

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **21 September 2023**

Public Authority: **Oxford City Council**

Address: **Town Hall
St Aldate's
Oxford
OX1 1BX**

Decision (including any steps ordered)

1. The complainant requested information relating to support for Ukraine. Oxford City Council (the "council") disclosed some information. The complainant considers that the council has failed to disclose all the relevant information that it holds.
2. The Commissioner's decision is that the council failed to respond in time and breached section 10(1) and, in relation to the request for correspondence from the former Member & Committee Services Manager, the council failed to comply with section 1(1) of FOIA.
3. The Commissioner requires the council to take the following steps:
 - issue a new response which either confirms or denies whether the requested information is held or cites a relevant provision which removes this duty.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 August 2022, the complainant wrote to Oxford City Council (the "council") and requested information in the following terms:

"Please provide all documents, minutes from meetings and internal communications relating to the pledging of support by Oxford City Council for the Ukraine, e.g., flying of Ukrainian flags above Council buildings and footers on official emails showing support for the Ukraine.

Is it mandatory or optional for Council employees to put a Ukrainian flag showing support for the Ukraine on the footer of their official Council emails?

Has Oxford City Council ever issued a statement condemning the killing of innocent civilians in Palestine or Yemen? Has Oxford City Council ever discussed flying Palestinian or Yemini flags above Council buildings in support of these persecuted people?"

6. The council responded to the request on 30 September 2022 and provided some information. It confirmed that the cost of locating, retrieving and extracting additional relevant information would exceed the appropriate limit under the terms of section 12 of the FOIA.
7. On 13 October 2022 the complainant asked the council to review its handling of the request. The complainant specifically asked the council to reconsider its position in relation to correspondence sent by the council's Committee and Service Manager.
8. On 20 December 2022 the council responded. It confirmed that the Committee and Service Manager was no longer a council employee and that it was unable to access their email account. The council further suggested that, if it was possible to access the Committee and Service Manager's email account, the cost of locating, retrieving and extracting relevant information would exceed the appropriate limit under the terms of section 12 of the FOIA.

Scope of the case

9. On 27 July 2023 the complainant contacted the Commissioner to complain about the council's handling of their request.
10. The complainant confirmed that they disputed the council's position that it did not hold relevant correspondence from the former Committee and Service Manager. The Commissioner has considered whether the

council's response to this element of the request complies with section 1(1) of FOIA.

11. The Commissioner notes that, following the internal review, the complainant submitted further queries to the council regarding its records management. The Commissioner considers that these enquiries do not fall within the scope of the original request so he has not considered these in this decision notice.

Reasons for decision

12. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told whether information is held and, where it is, to have it communicated to them.
13. The council confirmed to the Commissioner that the Committee and Member Services Manager left the council on 30 June 2022. It suggested that, if held, their correspondence potentially fell within the scope of the request.
14. The council explained that, in accordance with its standard processes for leavers, their email account would have been disabled from the day they left, then marked for deletion but kept on the system for 30 more days before being deleted. It clarified that, following this, there would be an option to recover emails for 14 more days, before being finally deleted from the council's server and, therefore, no longer held.
15. The council explained that the process outlined above had, therefore, been completed by the time the request was received on 20 August 2022.
16. The Commissioner's guidance acknowledges that there will be occasions where a requester asks for information which has previously been held but deleted prior to receiving the request. The Commissioner accepts that it would be reasonable for an authority to interpret most requests as relating to 'live' records or those held in archives. However, if a requester refers to an old or previous version of a document or otherwise makes it clear that they expect to be provided with 'deleted'

information, this needs to be considered and addressed in the authority's response¹.

17. The Commissioner guidance clarifies that information can still be held by an authority if it is retained in backup servers / tapes which are accessible to the authority. The council has indicated that the information deleted in this case is "potentially" held on back-up tapes administrated by an off-site contractor. It has suggested that the effort/cost of accessing this information would be time consuming.
18. However, in the Commissioner's view the council's responses fail to satisfy the duty provided by section 1(1).
19. The council should confirm or deny whether it considers that relevant information on back-up tapes is held and respond accordingly. Where it considers that the cost of complying with these duties prohibits it from doing so, the council should identify the relevant section(s) of the FOIA.
20. Section 10(1) requires authorities to comply with the duty in section 1(1) within 20 working days of the date of receipt of a request.
21. In this case, the council's initial response failed to meet this timeframe so the Commissioner has recorded a breach of section 10(1).

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/#requests>

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
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Wilmslow
Cheshire
SK9 5AF