

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 28 November 2017

Public Authority: Cambridgeshire County Council
Address: Shire Hall
Castle Hill
Cambridgeshire
CB3 0AP

Decision (including any steps ordered)

1. The complainant requested various items of information relating to grant funding awarded to Sawtry Youth Project ("SYP"). The council said that some of this information had already been provided and some of it was not held. The complainants did not accept that the council had provided the information. The Commissioner decided that the requests should have been considered under the terms of the Environmental Information Regulations 2004 ("the EIR"). She found that some additional information was held, but it has now been provided. On the balance of probabilities, no further information was held. The Commissioner has found a breach of regulation 5(1) and 5(2). There are no steps to take.

Request and response

2. The complainants have made a series of requests to the council since June 2016 relating to grant funding awarded to SYP. They were dissatisfied with the way in which the council handled their multiple requests. On 16 June 2017, the complainants wrote to the council and said the following:

"Please see below the the [sic] list of documents we require and which should have already been sent to us...

Documents to be supplied by CCC

- 2. Documents in support of SYP application for £1,000*
 - 3. Formal offer letter from CCC (see formal rejection letter for the previous unsuccessful application 12/5/17)*
 - 4. Documentation about SYP charitable status, either from SYP or internally (they must exist as the payment was made to SYP charity)*
 - 5. Copy of SYP application for £500 grant and formal acceptance offer*
 - 6. Documentation for HAP grant meeting of 2/2/16 if the meeting did take place*
 - 7. Documentation for HAP meeting of 9/2/16 and list of participants with contact details*
 - 8. Original (email) file for letter of 1 March 2016 from [name] to [name] showing the date the letter was created and whether it was later changed.*
 - 9. Original (email) file for HAP minutes of 23 March 2016 showing the date the letter was created and whether it was later changed. Also who created this document.*
 - 10. Communications between [name] with SYP and to her colleagues about these 2 applications and about HAP. There is an email from [name] to SYP saying she was not sure how to pay SYP the money and there must be an email trail on this subject.*
 - 11. Communications from [name] about SYP and HAP either internally and externally, especially with HRC*
 - 12. Communications both internally and externally by CCC officers about SYP, HAP and interested third parties.*
 - 13. Communications about SYP, HAP by interested third parties such as [name], Sawtry Parish Council or councillors and anyone else who expressed an interest in their applications and our f.o.i. requests.*
 - 14. All communications with HRC about HAP and SYP and making payments on CCC's behalf".*
3. The council responded on 15 August 2017. It said that it had already provided information relating to some of these requests, that it did not hold the information relating to other requests and it provided information in respect of some requests.

4. The complainants wrote to the Commissioner to express dissatisfaction with the council's response on 18 August 2017.

Scope of the case

5. The complainants contacted the Commissioner initially on 11 December 2016 to complain about the way their requests for information had been handled. By the investigation stage when the Commissioner sought to clarify the complaint, it became clear that the history of the correspondence had become quite convoluted. As the complainants' correspondence on 16 June 2017 purported to list all of the outstanding information connected to previous requests, the Commissioner decided to use this request as the focus of his investigation.
6. The Commissioner has excluded from his investigation any requests that were made on 16 June 2017 that were "new" i.e. had never been made to the council before. This is because they would not have been through the council's internal review procedure as is required for complaints to be eligible for further consideration by the Commissioner. The requests in question are as follows:
 - "4. Documentation about SYP charitable status, either from SYP or internally (they must exist as the payment was made to SYP charity)"
 - "8. Original (email) file for letter of 1 March 2016 from [name] to [name] showing the date the letter was created and whether it was later changed".
 - "9. Original (email) file for HAP minutes of 23 March 2016 showing the date the letter was created and whether it was later changed. Also who created this document".
7. For clarity, a limited amount of information was withheld using the exemption under section 40(2) of the FOIA. This exemption relates to third party personal data. The complainants confirmed that they did not require the Commissioner to consider the council's decision to withhold this information.

Reasons for decision

Environmental information

8. The council dealt with these requests under the terms of the FOIA. However, the Commissioner's view is that the majority of the requests ought to have been considered under the terms of the EIR. This is because the council has explained that the requests largely relate to grants made to a group relating to plans to build a skate park. Any

information relating to plans affecting or likely to affect the elements and factors of the environment will be environmental information for the purposes of the EIR. Such information cannot be considered under the FOIA.

Regulation 5(1) - Duty to make environmental information available

9. Regulation 5(1) provides a general duty to make environmental information available. This should generally happen within 20 working days in accordance with regulation 5(2) unless a valid exception applies.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
11. The council has explained to the Commissioner that although it has not, so far, sought to argue that the complainants' requests were vexatious, it is useful to set the requests into their wider context so that the nature of the requests and how these matters have progressed over a period of time can be properly understood. This helps to shed light on the reasons for the complainant's dissatisfaction with the responses provided. The council has been dealing with requests and correspondence from the complainants over a significant period of time in connection with a dispute over grant funding being awarded to a group, SYP. SYP have plans to build a skate park and it is understood that the complainants are strongly opposed to the park being built and the council considers that the complainants are determined to find fault with the grant payments as part of their opposition to the plans. It said that, quite simply, whatever information is provided and however much the council tries to explain what has happened, this is not acceptable to the complainants if it does not demonstrate any wrongdoing. The council explained that another complicating factor was that the complainants frequently make new information requests.

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

12. The council said that the matter had been exacerbated by the fact that it made an error in response to the first request made by the complainants in 2016 (not the subject of this particular complaint). This resulted in the council stating that it had not made a payment to SYP when in fact it had. The council apologised for this error, explained in detail how it came about and provided the information held. It said that this had regrettably resulted in a lack of trust and a suspicion that information is being deliberately withheld.
13. The council explained that there were two grant payments made to SYP, one paid by the council and another paid via Huntingdonshire Regional College (HRC). The latter was issued by the Hunts Area Partnership (HAP) of which the council is a member. The council explained that at the time it was decided that splitting up the administration of the HAP grants would be a good way of keeping the other partners engaged. This was why the fund money was transferred to HRC and they were responsible for issuing the payments. The council said that the complainants had misinterpreted this as a deliberate attempt to "hide" the issuing of the payments although the council said that it had invested a considerable amount of time in providing explanations and information to the complainants.
14. The council said that it had dedicated a significant amount of resource to the various requests and other correspondence on this topic. It said that it believed that it had provided comprehensive responses and was confident that it had provided all the recorded information held. The council said that it had undertaken extensive searches involving contacting the relevant officers that were involved. It said that where the complainants had queried anything, the council had conducted further consultation to ensure that everything had been provided. The council said that the primary officer involved had used search terms in Outlook to check for further information. It said that it had undertaken appropriate searches of email folders and documents for relevant information about SYP and HAP.
15. The council said that no relevant information had been deleted as far as it was aware. It said that it was possible that some very basic ephemeral email correspondence between officers about SYP had been deleted as part of general ongoing management of emails before the requests were received.
16. The council confirmed that it had responded to each request made by the complainants individually to demonstrate that nothing had been withheld. The details of those responses has been set out below.

17. *Documents in support of SYP application for £1,000*

The council explained that this payment was made by the council's Community Reach Fund. It supplemented a £500 grant made by the Area Partnership. In response to a previous request under reference 7359, the council wrote to the complainants on 20 January 2017 and said that it had attached the application form and communications confirming the grant award. It said that it had disclosed this in full except for minor redactions to personal details (address, signature, bank account details) under section 40(2) of the FOIA.

18. The council said that information had been obtained from the relevant team that dealt with the application concerned. It explained that the application was made on a standard form, so that the information covered by the question is a specific document that has been provided. It added that the application form for the £1000 also applied to the award for £500 under a separate grant scheme. There is just one completed application form.

19. *Formal offer letter from CCC (see formal rejection letter for the previous unsuccessful application 12/5/17)*

The council said that the information it held was provided in response to a previous request under reference 7359. The council said that the document was obtained from the relevant team that dealt with the application. It said that the request was seeking a copy of a specific single document (the offer letter) that the council could readily identify and had supplied.

20. *Copy of SYP application for £500 grant and formal acceptance offer*

The council said that as it had already explained, there was just one completed application for the two amounts of money. It said that while the complainants appear to believe that there should be two separate application forms, this is not the case. It said that the relevant information had been obtained from the team that dealt with the application.

21. *Documentation for HAP grant meeting of 2/2/16 if the meeting did take place*

The council said that it had confirmed that there was no meeting on this date. The meeting was on 9 February and the reference to 2 February in a previously disclosed email was a simple typing error. The council said that it had checked this point with the relevant officers and they had confirmed that the reference to 2 February was a typing error and that the meeting was actually scheduled for, and took place, a week later. As such, no documentation was held.

22. *Documentation for HAP meeting of 9/2/16 and list of participants with contact details*

The council said that the relevant officers involved in the meeting were consulted in order to obtain relevant documentation. The council said that the meeting was solely for those attending to consider the applications and to make decisions on who should receive a grant and the amount. The council confirmed that the recording of this meeting therefore took the form of completing a spreadsheet to capture the comments and decisions, rather than a more conventional formal set of minutes being written up. This had been provided to the complainants. It said that this was in line with normal procedure and that there is no statutory or business requirement to produce more formal minutes. It added that while the complainants may believe that there should be another more formal record of this meeting, this is not the case.

23. The council confirmed the identities of those in attendance at the meeting, with the exception of four young people. It said that that this information was exempt under section 40(2) of the FOIA.

24. *Communications between [name] with SYP and to her colleagues about these 2 applications and about HAP. There is an email from [name] to SYP saying she was not sure how to pay SYP the money and there must be an email trail on this subject.*

The council said that the information it held had been provided in response to a previous request, reference 7359. It said that this request was about communications involving a specific member of staff. Therefore the search primarily involved the member of staff going through their emails to identify any relevant information. This was completed by doing various keyword searches such as "Sawtry" and generally looking through sent/received emails from the relevant time period to ensure that nothing had been missed. Colleagues that the staff member concerned would have discussed the application with also completed similar checks of their emails.

25. With respect to the specific query raised about a follow up email, the council said that it discussed this with the staff members concerned who confirmed that no further recorded information was held. It said that the recollection was that the clarification required was provided verbally and that no notes were taken. It said that this was a simple procedural matter and it would be entirely reasonable not to keep any record.
26. *Communications from [name] about SYP and HAP either internally and externally, especially with HRC*

The council said that again, this request was about communications involving a specific member of staff and the search therefore primarily involved the member of staff going through their emails to identify any relevant information. Key search words were used and the relevant time period was checked. Colleagues that would have been involved in discussing the application also completed similar checks.

27. *Communications both internally and externally by CCC officers about SYP, HAP and interested third parties.*

The council said that the information it held was provided in response to the previous request under reference 7359. The council said that the subject matter of the request allowed the council to clearly identify which members of staff would have been involved with such communications. Correspondence about SYP concerned their grant application and also more indirectly, FOI requests about SYP. The council therefore contacted those officers and they completed searches to collect relevant information. The council confirmed that it had carefully checked the email threads and was confident that it had identified all the relevant information.

28. *Communications about SYP, HAP by interested third parties such as Cllr [name], Sawtry Parish Council or councillors and anyone else who expressed an interest in their applications and our f.o.i. requests.*

The council said that the information held was provided in response to a previous request under reference 7359. In relation to the councillor named in the request, the council located one additional thread that it provided to the complainants. The councillor raised a query but this was answered via a telephone conversation. The council confirmed that if any such communication had been received by the council, it would have been by those officers involved in the grants and FOI requests and that these people had all been included in searches. The council said that it had no reason to believe anyone other than the officers involved would hold information relevant to this request.

29. *All communications with HRC about HAP and SYP and making payments on CCC's behalf".*

The information held was provided in response to a previous request under reference 7359. As above, the council confirmed that it had clarified with the relevant officers whether any such communications would have involved them (either directly or through being copied in) and that the searches already undertaken relating to the other requests would have captured any such communication.

30. The Commissioner asked the complainants why they remained dissatisfied with the responses provided. The Commissioner notes that the complainants expressed dissatisfaction with the council's response picking up on parts of information that had been provided that the complainants consider require further explanation. That is not a matter for the Commissioner.
31. Some points raised by the complainants clearly related to the requests under consideration and some were arguably new requests. Nonetheless, in an effort to assist and resolve the matter, the council provided a complete response to the outstanding points raised by the complainants.
32. Regarding the requests for documentation about the applications, the complainants expressed dissatisfaction because the council had not supplied "assessments" and any documents used for the assessments. The complainants said that this should show who conducted the assessments and the dates. They said that the documents approving the assessments must show the date this happened and who approved the assessment. The council confirmed to the Commissioner that the documentation relating to this request had been provided. It said that the relevant Head of Service who has delegated powers under the council constitution for decisions at this level attended the meeting and oversaw that due diligence was followed. The council said that this was reported back to the HAP at the meeting in March (under items 5) and these minutes have previously been provided to the complainants as well.
33. The complainants also referred to request 7 and said that they required the agenda for the meeting on 9 February and a list of who was invited to the meeting and any documents they were sent. They also said that they were seeking apologies for absence and the time and venue of the meeting. The council wrote directly to the complainants separately and supplied a list of all the members of HAP at the time. It also confirmed that the meeting took place between 6-9pm at Broadleas Centre. It said that attendance was arranged on the basis of asking for volunteers from HAP. It said that the meeting was solely to look through the grant applications so the 'agenda' was a list of the applications to go through (including the details already provided to the complainants) and the applications in advance to consider.
34. Regarding the same meeting, the complainants raised a number of queries about the role of the 4 young people involved in approving the grant for £500. They said that they had wanted to know whether they were members of HAP or just members of CCC, whether they took part, how they were chosen, what guidance existed to avoid bias, and whether they had delegated powers. The complainants said they also sought copies of the redacted emails inviting them to the 9th February

- 2016 meeting. Again the council wrote to the complainants under separate cover and confirmed the requested details about the young people concerned. It confirmed that there were no emails as they were asked verbally, and that there was a training session to discuss issues such as bias. It said that the Head of Service had delegated powers.
35. The complainants sought the agenda for the HAP meeting of 23 March and a list of people sent minutes of the meeting and the date the minutes were sent with copies of the emails. The council wrote to the complainants to provide the agenda and confirmed who the minutes would have been circulated to. It said that no emails were held and this would not be the sort of information that the council would expect to retain.
36. The complainants said that they were seeking a list of payments made to the Huntingdonshire Regional College by the council for 2015/2016 and 2016/2017 and what they were for, as well as copies of the accounts showing these payments. The council wrote to provide this information directly to the complainants.
37. The complainants said that they sought council documents delegating grant making powers. It said that the document must clearly show to whom these powers are delegated and council guidance about awarding grants. Again, the council wrote to the complainants to provide details of its standard scheme of delegation. It said that there were no separate documents specific to delegation of grant-making powers or specific guidance about the award or oversight of grants. It provided a link to the council's Constitution.
38. In relation to request 10, the complainants made the following comments however the council had already provided an explanation (detailed above) which the Commissioner finds convincing:
- "There must be documents between SYP and [name] and between the officers which are being withheld. Anyone reading the documents supplied would take this view. For instance, there is an email by [name] saying she did not know how to make the grant payments to SYP. There must be emails on this subject. Whatever documents would prove embarrassing they do not exist and matters were resolved by phone or face to face. As CCC officers have consistently lied it is hard to believe them when they say there is no documentation".*
39. It is clear to the Commissioner that the parties have become embroiled in a dispute over this matter which has become increasingly complex and tangled. Nonetheless, it is clear to the Commissioner that the council has put in considerable effort and no doubt has expended considerable resources in responding in detail to the various points raised by the complainants. The council has been able to provide an

account of the thorough searches it has undertaken, over time and in response to the Commissioner's enquiries directly. It is apparent that it has searched for information and considered each individual element carefully and thoroughly. The Commissioner understands that no relevant information has been deleted, destroyed or mislaid with the exception of limited information that may have been deleted in the normal course of business along standard records management lines.

40. It seems to be the case that the reason for the complainants' dissatisfaction may be closely linked to the fact that some of the original requests were made in quite broad terms and it would not have been immediately apparent in some cases what additional information was being sought. Now that this has been specified in more detail, the council has diligently provided that outstanding information and arguably some additional information that may not have fallen within the scope of the original requests made. It also appears that the council has provided explanations regarding information that was not recorded in an effort to assist the complainants. The Commissioner agrees with the council that it seems that much of the dissatisfaction is borne of a general suspicion and distrust regarding the council's intentions, though the Commissioner found no evidence that these concerns were well-founded. On the contrary, the Commissioner's overall impression was that the council was doing its best to handle a series of convoluted requests and ongoing correspondence from the complainants.
41. There are no strong reasons for continuing to dispute the council's conviction that it has provided all the information it can, and the council has been able to explain convincingly why no further information was held. On the balance of probabilities, the Commissioner is satisfied that no further information was held and there are no additional steps for the council to take.

Procedural issues

42. The Commissioner has found breaches of regulation 5(1) and 5(2) of the EIR because some of the information was provided at a later stage.

Right of appeal

43. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. 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.
45. 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

Elizabeth Archer
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