

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 May 2014

Public Authority: Kirklees Council
Address: 2nd Floor, Civic Centre 3
Market Street, Huddersfield
HD1 2YZ

Decision (including any steps ordered)

1. The complainant requested information regarding the regulations and local implementation of the law guiding street traders and soliciting.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority did not hold the information requested.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 11 October 2013, the complainant wrote to the public authority and requested information in the following terms:

'I have been directed to write to you regarding the relevant regulations and local implementation of the law guiding street traders and soliciting.....'

I request information held by the Local Authority on the specific sections of the relevant Act(s) of Parliament setting out the definition of soliciting by street traders and the regulations applying to its implementation in Kirklees....'

5. On 5 November 2013 the public authority responded as follows:

'...Kirklees Council adopted the provisions of Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 at its Policy &

Resources (General Purposes) Sub-Committee on 17th February 1993 with the provisions of all streets in Kirklees to become "consent streets" from 1 May 1993. Please find attached a copy of those minutes.

Streets includes [sic] any road, footway, beach or other areas to which the public have access without payment.

Kirklees Council relies on the above and subsequent laws to control and regulate street trading in the borough.'

6. On 8 November 2013 the complainant requested an internal review in the following terms:

'....My Freedom of Information request of the 11th Oct asked for information held by the Local Authority on the specific sections of the relevant Acts of parliament setting out the definition of soliciting by street traders and the regulations applying to its implementation in Kirklees. I trust that you can supply the relevant information on the definition of soliciting and how the Local Authority deals with instances of such soliciting.

7. Unclear as to the information that the complainant was seeking, the public authority wrote to him on 27 November 2013 requesting clarification of his request in the following terms:

'.....I am afraid your request is not clear, and because I want to give you the correct information, and answer your questions correctly, I would be grateful if you clarified the following:

1. I understand you would like to know whether we hold information on the specific sections of the relevant Act(s) of Parliament that define: soliciting by street traders. What do you mean by soliciting? It is not clear to me what you mean by "soliciting by street traders".

2. What do you mean by implementing it in Kirklees?

Once I get clarification from you in relation to the meaning of soliciting, in this context, I will be able to continue with the review.'

8. On 29 November 2013 the complainant responded as follows:

'.....Of course, I mean by soliciting 'to ask for or try to obtain (something) from someone, or to accost someone and offer one's services or someone else's services. One may think of it as a form of harassment. And by implementation I mean 'the performance by the Kirklees Local Authority of a legal or regulatory obligation'.

But more importantly I wish to know what the relevant law defines as soliciting by street traders. Clearly from what you say there is some complexity in the law on this area but you have not thought it appropriate to set this out sufficiently to provide assistance to me (eg. As following the Lord Chancellor's Code of Practice.....).'

9. On 7 January 2014 the public authority issued its final response. It informed the complainant that it had carried out adequate and properly directed searches relating to the complainant's request to '*know what the relevant law defines as soliciting by street traders..*' but it could not locate any recorded information within the scope of the request. It explained that it was not aware of and did not hold any information on the definition of soliciting as defined in any Act of Parliament or otherwise. The public authority also considered that it had complied with its responsibilities under section 16 FOIA to provide advice and assistance to applicants requesting information.

Scope of the case

10. On 13 January 2014 the complainant wrote to the Commissioner to complain about the way his request for information had been handled. He disagreed with the public authority that it did not hold information within the scope of his request.
11. The scope of the investigation was to determine whether the public authority was correct to say it did not hold any information within the scope of the request above of 11 October 2013 (including the clarification issued on 29 November 2013).

Reasons for decision

Section 1 FOIA – general right of access to information held

12. A public authority is required by virtue of section 1(1)(a) FOIA to inform any person making a request whether it holds information of the description specified in the request. As mentioned, the public authority informed the complainant that it did not hold the information requested.
13. In his letter (setting out the scope of his investigation) of 6 March 2014 to the complainant, the Commissioner requested evidence (if any) in support of his view that the information requested was held by the public authority. The complainant did not respond.

14. The Commissioner subsequently asked the public authority to provide him with a full and detailed explanation (including details of any searches it had carried out) in support of its position that it did not hold the information requested by the complainant.
15. The public authority explained that its Licensing team had carried out searches of both its manual and electronic records for information within the scope of the request. The team had retrieved paper information from 1993 on street trading which details the public authority's decision to approve the introduction of a scheme regulating street trading in the Kirklees area under the provisions of the Local Government (Miscellaneous Provisions) Act 1982. However, the team did not identify any information within the scope of the request. Searches of its electronic database using the search terms '*soliciting*' and '*street trading*' also did not reveal any information in scope.
16. In determining whether information is held, the Commissioner applies the normal civil standard of proof – i.e. he will decide on the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
17. The public authority has clearly carried out searches of records which it considered relevant to the request – ie records relating to the scheme on regulating street trading in the Kirklees area. The public authority also searched its electronic database using the relevant key terms. Both of these searches did not yield information within the scope of the request. Although the information that the complainant seeks seems evident, it is far from clear whether there is an Act(s) of Parliament that defines *soliciting by street traders*. In the unlikely event that there is, there is nothing to indicate that it is held by the public authority and that the authority also holds information relevant to its implementation in the Kirklees area. What is clear is that the public authority has adopted and consequently introduced a scheme to implement the provisions of Part 3, Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 which generally deals with *Street Trading*. In the Commissioner's view, that is the information held by the public authority which is likely to be most relevant to the complainant's request.
18. The Commissioner consequently finds that, on the balance of probabilities, the public authority does not hold the information requested by the complainant on 11 October 2013 (including the clarification issued on 29 November 2013).

19. The Commissioner additionally finds that the public authority complied with the duty imposed on it by section 16 FOIA to advise and assist the applicant in making his request.

Right of appeal

20. 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

21. 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.
22. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF