

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2014

Public Authority: Doncaster Metropolitan Borough Council
Address: PO Box 67
Copley Road
Doncaster
South Yorkshire
DN1 2PR

Decision (including any steps ordered)

1. The complainant has requested access to all "emails, background papers, officer decision records, reports etc regarding the faking of [named official's] signature". Ultimately the Commissioner had to decide whether a set of briefing notes were held by the Council. His decision, on the balance of probabilities, is that it does not.
2. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

Background

3. On 4 September 2009 the then Mayor of Doncaster Metropolitan Borough Council ("DMBC") made a decision to withdraw funding for DMBC's United Nations Day including Black History Month.
4. On 11 September 2009 a letter regarding funding cuts was sent out by [named official] of DMBC.
5. On 25 February 2010, the complainant made the following request for information under the FOIA:
 - Who instructed [the named official] to implement the withdrawal of support for Black History Month 2009 along with any information he may have been provided with regarding the legality of that decision.

6. Under cover of a letter dated 24 March 2010 DMBC purported to release the requested information to the complainant.
7. In or around June 2013 the complainant became aware of media reports which stated that the named official's signature had been "forged" or otherwise wrongly used in correspondence generated by the decision outlined in paragraph 3 above.

Request and response

8. On 4 June 2013 the complainant made a further request to DMBC in which he asked as follows;
 - "for access to all emails, background papers, officer decision records, reports etc regarding the faking of [named official's] signature".
9. DMBC ultimately replied, in a letter dated 18 July 2013, that the requested information was withheld via exemptions within the FOIA. Upon an internal review DMBC revised its position and released some requested information to the complainant under cover of a letter 16 August 2013. However DMBC continued to withhold information and relied on section 40(2) (personal data of a third party) to do so.
10. One letter that was released is a draft of the 24 March 2010 letter referred to above. The draft contained a paragraph ("the missing paragraph") which did not appear in the final version; it said;
 - "[named official] throughout this whole process provided the Council with briefing notes and advice with particular references to equality and the general duties. These briefing notes were shared with Mayor Davies by both [two other officials]. This resulted in the subsequent Equality Impact on the whole equality and diversity calendar".

Scope of the case

11. The complainant contacted the Commissioner on 4 July 2013 to complain about the way his request for information had been handled. The complainant explained to the Commissioner that he did not take issue with the withholding of information on the grounds that it was the personal data of a third party (section 40(2) FOIA). However he wished the Commissioner to investigate whether the Council had in its possession the "briefing notes" referred to in paragraph 10 above. The

Commissioner is satisfied that, if held, the briefing notes would fall within the scope of the 4 June 2013 request.

12. The Commissioner will therefore seek to determine, on the balance of probabilities, whether DMBC held at the time of the request (4 June 2013) the briefing notes.
13. Some issues and matters that arose during the Commissioner's investigation, due to their nature, have been considered in the Confidential Annex attached to this Notice.

Reasons for decision

14. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
15. When a complainant complains that a public authority has not accounted for all the requested information it holds, the Commissioner will decide whether this is the case on the balance of probabilities. He will reach the decision based on the adequacy of the public authority's search for the information and any other reasons explaining why the information is not held, such as there being no business need to record it. In order to assist in this determination the Commissioner put a number of questions to DMBC.
16. DMBC explained that it does not know the name (if any) given by the named official to these briefing notes and instigated searches for the most likely generic title. DMBC is able to conduct extensive searches within its email system; the facility is unable to search for emails that are more than two years old. Recognising this, it had caused searches to be made on the in-boxes of key individuals including the former Mayor, his support team, and senior members of staff that could have been involved originally. No relevant material was found.
17. DMBC explained that a careful search has also been made of the hard copy file maintained in respect of the matter to which the request refers. The briefing notes in question were not found on that file, although one document on that file showed a picture of a PDF document entitled "H S PDF" and the content of this copy document indicated that the briefing notes were enclosed. Another network search (10 terabytes was

searched in total in relation to this particular search) was made with the search terms "H S pdf". Again no file was found.

18. In addition to the searches already undertaken a full network search was instigated to look for documents saved on DMBC's server using the key words "briefing note equalities". This facility, it said, is able to look at the title of documents but not the content.
19. DMBC believed that the information would have been held electronically by the author on either the available S: or U: drive.
20. DMBC stated that it did not have a formal records management policy until 2012; prior to this all files were managed by the individual Service and documents are unlikely to have been deleted in accordance with Information Society Guidelines on Information and Records Management. These briefing notes would have been regarded as information which falls within the category of "management of routine responses on council actions, policy or procedures" and therefore would have been destroyed after two years.
21. DMBC was not aware that any former employee had retained this information and had made no attempt to contact the former named official to request details of where the information might be held or to ask for copies to be provided to it. DMBC does not believe that this information should be retained for business purposes and is aware that it is not required to obtain information from any other sources to respond to requests or ICO complaints which relate to requests made in earlier years.
22. In summary, it believed that its searches for these documents were reasonable within the meaning of the legislation. The original network search took 9 ½ hours and the further search took 16 hours (part of which was carried out overnight). It said it was anxious to comply with the request but believed that any further searches of the remaining network would be disproportionate given the resources that have already been applied in searching for these documents and the impact that such searches have on the speed of the DMBC's Network. In reality, it went on to say, further searches are only likely to identify thousands of other documents entitled "Briefing Notes" and containing the word Equalities. It considered that any further search to be excessive and go beyond what should be considered as reasonable and proportionate.
23. This has not been an easy decision for the Commissioner to reach. On the one hand there are matters discussed in the confidential annex that suggests the DMBC being in possession of the briefing note at the time of the request. On the other, DMBC explain that they extensively searched for the briefing notes and that the search has been fruitless. It

further explains that it has nothing to gain from "hiding" the briefing notes. The staff members involved in the relevant matters of 2010 are no longer with it and DMBC's political administration has changed.

24. On the balance of probabilities the Commissioner has come to the view that around the time of the request the Council did not have possession of the briefing notes and that it has undertaken reasonable and satisfactory searches which failed to find them. The Commissioner makes this finding based on the searches the Council latterly undertook and, to a lesser extent, that the key personnel of 2010 are no longer with the Council.

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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF