

.Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 July 2021

Public Authority: Warwick District Council
Address: Riverside House
Milverton Hill
Leamington Spa
CV32 5HZ

Decision (including any steps ordered)

1. The complainant requested from Warwick District Council (“the Council”) information relating to the cancellation of Penalty Charge Notices (“PCNs”). The Council disclosed held information that it considered fell within the parameters of the request, and stated that some of the requested information, whilst possibly held on behalf of another person, would not be held by the Council for the purposes of the FOIA.
2. The Commissioner’s decision is that the Council disclosed all held information. In respect of that information which the Council claims may be held on behalf of another person, the Commissioner is satisfied that, whilst such information may be physically held by the Council, it is not held for the purposes of the FOIA.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 21 January 2020, the complainant wrote to the Council and requested information in the following terms:

"Query 1: I would like to request a copy of all policy and guidance documents that are available to council officers who are tasked with considering the question of whether a Penalty Charge Notice should be cancelled. For the avoidance of doubt, this request covers any policy that is published or otherwise publicly available, plus any internal council guidance or policy that is only available internally to council staff (such as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN).

Query 2: Please could you also disclose the training material that is used to train the council officers who make decisions regarding the cancellation of PCNs. This should cover only training material that is directly relevant to their role in deciding whether a council PCN should be cancelled, any other training material (such as generic council training, health and safety, GDPR or training related to other roles or functions) is not within the scope of this request. Again for the avoidance of doubt, both queries above cover policies and training material available to council officers who deal with informal representations, formal representations and appeals to the tribunal."

5. The Council responded on 28 January 2020. In respect of Query 1 it disclosed information. In respect of Query 2 it indicated that information was held but that it was not able to disclose it on the basis of copyright – although no exemption was claimed.
6. On 5 February 2020, the complainant requested an internal review in respect of Query 2, and the Council's position that it was unable to disclose the information.
7. In additional correspondence - which the Commissioner has not seen - the complainant also referred the Council to a document (that was referred to by the Council when responding to an earlier request) which he considered fell within the parameters of Query 1, but which had not been disclosed.
8. Following an internal review, the Council wrote to the complainant on 26 June 2020. In respect of Query 1, it maintained that all information falling within its parameters had been disclosed. In respect of Query 2, it clarified that the information was not held by it for the purposes of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 26 June 2020 to complain about the way his request for information had been handled, and specifically that the Council had not disclosed a specific document in respect of Query 1, and that the Council was incorrect in claiming that the information sought by Query 2 was not held by it for the purposes of the FOIA.
10. The scope of this notice is whether the Council has complied with section 1 of the FOIA in respect of Query 1, and whether the Council's position is correct (under section 3 of the FOIA) in respect of Query 2.

Reasons for decision

Section 1 – General right of access to information

11. Section 1(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.*
12. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

15. The complainant argues that the Council has failed to disclose a specific document in respect of Query 1.
16. The complainant is aware of this document following the Council's response to an earlier information request, in which it disclosed information that specifically referred to this document as "*mitigation doc*".

The Council's position

17. The Council argues that this document does not fall within the parameters of the request.
18. The Council has informed the Commissioner that this document was a historic template, and was not available for official use at the time that the request was made. As such, the Council asserts that the document did not fall within the parameters of the request. The Council has further informed the Commissioner that it has not been able to locate a copy of the document in response to her enquiries, and that it appears to have been previously deleted as a matter of routine.

The Commissioner's conclusion

19. In the circumstances of this case, the Commissioner must determine whether all relevant held information has been disclosed that would fall within the parameters of Query 1.
20. The Council's submission to the Commissioner confirms that, at the time of the request, the specific document referred to by the complainant was historic and not available for official use.
21. Having regard to the phrasing of Query 1, the Commissioner considers it reasonably clear in seeking current information as it is used by the Council in the consideration of PCNs. There is no part of the request that indicates that it is seeking historic guidance.
22. Having considered the above, the Commissioner has concluded that the document did not fall within the parameters of the request as it was phrased, and that the Council has disclosed all relevant information that would fall within its parameters.

Section 3 – Information held by a public authority

23. Section 3(2) of the FOIA states that:

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.*

24. This sets out a two-part definition. Information is held by the public authority, and therefore within scope of a request, if the authority holds it (but not if it holds it only on behalf of another person), or if another person holds it on behalf of the authority.

25. The Commissioner's guidance¹ explains the circumstances in which information is considered to be held by a public authority for the purposes of the FOIA.

26. Her guidance also makes it clear that whether information is held by a public authority, or is held on behalf of a public authority, depends on the facts of the case.

27. As explained in the Commissioner's guidance, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes or solely on behalf of another person.

28. There are various factors that will assist in determining whether the public authority holds the information for the purposes of the FOIA. The weight attached to each one will vary from case to case. In some circumstances, one factor may outweigh all the others.

29. As the Commissioner's guidance on this section explains:

"The Upper Tribunal considered the meaning of section 3(2)(a) in the case of University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection [2011] UKUT 185 (AAC, 11 May 2011). It explained that the concept of 'holding' information for FOIA purposes "is not purely a physical concept, and has to be understood with the purpose of the Act in

¹ https://ico.org.uk/media/for-organisations/documents/1152/public_authorities_under_the_foia.pdf

mind". This means that information may be present on a public authority's premises (or even its IT network) but not held by the authority for FOIA purposes. To be considered 'held' for FOIA purposes, there has to be "an appropriate connection between the information and the authority"."

30. The question to consider in this case, therefore, is whether the requested information is held by the Council, to any extent, for its own purposes.

What is the disputed information?

31. The information is any training materials provided to officers by an external party who the Council has engaged to provide training to officers about PCNs. The Council has informed the Commissioner that the external party is a limited company which the Council has used to provide this training since 2007.

The complainant's position

32. The complainant argues that if officers attend a training course in their capacity as employees, then any training materials that they are provided with will be held by the Council for the purposes of the FOIA.
33. The complainant also notes that, as the Council has previously attempted to withhold the information on the basis of copyright, it can be inferred that the Council considered the information at that time to be held by it.

The Council's position

34. The Council argues that the requested information would have been provided in 'delegates packs' that the external party provides to officers for them to use as part of their training. Any decision on whether to keep the information is made by those officers, and should officers keep the information, this would only be for their personal reference.
35. The Council has clarified that at present, and due to the impact of the Covid-19 pandemic, all relevant officers (who have attended the training) are working at home. As such, the Council is not aware of any documents (such as personal copies of the delegates packs) that they may have stored on Council premises.
36. The Council has also confirmed to the Commissioner that, whilst it is aware of the content of the training course, it has not been provided with a copy of the training material for its own use, such as part of the procurement process, or a central reference for officers. The Council has

further explained that it has used the external party since 2007, to ensure that all officers receive the same training.

The Commissioner's conclusion

37. The Commissioner recognises that each case needs to be viewed individually to determine whether a public authority holds information for its own purposes.

38. In her guidance the Commissioner acknowledges that:

"When information is held by a public authority solely on behalf of another person, it is not held for FOIA purposes. However, information will be held by the public authority if the information is held to any extent for its own purposes".

39. In accordance with her guidance, factors that would indicate that the information is held solely on behalf of another person include:

- 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; or
- the authority is merely providing storage facilities, whether physical or electronic.

40. Likewise, factors that would indicate that the information is held by the public authority include:

- the authority provides clerical and administrative support for the other person, whether legally required to or not;
- the authority controls access to the information;
- the authority itself decides what information is retained, altered or deleted;
- the authority deals with enquiries about the information; or
- costs arising from holding the information are included in the authority's overall budget.

41. In the circumstances of this case, the Commissioner understands that the information is created by an external party, and that copies are

provided to officers (as attendees) on a training course. However, any subsequent decision on whether to keep the information is solely at the discretion of the officers, and - should the information be kept (whether on Council premises, or at officers' homes) - any use of it, or decision on whether to retain, alter, or destroy it, will be solely limited to the officers.

42. The Commissioner also understands that the Council does not hold any central copy of the information that it controls access to, such as for procurement reasons, or to provide staff training itself. Furthermore, the Commissioner notes that the Council is not even able to verify whether officers have retained their own personal copies of the information, either on Council premises or at home.
43. Having considered this context, and particularly in regard to the factors outlined in paragraphs 38 and 39, it is evident to the Commissioner that the Council has no involvement in what officers may decide to do with the information. It is also noted that no central copy is retained by the Council for its own purposes, and that officers are free to use, change, or destroy individual copies as they wish. Having considered this, the Commissioner is satisfied that the requested information, should it be held either physically or electronically by the Council, is not held for the purposes of the FOIA.

Right of appeal

44. 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

45. 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.
46. 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

Daniel Perry
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