

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2016

Public Authority: Harrogate Borough Council
Address: Council Offices
Crescent Gardens
Harrogate
North Yorkshire
HG1 2SG

Decision (including any steps ordered)

1. The complainant had requested information from the council relating to electronic back up data for previous versions of an enforcement file to demonstrate what alterations took place on the file after it had been closed. The council said that the back-up tapes were not held for the relevant period due to a server failure. The complainant therefore requested any information held by the council relating to the server failure. The council said that no information was held on the server failure.
2. The Commissioner's decision is that, on a balance of probabilities the council has correctly applied section 1(1)(a) as it does not hold the information which the complainant has requested.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 January 2015 the complainant wrote to the council and requested information on an enforcement file he had viewed within council offices in the following terms:

"In our meeting 19/12/14 you stated that the file had been accessed and altered after it had been closed. So the file was altered! Electronic data automatically stores all previous versions of that file, this is what I

require (all versions of the file), to show what alterations took place, and when."

5. The council responded 5 February 2015 stating that the information was not held and that it would therefore check to see if the information was held on its backup servers. It subsequently wrote to the complainant informing him that the information was no longer held as there had been a server failure in May 2014 and a decision had been taken at that time not to retrieve the data from the back-up files as there was no business need for it to retain that information.
6. The complainant therefore asked the council for any information it holds on the server failure. The Commissioner does not hold a copy of the request itself, however it is clear from the councils correspondence following this that a request was received on or around 28 January 2015 and was acted upon by the council under the Act. In the outcome of its review the council stipulated that the request was for:

"a copy of the root cause analysis report, plus any emails and notes etc, in connection with the Council's server failure in May 2014."

7. The council responded stating that it would provide further details of the server failure in due course. It subsequently confirmed that no information was held in relation to the server failure in a letter dated 4 September 2015.

Scope of the case

8. The complainant contacted the Commissioner on 4 December 2015 to complain about the way his request for information had been handled. His central complaint relates to the entirety of the issue surrounding the planning enforcement notice and the council's failure to be able to demonstrate what alterations were made to the enforcement file. However the Commissioner has refused to consider some parts of the complaint on the basis that it was made outside of the period within which he would normally accept complaints. The complainant has not been able to provide any mitigating factors which would give reason for him to accept these complaints out of time.
9. The Commissioner therefore clarified with the complainant that the only request he would investigate is the request for any information held by the council relating to the server failure. This is the issue which the Commissioner considers within this decision notice.

Reasons for the Decision

10. Section 1(1) provides that –

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

- i) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- ii) if that is the case, to have that information communicated to him.”*

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

12. The Commissioner therefore asked the council to confirm what searches it has carried out for the information and to explain why it considers that relevant information is not held.

13. The council confirmed that it had asked council officers, including the Head of ICT to search their records to see what information was held. Officers recalled that due to the urgency when the server failed a meeting took place and action was taken to sort the issue. It said that in a perfect world a full record may have been taken, but it was not in this case as its ICT department was extremely stretched.

14. It said that the search was undertaken on all networked pc/laptops and other devices. It confirmed that it does not allow use of personal equipment for council business. No information was found falling within the scope of this request.

15. It confirmed that searches were made of electronic data referring to server failure and for the relevant date, but as the network was not working at that time no emails were sent during that period. It said that staff were called together to discuss the way forward and once the network was back up staff had other priorities other than to record what had occurred.

16. In addition to these searches the council has made previous searches for information relating to the back-up files. On each occasion it has responded to the complainant (through stages of the council's complaints process), the council has confirmed that the information sought by the complainant is not held.
17. The complainant had raised issues with the council's response, asking how it knew the date of the service failure when it apparently held no records to verify that. The council said that it was aware of this because that is the date is that the "new" backup management server, (i.e. the one that was built to replace the one that failed) maintains a history of what's been backed up. The failed machine was called CVMEDIA3. It was rebuilt and so when we look at the backup history the first entry in this, for CVMEDIA3 is the date it was rebuilt and was back online." The date which it provided to the complainant for the server failure was 30 May 2014.

The complainant's counter arguments

18. The complainant considers that it is inconceivable that a server failure can occur, and that a decision is made to delete all of the previous back-ups without any record at all being made of the decisions, or a root cause analysis being carried out to determine what the issue had been which caused the failure. He believes that the council cannot be telling the truth when it says that the information has been lost due to a server error as information would be held which would demonstrate that it had occurred.
19. He points out that in the wider dispute he has had with the council he has been given answers to questions previously which have subsequently proven to be incorrect. For instance he says that the council initially told him that no alteration of the planning file had taken place, however after pressing the point and seeking further clarification the council did subsequently admit that an alteration had been made. It then sought to rely upon the fact that it could not say what the alteration on the file was, and when pressed on retrieving the back-up data to demonstrate the file prior to the alteration it then said that this was not possible due to the server failure.
20. He further argues that the council has stated to him that its data records management follows the same standards as GCHQ, but it is inconceivable that GCHQ standards would allow back-ups to be lost without making a record of what had occurred. Clearly if that is the case then there is a wide disparity between the intentions of the council and the actual security with which information is retained, at least insofar as back-up data is concerned.

21. The council itself says that the alterations may have simply been spelling corrections or an officer accidentally saved the document after opening it. The complainant disbelieves this and points out that there would be no reason to open an enforcement record from 2007 to amend spelling, especially as the council has specifically stated that the current enforcement action does not rely upon the earlier investigation (however the complainant disputes this). He believes that the council amended the outcome of the investigation in order to forward its argument for the current enforcement investigation. The complainant also points out that the file should not have been amended as it should be retained as it stood, as a record for audit purposes. He therefore questions why an amendment was made in the first instance, and the council has not been able to provide a response other than the potential for the correction of spelling errors, or an accidentally resaved file.
22. The complainant also argues that the council officer he was corresponding with has asked questions of the ICT section at the council and of their supplier IDOX regarding the server failure. He says that he has not been provided with these communications as part of the council's response to his request. Given the findings of the searches however there is no evidence that the communication between the parties was by email, that any emails which did pass between the parties were not subsequently deleted, or that the communication was not by telephone.

Conclusions

23. The Commissioner has considered the above. It is clear that the information requested by the complainant is either no longer held by the council, or it was never held in the first instance. The council has confirmed both to the complainant and to the Commissioner that it holds no evidence that the server failure took place. The council has set out why it does not hold any record of the server failure. Further to this it has explained what searches it carried out to determine whether there was any other information which it was not aware of which falls within the scope of the request. This would include the information outlined in paragraph 22 above.
24. The alterations to the relevant file were made in February 2014, prior to the complainant making his request for information for a copy of the file itself. Therefore the council's disclosure of the altered enforcement record provided the information it actually held at the time that the request was received. Nevertheless he would point out to the council that if the back-up server still held the information then it would have been under a duty to consider that information for restoration and consideration for disclosure.

25. The Commissioner agrees with the complainant's concerns that the council has no record of a major IT system failure such as this. He notes however that the server was a back-up server, and the council would still be able to make a newer, more current back-up once its system was restored. Effectively therefore the information which was lost would be limited to information which was older and (in general) would be unlikely to be needed for disaster recovery purposes because the latest record would generally be the version which would be restored if the main systems were to fail. For business purposes the last back-up would be the preferred choice for resetting the councils systems in the event of a loss of data as it would hold the most up-to-date copy of the information which it had lost.
26. The complainant may have issues relating to the failure of the council to investigate the cause of the failure and no record at all being made of the decisions it took at that time. Nevertheless the council has been specific in its response to the Commissioner and he has taken that response on face value as there is no specific evidence that suggests that that is not what occurred.
27. The Commissioner cannot comment on whether a root-cause analysis should have been done to determine the reason for the server failure – it is for the council to make such decisions based upon its business need, records management and risk policies.
28. After considering the above the Commissioner's decision is that on a balance of probabilities no information is held falling within the scope of the complainant's request.

Right of appeal

29. 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

30. 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.
31. 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
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