

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2015

Public Authority: Broxbourne Borough Council

Address: Borough Offices
Bishop's College
Churchgate
Cheshunt
Hertfordshire
EN8 9XQ

Decision (including any steps ordered)

1. The complainant has requested information from Broxbourne Borough Council which concerns the costs it incurred in bringing a prosecution against a named person for dropping a piece of orange peel.
2. The Commissioner has investigated why the costs disclosed to the complainant are different from the costs the Council disclosed to the Hertford Mercury in its press release.
3. The Commissioner's decision is that the Council has complied with section 1 of the FOIA. He requires no further action to be taken in respect of this matter.

Request and response

4. On 8 July 2015, the complainant wrote to Broxbourne Borough Council and requested information in the following terms:
"Please advise how much the Council paid for legal advice, representation and court fees to pursue its prosecution of [a named person] for dropping one 10p size piece of orange peel, despite him apologising, thanking the officer and immediately picking it up."
5. The Council acknowledged the complainant's request on 8 July, under reference FOI 3251.

6. On 4 August the Council responded to the complainant's request, stating that:

"There were no court costs or other costs incurred. All work relating to this matter was carried out by the Council's in-house legal team. Currently one member of this is a temporary agency worker employed to fill a staff vacancy. However no specific payments have been made in respect of this case."

7. The complainant asked the Council to review its response to his request on 4 August. He accepted that the Council's in-house team would not have incurred any extra cost for its work on this case through the appointment of external advisors and representatives. However, the complainant asserted that there will have been substantial costs for the time spent by legal officers and others in respect of this case. He further asserted that the Council would have produced a list of costs that would have been payable by [a named person] had the Council been successful in its prosecution.
8. To support his assertions, the complainant directed the Council to news articles on the BBC website¹ and on the Daily Telegraph website². Both articles estimate the cost of the Council's own legal fees to be £4000.
9. The Council conducted its internal review of its response and wrote to the complainant on 14 August. The Council confirmed that the recorded legal costs for this case, including work other than for the prosecution, came to £1,700, with a further £100 being paid to a contractor for an officer to attend court to give evidence.

Scope of the case

10. The complainant contacted the Commissioner on 27 August 2015 to complain about the way his request for information had been handled.
11. The complainant expressed his concerns about the recorded amounts of money which the Council disclosed to him and he directed the
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¹ <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-33424607>

² <http://www.telegraph.co.uk/news/newstoppers/howaboutthat/11720952/Council-loses-nine-month-legal-battle-with-man-who-accidentally-dropped-a-piece-of-orange-peel.html>

Commissioner's attention to a news article in the Hertfordshire Mercury³ which reports that the actual costs incurred by the Council was £2,057. This conflicting information has led the complainant to believe that the Council has knowingly made an incorrect response to his request.

12. The Commissioner's has investigated the complainant's complaint to determine whether the Council has handled his request in accordance with the FOIA and specifically to determine whether the Council holds recorded information as to the actual costs it incurred in bringing the prosecution against [a named person].

Reasons for decision

Section 1 – Is the information held?

13. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

14. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information which the complainant believes it holds.
15. The Commissioner makes this determination by applying the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
16. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.

³ <http://www.hertfordshiremercury.co.uk/True-cost-Broxbourne-s-orange-peel-court-case/story-27689701-detail/story.html>

17. The Council responded to the Commissioner's enquiry by explaining why different figures have been quoted on different occasions. The Council stated that it was asked different questions about the legal costs which it had incurred and that these questions had related to different time periods. Consequently the costs given to the complainant and those reported in the press do not match.
18. Additionally, the Council informed the Commissioner that it had made a statement to the press – The Hertford Mercury, to explain the discrepancy between £1,700 and £2,057. It noted that the £1,700 included costs not directly related to the prosecution of [a named person], and did not include the time spent by legal officers in answering questions relating to breaches of human rights and matters leading to investigation made by the Local Government Ombudsman.
19. The Council advised the Commissioner that the story covered by the Hertford Mercury reflects the information which was put out in the statement to the press, and the discrepancy between the Mercury story and the information given to the complainant reflects the unrecorded and estimated time spent on the prosecutions by council officers involved in answering queries relating to the case.
20. The Council refuted the complainant's assertion that the response it gave him was knowingly incorrect. It maintained its position that the Council did not pay any specific sums for legal advice, legal representation and court fees.
21. The Council also pointed out that the complainant had asked for different information when he asked the Council to review the initial response it had made to his request. Rather than seeking how much the Council had paid for legal advice, representation and court fees, the complainant now asked to be told the cost of the legal and enforcement officers' time. The Council advised the Commissioner that it had provided this information to the complainant.
22. The Commissioner asked the Council about the information it holds which could be used to collate the cost of the prosecution of [a named person].
23. In response to the Commissioner's questions, the Council said that, it 'holds records of legal staff time spent on its dealings with [a named person] and separate records of payments to the contractor for a witness'.
24. Additionally, 'the Council has a record of the estimated time spent by the staff bringing the case to prosecution, which amounts to £2,057. This is

the figure that was provided to the court in support of its claim for costs.'

25. The Council advised the Commissioner that it carried out searches of its legal time recording database when it received the complainant's request. These searches were made because this database records the time spent on this case by its in-house legal officers. It also advised the Commissioner that no relevant information had been destroyed or deleted and that its records management policy requires that litigation files should be kept for six years.

The Commissioners decision

26. The Commissioner has carefully considered the representation made to him by the Council.
27. The fact that the Council's responses to the complainant and to the press were made in respect of different questions and different time periods, clearly explains why there are differences in between the amounts the Council disclosed.
28. The Commissioner accepts the Council's explanation of why there is a discrepancy between the figures given to the complainant and to the press. He finds no evidence which suggests that the Council has knowingly made an incorrect response to the complainant's request and no evidence which suggests that the Council holds any further information which is relevant to the complainant's request.
29. The Commissioner's decision is that the Council has complied with section 1 of the FOIA.

Right of appeal

30. 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

31. 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.
32. 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