

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2023

Public Authority: South Kesteven District Council
Address: Council Offices
The Picture House
St Catherine's Road
Grantham
NG31 6TT

Decision (including any steps ordered)

1. The complainant requested information from South Kesteven District Council ("the Council") relating to a code of conduct review panel hearing.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold further information within the scope of parts 1 and 2 of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following request for information to the Council on 12 December 2022:

"As discussed, this morning I was surprised at being informed that a Code of Conduct Review Panel Hearing was being conducted this morning by SKDC.

Due to my ongoing dispute with SKDC over the application of safety legislation and the legal obligations of a Local Authority towards the "Right to Life" of the UK citizens I request, once the hearing is complete a copy of the following documents be provided: -

1. A full list of the documents that relate to the Hearing
 2. A copy of the documents that are not protected under the Local Government Act 1972
 3. The specific reason why individual documents are precluded from the public domain"
5. The Council responded on 15 February 2023 and provided the complainant with a list of documents relating to the hearing in response to part 1 of the request. In response to part 2 of the request, the Council provided the complainant with links to where the documents which are not protected under the Local Government Act 1972 can be located within the public domain.
6. In response to part 3 of the request, the Council informed the complainant that the reason why certain documents relating to the hearing are precluded from disclosure is because the documents constitute personal data and are therefore exempt under section 40(2) (personal information) of the FOIA.
7. On 16 February 2023, the complainant wrote to the Council to complain about its response to the request. The complainant stated that they consider the Council to hold the following documents relating to the hearing which were not included in the list provided in response to part 1 of the request, or provided in response to part 2 off the request:
- 1) Report from the SKDC Monitoring Officer that there is case to be answered.
 - 2) Report explaining how a private conversation can be deemed a breach of the SKDC Code of Conduct
 - 3) Reports detailing the scope, terms of reference and required status for the appointment of an Independent Person, Independent Advisor and Acting Monitoring Officer.
 - 4) Reports prepared by the Independent Person, Independent Advisor and Acting Monitoring Officer.
 - 5) Documentation to show that the entire Group of Conservative Councillors supported the complaint.

- 6) Documentary evidence that demonstrates there would be no conflict of interest in a Conservative Councillor being a panel member even though he is classified as a complainant.
 - 7) Documentary evidence that demonstrates the three Councillors on the panel had the experience and knowledge to make the decision the Hearing must by law be held in private on the grounds that paragraphs 1 and 2 of Schedule 12A to Section 100(A)(4) of the Local Government Act 1972 applied.
 - 8) Documentary evidence that demonstrates the three Councillors on the panel had the experience and knowledge to make the decision that certain documents relating to Hearing must be exempted from the public based on the Hearing must by law be held in private on Section 40(2) (personal information) in that it believes the exemption applies because the information is personal data of a third party and if disclosure would not be fair or lawful because it would breach the first data protection principle as outlined in Part 3, Chapter 2 of the Data Protection Act 2018.
 - 9) Report explaining how the decision was reached that those making a complaint that could destroy someone's integrity and position on the council is acceptable whilst at the same time the individuals who are making the complaint have a reasonable expectation of privacy for their decision to complain.
8. The Council responded on 21 February 2023 and stated that it does not hold separate documents which contain the information outlined at points 1, 2, 4 and 9. The information is contained within a document which is protected under the Local Government Act 1972.
 9. With regards to point 3 listed above, the Council provided the complainant with a link to where some information relating to the appointment of an independent person could be located on the Council's website. The Council stated that it does not hold documents which contain the information outlined at points 5, 6, 7 and 8 above.

Reasons for decision

10. This reasoning covers whether the Council holds further information within the scope of parts 1 and 2 of the request which has not been disclosed.
11. The complainant considers the Council to hold further information within the scope of parts 1 and 2 of the request. In their complaint to the Commissioner, the complainant stated that the Council should hold the

document listed in their correspondence of 16 February 2023 to the Council.

12. The Council considers that it has provided the complainant with all the information it holds within the scope of parts 1 and 2 of the request. In its submissions to the Commissioner, the Council explained the code of conduct review panel hearing took place as part of an investigation into an alleged breach of the Councillor code of conduct. The investigation was led by an independent Monitoring Officer employed by Legal Services Lincolnshire. As the Monitoring Officer was the primary contact for the investigation, the Council considers that any documents relating to the hearing would have either been sent to the Council by the Monitoring Officer, or sent to the Monitoring Officer by the Council.
13. The Council explained that the Monitoring Officer has provided the Council with all the documents they hold relating to the code of conduct review panel hearing. It also explained that it has conducted a search of all the emails received by Council employees involved in the investigation from the Monitoring Officer for information held within the scope of parts 1 and 2 of the request. It stated that any information located as a result of these searches that fall within the scope of part 1 and 2 of the request have been disclosed to the complainant.
14. The Council explained that any information relating to the code of conduct panel hearing would be held in the relevant complaint file within the Democratic and Legal Services area on the Council's network. The Council explained that it has conducted a search of the relevant complaint file to identify information falling within the scope of parts 1 and 2 of the request. Any information located as a result of this search that falls within the scope of parts 1 and 2 of the request has been disclosed to the complainant.
15. In its submissions to the Commissioner, the Council stated that it holds the following documents relating to the hearing:
 - 2 complaint letters
 - An apology
 - A response to the complaint
 - 5 interview notes
 - A response to a draft report
16. However, it explained that whilst the above documents were listed in its response to part 1 of the request, copies of the documents have not been disclosed in response to part 2 of the request as the information is

exempt under the Local Government Act 1972. As the complainant stated in part 2 of their request that they were only requesting documents relating to the hearing that are not protected under the Local Government Act, the Council does not consider the documents listed above to fall within the scope of part 2 of the request.

17. The Commissioner is satisfied that the Council has carried out adequate searches for information held within the scope of parts 1 and 2 of the request.
18. The Commissioner recognises that the Council holds information relating to the hearing which has not been disclosed to the complainant, that being the documents listed above. However, he notes that the Council considers the documents to be exempt from disclosure under the Local Government Act 1972. The Commissioner is unable to consider whether the Council is entitled to refuse to disclose the documents listed above under the Local Government Act 1972 as it does not fall within his remit. He therefore accepts the Council's position that the documents are exempt under the Local Government Act 1972.
19. Therefore, as the complainant specified in part 2 of the request that they are only requesting documents relating to the hearing that are not protected by the Local Government Act 1972, the Commissioner considers that the documents listed above do not fall within the scope of part 2 of the request.
20. Furthermore, whilst the Commissioner recognises that the Council has stated in its response to part 3 of the request that some documents relating to the hearing have not been disclosed under section 40(2) of the FOIA, the Council clarified in its submissions to the Commissioner that these documents are the same documents listed above which are exempt from disclosure under the Local Government Act 1972. Therefore, for the reasons outlined above, the documents do not fall within the scope of part 2 of the request.
21. The Commissioner's decision is that on the balance of probabilities, the Council does not hold further information within the scope of part 1 or 2 of the request.

Right of appeal

22. 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

23. 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.
24. 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

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