

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2016

Public Authority: Warwickshire County Council
Address: Shire Hall
Warwick
CV34 4RL

Decision (including any steps ordered)

1. The complainant has requested information about a named electrician. Warwickshire County Council says it does not hold any information within the scope of the request.
2. The Commissioner's decision is that Warwickshire County Council does not hold any relevant information and has complied with its obligations under section 1(1) of the FOIA.
3. The Commissioner does not require Warwickshire County Council to take any further steps.

Request and response

4. On 2 July 2015 the complainant wrote to Warwickshire County Council ('the Council') and requested information in the following terms:

[1] *"It would appear [Named Individuals] have been fraudulent in the way they have been dealing with recent matters. It would also appear [Named Individual] has worked on a 'cash in hand' basis for some time. Please advise if your enquiries show this; and any other evidence you may have to hand."*

[2] *"What have you investigated in relation to the 'rogue electrician' and what are the results"*

5. The Council responded on 8 July 2015. With regard to [1], the Council said it does not hold any information within the scope of this part. It suggested to the complainant that HMRC may do. With regard to [2], the Council said it had undertaken a search of its records and had not

retrieved any related information, other than the complainant's own complaint about the electrician in question.

6. During the Commissioner's investigation, the Council confirmed to the Commissioner that it does not consider that the complainant's complaint about the electrician falls within the scope of either part of the request and the Commissioner agrees.
7. Following an internal review the Council wrote to the complainant on 31 July 2015. It acknowledged that there had been procedural shortcomings in the way it had handled correspondence with the complainant about the electrician and his FOIA request.
8. The Council said that with respect to the complainant's FOIA request it was not, in fact, obliged to confirm or deny it holds relevant information, citing the provision under sections 40(5)(b)(i) (data protection) and 30(3)(investigations and proceedings), 44(2) (prohibitions on disclosure) and 43(3)(commercial interests) of the FOIA. It then went on to say that it was no longer relying on these exemptions because it had already told the complainant that it does not hold any relevant information, in its correspondence of 8 July 2015.
9. The Council apologised for its handling of the complainant's FOI requests and the resulting confusion and confirmed that it does not hold information within the scope of the request. It considered it had also met its obligations under section 16 of the FOIA to offer advice and assistance, because it had directed the complainant to HMRC regarding any matters concerning 'cash in hand' payments.

Scope of the case

10. The complainant contacted the Commissioner on 18 August 2015 to complain about the way his requests for information had been handled.
11. The Commissioner has focussed his investigation on whether the Council holds any information within the scope of the complainant's requests and has met its obligations under section 1(1) of the FOIA.

Reasons for decision

12. Section 1(1) of the FOIA says that anyone making a request for information to a public authority is entitled to be informed by the authority whether it holds the requested information and, if it does, to have that information communicated to him or her.

13. The Commissioner notes the Council's internal review, which provides some background to the case. The Council says that the complainant's request emanates from concerns he had raised in March 2015 about an alleged rogue trader and the subsequent dealings the complainant had with Warwickshire's Trading Standards Service about this. Trading Standards was unable to pursue the matter further as there was insufficient information and/or evidence to support the complainant's allegations. The complainant appears to have then complained to the Council about the service he received from Trading Standards and he received a response to his complaint from the Council's Customer Liaison Manager on 28 July 2015. The complainant's FOIA requests emerged during subsequent correspondence between the complainant and the Council's Information Management team.
14. In its submission to the Commissioner, the Council detailed the search it had undertaken to identify whether it held information relevant to the complainant's requests.
15. The Council says that all complaints and enquiries handled by Warwickshire Trading Standards are recorded on the local Authority Public Protection database. The Council says it searched this database for any complaints or enquiries about the electrician in question.
16. Since 2005, all telephone calls to Trading Standards are handled in the first instance by a national call centre. All calls to this national advice line are recorded on a central database owned by the Citizens Advice Service; all Trading Standards authorities have access. The Council says it also searched this database for complaints or enquiries about the electrician spanning a five year period.
17. The Council says it searched these databases using a range of search terms such as variations of the electrician's name and the electrician's address and post code.
18. The Council has confirmed that its searches retrieved no relevant information. Finally, the Council has told the Commissioner that its document retention schedule, which it has provided to the Commissioner, requires that it keeps complaints and enquiries for the current year plus six years. It says that some information within the scope of the request may have been destroyed in accordance with that schedule.
19. Having considered the Council's submission, the Commissioner considers that the searches it undertook were satisfactory. On the balance of probabilities, the Commissioner is prepared to accept that the Council does not hold any information that is relevant to the complainant's

requests. He is therefore satisfied that the Council has met its obligations under section 1(1) of the FOIA.

Other matters

20. The Commissioner considers that the Council originally handled this FOI request a little clumsily as it seemed to suggest, in the wider correspondence it had with the complainant, that it did hold information and that it was exempt from disclosure for various reasons. However, the Commissioner notes the Council apologised to the complainant for this confusion and explained in its internal review why this had happened.
21. He has noted that the Council did, however, maintain that it was within its rights to neither confirm nor deny whether the information was held but, because it had already confirmed to the complainant that the information was not held, it did not consider that it could maintain this position. The Commissioner has not made a decision on whether its position was correct. However, he does recognise that a public authority can refuse to neither confirm nor deny if information is held under certain exemptions and this may therefore have been the correct approach to have taken when it initially responded to the complainant.
22. The Commissioner expects the Council to have learned from its handling of this request and for its handling of future requests to improve. It is important that the Council provides the appropriate response at the outset in order to avoid compromising its position at a later stage.

Right of appeal

23. 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

24. 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.
25. 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

Pamela Clements
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