

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2019

Public Authority: Kirby Muxloe Parish Council
Address: The parish Office
Station Road
Kirby Muxloe
Leicestershire
LE9 2EN

Decision (including any steps ordered)

1. The complainant has requested information with regards to specific contracts. Kirby Muxloe Parish Council (the council) provided the information it held, but the complainant considered more information was held.
2. The Commissioner's decision is that the council does not hold any further information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 18 May 2018 the Commissioner issued a decision notice finding that the council breached section 10(1) of the FOIA, as it had not responded to the complainant's information request made on the 29 September 2017. The decision notice ordered the council to issue a substantive response to the request, the request being:

"I should be grateful if you would provide me with copies of the following documents.

- *The council's contract with the temporary clerk who is minuted in attendance on 18 August 2016, and from whom an update was received at minute Cou/111/17-17 on 29 September 2016.*
 - *The council's consultancy contracts referred to in minute Cou/111/16-17 on 29 September 2016, and in minute Cou/244/16-17 on 16 March 2017.*
 - *The council's contracts with [company name redacted] where these have not already been included above."*
5. On the 6 August 2018 the council responded to the request and provided a copy of the Data Processor Agreement.
 6. The complainant emailed the council on the 18 September 2018 stating that not everything requested had been provided.
 7. The council responded on the 12 October 2018 explaining that the contract concerned relates to a broad spectrum of consultancy and work requirement and in its view, any other requests to undertake work do not necessitate an individual document to enable such work to commence.
 8. The council also stated that it was aware that the complainant had been provided with a copy of the contract by the ICO as a result of the council's consultant giving his permission for it to be disclosed.
 9. The complainant responded to the council on the 16 October 2018 stating that the master contract should be disclosed together with the authorities under which individual services are contracted for. She also stated that she has not been provided with any contract.

Scope of the case

10. The complainant contacted the Commissioner on the 29 September 2018 dissatisfied with the council's response to the request.
11. The Commissioner asked the council to confirm whether it held the information requested to each of the three parts of the request and if so to either provide it or issue a valid refusal notice under the FOIA.
12. On the 6 March 2018 the council advised the complainant that for parts 1 and 3 of the request, no information is held. For part 2 of the request the council provided the complainant with a copy of the Agreement it held.

13. The complainant has told the Commissioner she stills believes that further information is held by the council, that being a 'Master Contract'.
14. The Commissioner considers the scope of the case is to determine whether the council holds this Master Contract.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

15. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
16. Where there is some dispute between the amount of information identified 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 decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
17. The complainant has told the Commissioner that she considers there is a 'Master Contract' which is highlighted in the Data Processor Agreement that was provided by the council.
18. The Commissioner has viewed this Data Processor Agreement which states: *"This Agreement shall continue in full force and effect for the same period as the Master Contract, unless terminated or breached by either party."*
19. The 'Definitions and Interpretation' section of the Data Processor Agreement, at 1.1, explains that 'Master Contract' *"means the main contract between the Data Controller and the Data Processor setting out the terms and conditions for the Services to be provided by the Data Processor."*
20. The council has responded to the Commissioner on this stating that it does not hold a 'Master Contract' and the council has no knowledge of ever holding such a document.
21. It has explained that any reference to a 'Master Contract' should have been removed when the Consultancy Agreement was drawn up.

22. The Commissioner should make clear here that the Consultancy Agreement and the Data Processor Agreement are one and the same thing and will be referred to as 'the Agreement' for the remainder of the decision notice.
23. The council has told the Commissioner that if a Master Contract were held, it would most likely be held manually and its staff cannot recall any such contract being made.
24. The council has told the Commissioner that it has searched its electronic records (computers and laptops) and done a full physical search of its office files even though it aware that this contract is not in existence.
25. The council is not aware of this contract ever been in existence and then deleted or destroyed and that there is no statutory purpose for it to hold such a contract. The council state that is it the Agreement that sets out the requirements of the council and the company/consultant.
26. The council has told the Commissioner that it is of the very strong view that it has provided a thorough and truthful response to the information request and investigation.
27. After considering the above, the Commissioner can see why the complainant considers there to be a 'Master Contract' as the Agreement clearly makes mention of one and states that the Agreement will continue in full force and effect for the same period as the Master Contract.
28. However, the council has carried out searches for this contract and is adamant about knowing that it does not exist. Also the council has told the Commissioner that reference to a Master Contract should have been deleted from the agreement when it was drawn up – which adds strong weight that the Master Contract was not created.
29. Even though the Agreement suggests that a Master Contract should exist, there is a difference to what does exist and what should exist. The Commissioner cannot determine whether a document should be held, it is only in her remit under the FOIA to determine whether a document is held or not.
30. Therefore on the balance of probabilities, the Commissioner finds that the Master Contract is not held by the council.

Right of appeal

31. 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

32. 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.
33. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF