

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2014

Public Authority: Pembrokeshire County Council
Address: County Hall
Haverfordwest
Pembrokeshire
SA61 1TP

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of Pembrokeshire County Council's use of Excel Civil Enforcement Limited for the period from 1 April 2012 to 31 March 2013. The Council provided some information but informed the complainant that it did not hold any further information. The Commissioner's decision is that in failing to provide the amount of the fees refunded at the time of the request, the Council has breached section 10(1) of the FOIA, however the remainder of the requested information is not held for the purposes of FOIA under the provisions of section 3(2)(b). As the information which should have been provided under section 1(1)(b) has been provided during the course of the Commissioner's investigation, he does not require the Council to take any steps.

Request and response

2. On 13 May 2013, the complainant requested various items of information for the period from 1 April 2012 to 31 March 2013, in respect of visits, collections and charges where Excel Civil Enforcement Limited (ECE) had been involved in the process of Council tax debt recovery on behalf of Pembrokeshire County Council ('the Council').
3. The request consisted of 10 separate items with many containing sub-sections. Due to the length of the request, it has been reproduced in the attached Annex to this notice.

4. The Council responded on 10 June 2013. It provided information in respect of items one and nine of the request, sought clarification what the complainant meant in respect of item 10 and informed the complainant that it did not hold information in respect of items two to eight of his request.
5. Following an internal review the Council wrote to the complainant on 5 August 2013. In relation to items two to eight, the Council confirmed that it was upholding its original decision as the information requested relates to the operational procedures and costing arrangements of ECE. It did however provide further information in respect of item nine.

Scope of the case

6. The complainant contacted the Commissioner on 6 August 2013 to complain about the way his request for information had been handled. He disputed that the Council's response that the information was that of the third party rather than the Council's.
7. As the complainant did not express dissatisfaction with the Council's response to items one and ten of his request for information, these have not been included in the scope of the Commissioner's investigation. However, during the course of the Commissioner's investigation, the complainant has confirmed that he is not satisfied with the Council's response to item nine of his request for information in addition to his concerns regarding items two to eight. Item nine therefore also forms part of the Commissioner's investigation.

Reasons for decision

Section 1 – General right of access

8. Section 1(1) of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.

Section 10(1)

9. Section 10(1) concerns the time for compliance with a request and states that a public authority must comply with section 1(1) no later than the twentieth working day following date of receipt.

10. The complainant is not satisfied with the Council's response to item nine of his request for information. The request concerned the number and amount of fees that were refunded either by the Council or by ECE for the time period specified. The request also asked for the mean, mode and median of the amount refunded.
11. The Council confirmed that there was only one instance of fees being refunded for the relevant time period and that they were refunded by ECE. However, it did not provide details of the amount, mean, mode or median refunded although the amount was subsequently confirmed during the course of the Commissioner's investigation.
12. As there was only one refund, the Commissioner considers that it would not be appropriate to provide figures for the mean, mode and median. However, the Council's failure to provide the amount within the timescales specified under the FOIA, represents a breach of section 10(1) of the FOIA.

Section 3(2) – information held by a public authority

13. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of FOIA:

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

14. The issue for the Commissioner to determine is whether the information relevant to items two to eight of the complainant's request is held by ECE for its own purposes or on the Council's behalf.
15. The complainant considers that the information is held on behalf of the Council. He has argued that as the Council is legally responsible for Council tax collection as laid down by "*The Council tax (Administration and Enforcement) Regulations 1992*" (*as amended*), ('the Regulations'), then the Council is required to hold information of the type requested.
16. Additionally, he also considers that a recent document, "*Council tax Guidance to local councils on good practice in the collection of Council tax arrears*" further reinforces this requirement. He has stated that he is not requesting the financial arrangements of a private company but

asking for details about the fees set out in the legislation and how they are applied.

17. However, the Council considers that the complainant's request relates to the operational procedures and costing arrangements of ECE, and as such, is information held by that company for its own purposes as opposed to on behalf of the Council.
18. The Council has explained that in providing debt collection services, the bailiff is responsible for all parts of the recovery of the debt in accordance with Schedule 5 of the Regulations which sets out the charges and fees in relation to Council tax debt recovery.
19. It has further argued that any arrangements they make to collect the debt are part of the bailiffs working arrangements and these are not shared with the Council. The Council has informed the Commissioner that it provides the bailiff with the details of the debt, and the bailiff makes the payments net of their fees together with a schedule of accounts to which the payments relate. The Council does not however receive details of how the debt was collected and has no involvement in the number of visits made, or fees raised against these visits, as this is between the debtor and ECE.
20. The Council has however confirmed that the arrangement entered into does state that the bailiff firm must permit officers of the Council to visit their premises and examine those records relating to cases of the Council. However, these records are created by ECE for all cases regardless of their source of origin.
21. The Commissioner has considered the arguments of both the complainant and the Council. The Commissioner acknowledges that the Council is legally responsible for Council tax collection. However, the charges and fees in relation to Council tax debt recovery are the responsibility of the debt recovery company as laid down under Section 5 of the Regulations.
22. Local authorities should, for their part ensure that fees are transparent to the public and open to scrutiny, for example by publishing their standard scale of fees on their website. However, they are not required to hold detailed information regarding the fees and charges made on a case by case basis.
23. The Commissioner has also considered the document referred to by the complainant, "*Council tax Guidance to local councils on good practice in the collection of Council tax arrears*" and whilst it clearly confirms:
 - that responsibility for the administration of Council tax lies with the council,

- the recommendation that councils have robust contracts in place with their bailiffs including a clear procedure for people to report complaints about recovery action, and
- that local authorities must ensure that they are aware how their bailiffs are operating and regularly scrutinise the operation of outsourced contracts,

it does not require councils to hold the detailed information necessary to answer this request. Additionally, the Commissioner notes that this guidance was published in June 2013 whilst the request dated 13 May 2013, covered the period from 1 April 2012 to 31 March 2013. Therefore, even in the event that the guidance did require this level of detail, it would not have applied to the period subject to this request.

24. The Commissioner has therefore concluded that the information relevant to items two to eight of the request is held by ECE for its own purposes as opposed to on behalf of the council and as such, is not held for the purposes of FOIA. The council was therefore justified in its refusal to provide this information.

Right of appeal

25. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

The request dated 13 May 2013 asked for the following information for the period from 1 April 2012 – 31 March 2013:

1. In how many cases has Pembrokeshire County Council employed certificated bailiffs employed by Excel Civil Enforcement Limited to collect debts owed to Pembrokeshire County Council
2. In all cases, how many involved a first visit from certificated bailiffs employed by Excel Civil Enforcement Limited?
 - a. In all cases where a first visit was made, in how many cases was an Attendance Fee raised?
 - b. In all cases, where a first visit was made, in how many cases was a charge raised for a Walking Possession?
 - c. In all cases where a first visit was made, in how many cases was a Redemption Fee raised?
 - i. In all cases where a Redemption Fee was raised on the first visit, in how many cases were goods removed from a debtor's property and, subsequently, retrieved by the debtor after all monies owing had been paid in full, where goods were stored, were there inventories of goods stored and the costs for storing the goods over any period of time
3. In all cases, how many involved a second visit from certificated bailiffs employed by Excel Civil Enforcement Limited?
 - a. In all cases where a second visit was made, in how many cases was an Attendance Fee raised?
 - b. In all cases where a second visit was made, in how many cases was a charge raised for a Walking Possession?
 - c. In all cases, where a second visit was made, in how many cases was a Redemption Fee raised?
 - i. In all cases where a Redemption Fee was raised on the second visit, in how many cases were goods removed from a debtor's property and, subsequently, retrieved by the debtor after all monies owing had been paid in full, where goods were stored, were there inventories of goods stored and the costs for storing the goods over any period of time
4. In all cases, in how many cases was a fee raised for Attendance to Remove involving a charge for a van?
 - a. How many of these Vans for collection fees occur within the same twenty-four hour period of another and how many have occurred on each twenty-four hour period?
 - b. In all cases, in how many cases where goods removed from debtors' properties involving the use of a van?
 - i. How many of those people who have had goods removed by a van, have occurred on the same twenty-four hour

period of another and how many have occurred in each twenty-four hour period?

5. In all cases, in how many cases did debtors pay a First Visit Fee only?
6. In all cases, in how many cases did debtors pay a First Visit Fee and a Second Visit Fee only?
7. In all cases, what is the; mean, mode, median and standard deviation (I am happy for the raw data to undertake the calculations myself) for all fees combined added to the accounts by Excel Civil Enforcement Limited beyond the original Council Tax bill and court fees? This includes, but is not restricted to fees for credit and debit card payments, fees for cheque payments, Attendance Fees, Walking Possession Fees, Van Fees, Redemption Fees, Online Payment Fees, Letter Fees.
8. In all cases, in how many cases, did debtors complain by email, letter or telephone, or in person that they had not received any visit for which a charge was raised or have not received any necessary paperwork from any visit for which a charge was raised or communication from Excel Civil Enforcement Limited?
9. In all cases, in how many cases were fees refunded by
 - a. Pembrokeshire County Council
 - b. Excel Civil Enforcement Limited
 - c. What is the combined mean, mode, median and sum refunded amounts?
on account of fees being not permitted by legislation, or for work not carried or for whatever reason?
10. What is meant by "Refunded Amount"?