

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **31 May 2022**

Public Authority: **Watford Borough Council**

Address: **Town Hall
Watford
WD17 3EX**

Decision (including any steps ordered)

1. The complainant requested from Watford Borough Council ("the council") a copy of its complaints procedure relating to section 165 of the Data Protection Act 2018. The council said that that the requested information was not held, and advised the complainant that section 165 of the DPA 2018 refers to duties of the Information Commissioner, not to the council.
2. The Commissioner's decision is that, on a balance of probabilities, the council does not hold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 20 May 2021 the complainant made the following request for information to the council:

"Does WBC procedural document of data complaints procedure, defined under Data Protection Act 2018 section 165 exist?"
5. The council responded on 21 May 2021. It directed the complainant to its notification advising complainants of their right to make a complaint to the Information Commissioner if they felt that their rights under the DPA 2018 had been breached.

6. On the same date, the complainant wrote back to the council. He said that his request had not been responded to. He said he wished the council to provide a 'yes or no' response to his request.
7. On 24 May 2021 the council responded. It said it had provided the information which it holds.
8. On the same date, the complainant again wrote back and said that he wished a 'yes or no' answer. He also requested:

"Also under the DPA 2018 Section 165, I wish, require and request, a written copy of such data complaint policy at the WBC, as it should be made publicly available, as per the section 165."
9. On the same date the council responded and clarified that the section of the DPA referred to by the complainant refers to the procedural duties relating to the Commissioner, not to any duties placed upon the council by the DPA.
10. The complainant responded stating that the council had failed to respond to a simple question, and had therefore tacitly agreed that it was in breach of the "ICO regulations". Presumably, by this he meant that it had breached its obligations under the DPA.
11. The council therefore conducted an internal review. It provided the outcome of its review on 21 September 2021. It clarified that:

"As has already been explained to you S165 of the Data Protection Act 2018 does not apply to the council. S165 places an obligation on the Information Commissioner to facilitate the making of complaints by data subjects to her office.

The Council does publish on its website how a data subject can complain to the council see the attached link
https://www.watford.gov.uk/info/20016/the_council/840/subject_access_request_sar/11.

The council has no other documents to disclose to you on this point."

Scope of the case

12. The complainant contacted the Commissioner on 16 July 2021 to complain about the way his request for information had been handled.
13. The complainant's request was in the form of a question – does the information exist. The right provided by FOIA is the right to request recorded information from a public authority – it provides no right to

require an authority to answer any question provided to it. Nevertheless, authorities should consider whether any recorded information is held which can respond to the question asked, and consider this for disclosure in response to such a question.

14. The scope of this case and of the following analysis is therefore whether the council is likely, on the balance of probabilities, to hold the requested information for the purposes of section 1 of FOIA.

Reasons for decision

Section 1 – General right of access to information

15. 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.*

16. 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.
17. In scenarios where there is a 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.
18. 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

19. The complainant argues that the council has not responded appropriately to his request for information. He argues that if it does not hold the information which he requested then it is in breach of its data protection obligations under the DPA 2018.

The council's position

20. The council notes that section 165 of the Data Protection Act 2018 relates to the duties and obligations of the Information Commissioner, not the council. It therefore has no requirement to hold the requested information, and does not do so.

The Commissioner's conclusion

21. The Commissioner has considered the council's position, in conjunction with the request. He has not found it necessary to contact the council for its further arguments in this case given the nature of the information requested, together with the council's responses to the complainant's correspondence.
22. The council was clear why it was refusing the request – that section 165 of the DPA does not place any obligations upon the council to hold such a procedure, and it has provided all of the information which it does hold.
23. The council is correct in stating that section 165 of the DPA relates to duties and obligations relating to the Information Commissioner, not to public authorities in general.
24. The council provided details of the notification which it does hold and confirmed that no other information is held falling within the scope of the request. The Commissioner notes, in passing, that its data protection notification does not specifically fall within the scope of the request for information.
25. The complainant has not provided any arguments in support of the view that his assertions are correct. He has not explained why he considers that the council should hold such a document.
26. The Commissioner must consider the objective wording of the request.
27. The Commissioner notes that the council sought to provide help and assistance by being clear and specific in stating to the complainant that no obligation exists on it under section 165 of the DPA, but the complainant did not amend the information which he was requesting to ask for any data protection complaints procedure which the council holds generally. His request was specific, and he did not alter the wording or widen the scope of his request during the course of his correspondence with the council. He reiterated the point that if no such procedure is held, then the council is in breach of its data protection obligations. This is incorrect.

28. There is no legal obligation upon the council to hold a section 165 complaints procedure, and the Commissioner can see no evidence why it would therefore hold such a document; there is no necessity for it to do so.
29. If the council holds a data protection complaints procedure generally, this would not be related to any obligations under section 165 of the DPA, and therefore this would fall outside of the scope of the request as it was worded.
30. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
31. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Right of appeal

32. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF