at all, to progress their investigation. As you know the decision was not to pursue your complaint further.

7) So far as the 'loss of the indexes' is concerned and the relevant server failure to which you refer I am satisfied that in response to you previous FOIA requests you have been sent all the information which the Council holds."

6. The council also advised the complainant that it may not respond to any further requests on this matter and would rely on section 14(1) of the FOIA to refuse further requests as being unreasonable, repetitive or vexatious.
7. The complainant requested an internal review on the 5 October 2018. The council responded on the 26 October 2018 refusing to carry out an internal review based on the reasons set out in its initial response.

Scope of the case

8. The complainant contacted the Commissioner on the 7 February 2019 to complain about the council refusing to carry out an internal review and because he considers that the council would hold the requested information.
9. The Commissioner considers the scope of the case is to determine whether the council holds information falling within the scope of the request.
10. The Commissioner will address the council's refusal to carry out an internal review in the 'other matters' section at the end of the decision notice.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
12. 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).
13. The council has provided some background information relating to this case in that the complainant made a previous request on 27 April 2015 for information on the same overall matter, relating to a server failure, which went to the Information Tribunal¹, following the Commissioner's decision that the requested information was not held.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1944/Clark,%20Matthew%20EA-2016-0191%20\(27.01.17\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1944/Clark,%20Matthew%20EA-2016-0191%20(27.01.17).pdf)

14. The Tribunals' decision [at para 20] found some information to be held within the scope of the request (emails between the complainant and the council's *ICT Business Analyst* and follow up enquiries), and it ordered the council to respond to the complainant on the basis that it does hold information within the scope of the request.
15. The council has provided the Commissioner with the information that it sent to the complainant following this Tribunal decision. It advised that this information was provided to the complainant on 7 March 2017.
16. The council has told the Commissioner that further explanations were then provided to the complainant on the 5 April 2017, following discussions with its ICT manager.
17. There were then further discussions between the Commissioner's lawyers and the council regarding compliance with the Tribunal's decision.
18. The council stated it then sent the complainant further information on the 20 November 2017. The documents being a change control document and a further explanation by the council's ICT section in relation to the recovery issues on the council's uniform planning system.
19. The council has advised the Commissioner that the complainant requested further information from the council on 6 February 2018 with reference to the information it provided to him on the 20 November 2017. The council provided information to his 6 February 2018 request on the 7 March 2018.
20. The council has told the Commissioner that the information provided on the dates outlined above is the only recorded information it holds falling within the scope of his request and that is why it is unable to provide anything further.
21. The council has stated to the Commissioner that its Legal Services department liaised with its ICT department, specifically the *ICT Business Analyst* and sought clarification from him that other than what he has previously received, it did not hold any other information.
22. The council has told the Commissioner that the information would be held electronically.
23. The complainant has told the Commissioner that the information being sought is standard procedure documentation when carrying out work on back up tapes. He states that for this reason it would be unlikely that this documentation is not held by the council and if it is not it would pose serious issues concerning undocumented access to historic records and security of data.

24. The council has told the Commissioner that, in its view, there is no business purpose or statutory requirements for it to hold the information requested.
25. It further explained that the council's ICT Business Analyst has stated that there was no 'incident control change' document in existence because the work carried out by him to retrieve the backup data did not affect a live system. If a live system had been affected, he would have logged the information as per the council's Change Control procedure.
26. The complainant has asked that the Commissioner consider the council previously claiming documents were not held, when in fact they were – referring to the above mentioned Information Tribunal decision.
27. The council maintains that no formal written request or log was required and so that is why these documents do not exist and that, other than the information it has previously provided, no further information is held.
28. The Commissioner has given consideration to this and can see how this Tribunal finding would increase the complainant's view that the council is not providing all that it holds to this request.
29. Clearly there is a differing view by the complainant and the council as to what it is and is not required to hold with regards to this request.
30. The Commissioner has reviewed the previous Tribunal decision. She notes that the Tribunal found [paragraph 20] that the then request was broad, and that further correspondence should have been captured within the scope of it, and so ordered disclosure of this correspondence.
31. The Tribunal did also state in its decision [paragraph 19] that it is not its role *"to take a view as to whether the Council should have recorded information about the server failure. We understand the Appellant has taken this matter up with the Local Government Ombudsman"*.
32. The Commissioner takes the same view as the above paragraph with regards to this request which is being considered now, in that she cannot determine whether information should be recorded.
33. The council is adamant that no formal written request or log was required so no documents were created and that there is no 'incident control change' document due to it not affecting a live system.
34. Also, it has explained there was no invoice for the work the complaint refers to because there was no external intervention by any company. It was carried out by its own personnel within the council so there was no

requirement for any 'government' clearance so again no documents would exist.

35. The council maintains that all documents produced by its ICT Business Analyst have all been sent to the complainant via the previous requests he has made on this matter.
36. The council also maintains that no 'actions' were recorded for the meeting on 22 August 2017. The Information Officer who was present at the meeting has confirmed this to the council. The council advised that the police went away to consider how to progress its investigation which its decision was not to pursue it.
37. Finally, with regards to the 'loss of indexes' to the relevant server, the council states it has already provided all it holds in relation to this in its responses to the previous requests and there is nothing further held.
38. The Commissioner appreciates that the Tribunal decision found more information was held in a previous request, once the scope of the request was determined to be broad.
39. It is clear in this case, and even the past case, that the complainant and the council have opposing views as to what should be recorded and why.
40. With the council's view that it does not need to record the information requested, regardless of the counter view that it *should*, it suggests that the council would not have put steps in place to record the information if it was not, in its view, required.
41. The Commissioner is satisfied that the council has made the relevant searches for the information requested, has contacted the relevant department/ officer and that the explanations it has given as to why it holds no further information, other than what has been provided to previous requests.
42. Therefore, on consideration of the above, the Commissioner finds that on the balance of probabilities the council does not hold any further information within the scope of the request.

Other matters

Internal Review

43. In this case, the council refused to carry out an internal review when requested by the complainant.
44. The Commissioner notes that the council had indicated to the complainant in its initial response to the request that it would potentially apply section 14 of the FOIA to any further requests he made on the subject of his request as it would consider them to be vexatious.
45. The Commissioner wrote to the council in relation to its refusal to carry out an internal review and explained that even though it was considering applying section 14 of the FOIA to future requests, this does not mean the complainant should not be allowed an internal review to their current request.
46. The Commissioner wants to ensure that a complainant has exhausted a public authority's internal review procedure, but at the same time the complainant should not be unreasonably delayed in having his complaint considered under section 50.
47. Internal reviews are referred to in the section 45 Code of Practice, and significant or repeated unreasonable delays in dealing with internal reviews will be monitored by the Enforcement team. In some instances regulatory action may be necessary.
48. More details about the Commissioner's FOI Regulatory Action Policy are available on our website using the following links:

http://www.ico.gov.uk/what_we_cover/promoting_openness/taking_action.aspx
49. The Commissioner also notes that both the council's response and refusal of the internal review did not give details of how to complain to the information Commissioner, or how to request an internal review.
50. The Commissioner would recommend that the council adds these details to its internal review responses in future.
51. The council has acknowledged to the Commissioner that it should have carried out an internal review in this case.
52. In this instance, the Commissioner decided to go on to consider this case without an internal review firstly being carried out – so the complainant was not disadvantaged with any further delays in having his

case assessed. However, the Commissioner asks that the council ensures it adheres with the Section 45 code of practice for future requests.

Right of Appeal

53. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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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