

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

### **Decision notice**

**Date:** 17 October 2022

**Public Authority:** Maidstone Borough Council

**Address:** Maidstone House  
King Street  
Maidstone  
Kent  
ME15 6JQ

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

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1. The complainant requested information from Maidstone Borough Council ("the Council") relating to a letter they had received from the Council. The Council denied holding the requested information.
2. The Commissioner's decision is that on the 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**

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4. On 6 February 2022, the complainant wrote to the Council and requested information in the following terms:  
  
"Can I ask under the Freedom of Information Act the name of the Officer who drafted the attached letter?"
5. The request refers to a letter dated 11 January 2022 which the complainant received from the Council.
6. The Council responded to the request on 18 March 2022 and denied holding the requested information.
7. On 23 March 2022 the complainant requested an internal review. Following an internal review, the Council wrote to the complainant on 11 April 2022. It maintained that it does not hold the requested information.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 18 April 2022 to complain about the way their request for information had been handled.
9. The scope of this case and the following analysis is to determine if the Council is correct when it says that it does not hold the requested information.

## **Reasons for decision**

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### **Section 1 – general right of access to information**

10. 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."
11. 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.

12. 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 Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner 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**

14. In their complaint to the Commissioner, the complainant stated that they do not accept that the Council does not hold the name of the Council Officer who drafted the letter as they believe that the Council's computer system would record the name of the Council Officer who drafted the letter.

### **The Council's position**

15. As is the practice in a case where there is some dispute over the amount of information located by a public authority and the amount of information that a complainant believes the public authority to hold, the Commissioner asked the Council to provide him with a detailed explanation of the searches it had conducted for the requested information.
16. In its submissions to the Commissioner, the Council stated that it examined the metadata of the letter referred to in the request to check whether the author of the letter was recorded. The Council explained that whilst the metadata did contain the name of a Council Officer, this was the name of an administrator within the Information Governance Team who formatted the letter before it was sent and not the name of the Council Officer who drafted the letter.
17. The Council explained that it also conducted a search of all mailboxes and SharePoint sites for the requested information using the Microsoft Compliance Centre. When conducting its search the Council used the search term "letter dated 6 December 2021 regarding [address redacted]". This search term was used as it is the subject line of the letter referred to in the request. The Council's search returned a total of 38 results which may have contained the requested information. The

Council explained that it has reviewed each of the 38 results but the requested information was not located.

18. The Council stated that there is not a business reason or statutory requirement for it to hold the requested information.

**The Commissioner's position**

19. The Commissioner has considered the Council's position in relation to whether the Council holds the requested information. The Commissioner is satisfied that the Council has carried out adequate searches for the requested information. Therefore, his decision is that, on the balance of probabilities, the Council does not hold the requested information.

## Right of appeal

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

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

21. 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.
22. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**