

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2019

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant requested from Derby City Council (the Council) information in relation to cash seizures carried out by Environmental, Health and Trading Standards for a specific period of time. The Council's position was that it did not hold information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information within the scope of the request in this case.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On an unconfirmed date, the complainant wrote to the Council and requested information in the following terms:

"Please could I have the following information relating to cash seizures carried out by Environmental Health and Trading Standards from 1/4/16 until 31/3/18?"

- *How many cash seizures have been carried out?*
- *How much cash was seized in total?*
- *What powers were used including the act and the section?*
- *Were the cash seizures considered lawful and properly carried out?*
- *How was the cash disposed of and was that considered lawful?*
- *Was any advice given to officers prior to any seizures? If so copies please (naturally please redact any officer's details).*
- *Was any advice given after seizures? If so copies please and copies of any emails concerning this matter (redact as necessary).*
- *Was any legal advice sought (internally or externally)? If so copies please.*
- *What is the current (as of today) position on seizing cash?"*

5. On 15 May 2018 the Council responded. It responded to the request under bullet point 1, stating that no seizure had been carried out. It stated that it did not hold the information requested under bullet points 2, 3, 4, 5, 6, 7 and 8. In response to the last bullet point of the information request, the Council responded that *"Officers are not permitted to seize cash under any circumstances."*
6. The complainant requested an internal review on 17 May 2018.
7. The Council sent the outcome of its internal review to the complainant on 18 June 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 29 June 2018 to complain about the way his request for information had been handled.
9. The Commissioner's analysis that follows considers whether further information was held within the scope of the request.

Reasons for decision

Section 1 – general right of access

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to him.
11. In this case, the complainant clearly believes that the Council holds information from which it can answer the request. The Council's position is that it does not.
12. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
13. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that the requested information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

14. In his complaint to the Commissioner, the complainant has expressed his firm belief that the Council holds information related to cash seizures carried out by Council officers.

The Council's position

15. As part of her investigation, the Commissioner wrote to the Council requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The questions were focused on the Council's efforts to ensure that necessary searches were conducted in order to determine whether the requested information was held.
16. The Council confirmed that despite being confident that it does not hold recorded information within the scope of the complainant's request, it complied with the Commissioner's requirements to conduct further necessary searches.
17. The Council explained that it interpreted the request for information as relating to cash seizures made in accordance with s.294 of the Proceeds of Crime Act 2002, this being the legislation that establishes a lawful basis for appropriate authorities to carry out cash seizures. The Council stated that according to this Act¹:

"Only the below officers can conduct lawful cash seizures none of which are employed by the Council at the time of the initial request:

- *An Officer of Revenue and Customs;*
 - *A constable; or*
 - *An accredited financial investigator."*
18. Nevertheless, the Council stated that the trading standards team examined the departmental case management, email inboxes and corporate drives for any information relating to cash seizures but these searches did not indicate that such information was held. In this process, both the Head of Service and Acting Director of Public Protection were consulted.
 19. The Council asserted that if such information was held, it would be recorded both manually in notebooks and electronically in its electronic case management software. For this purpose, the Council conducted searches on its:
 - Corporate Document Management System
 - Electronic Visit Records

¹ Section 294 of Proceeds of Crime Act 2002
<https://www.legislation.gov.uk/ukpga/2002/29/section/294>

- Electronic Case Management Software
20. The Council also explained that consultations were carried out with relevant officers and their email inboxes were searched.
 21. According to the Council, none of the above searches located any information that would fall within the scope of the complainant's request.
 22. The Council stated that there is no business purpose to hold information of this kind, unless the Council itself was involved in a lawful cash seizure, which it indicated it had not been.

The Commissioner's view

23. The Commissioner has examined the submissions of both parties.
24. The Commissioner has considered the searches performed by the Council and the Council's explanations as to why there is no information held and the complainant's concerns.
25. The Commissioner noted that during the course of handling of the complainant's request, the Council's decision to interpret the scope of the request within the meaning of s.294 of the Proceeds of Crime Act 2002, in fact narrowed it down. Whilst the complainant requested information about *any* cash seizures carried out by Environmental Health and Trading Standards, the Council responded that no *lawful* cash seizure were carried out.
26. Therefore, in the course of her investigation, the Commissioner asked the Council to confirm whether, at the time of the request, it held information in recorded form relating to "*any cash seizure (lawful or unlawful) carried out by the Council's officers from Environmental Health and Trading Standards.*" The Council confirmed its original response that at the time of the request, the Council held no information related to cash seizures that fell within the scope of the request because there were no cash seizures carried out by the officers of Environmental Health and Trading Standards.
27. Having considered the scope of the request and on an objective reading, the Commissioner is satisfied that the Council carried out adequate searches to identify the requested information that was held at the time of the request. The most significant point here, however, is that the Commissioner accepts the statement from the Council that no cash seizures of the type envisaged by the request were carried out. Having accepted that point, it follows that the Commissioner also accepts the probability that the Council holds no information falling within the scope of the complainant's request.

28. In the absence of evidence to the contrary, the Commissioner is satisfied that the Council was correct when it stated that it did not hold any information within the scope of the request. Therefore, on the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided and, therefore, concludes that the Council complied with section 1(1) of the FOIA.
29. In light of the above finding, the Commissioner does not require the Council to take any steps.

Other matters

30. The Commissioner wishes to address specific issues which were noted in the course of investigation of this complaint.
31. Whilst the Commissioner is satisfied with the searches conducted by the Council and its clarifications provided in the course of investigation which enabled her to conclude that no information was held, it is the Commissioner's opinion that had the Council provided similar clarifications to the complainant, the matter could have been resolved at an earlier stage.
32. It was indicated to the Commissioner that the Council may have been in possession of information of a similar nature to that requested by the complainant, but which did not fall within the scope of the request above.
33. The Commissioner would like to remind the Council of its obligation under section 16 to advise and assist. She appreciates that the Council in the outcome of its internal review suggested to the complainant to amend the request and ask for different information. However, the Commissioner considers that the Council could have been more specific with the complainant by indicating what information it held that, whilst not within the scope of his request, was similar to the information requested.

Right of appeal

34. 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

35. 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.
36. 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
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