

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 September 2016

Public Authority: Poole Borough Council
Address: Civic Centre
Poole
BH15 2RU

Decision (including any steps ordered)

1. The complainant made a request to Poole Borough Council (the Council) for information relating to the use of an air spade at 16 Commercial Road, Poole. Poole Borough Council responded stating that it does not hold any information within the scope of the request.
2. The Commissioner's decision is that correspondence relating to the use of the air spade is held on the Council's website and so it was not accurate for the Council to state that it did not hold information falling within the scope of the request. The Council therefore did not comply with the requirements of section 1(1)(a) of the FOIA. However, the Commissioner has also found that the Council did not hold any other information falling within the scope of the request.
3. The Commissioner has not ordered any steps for the Council to take in this case, as it appears the complainant is aware of the information held on the Council's website.

Request and response

4. On 12 August 2015, the complainant wrote to the Council and requested information in the following terms:
"I request copies of all information and photographs submitted by [name redacted] Arboriculture Consultants relating to the recent use of the air spade at 16 Commercial Road, Poole that he/his staff supervised through twelve site visits."

5. The Council responded on 13 August 2015. It stated that it did not hold any information in relation to the request.
6. The complainant wrote back to the Council on the 13 August 2015 expressing his surprise that the Council held no information within the scope of this request. On the 19 August 2015, the Council responded with an explanation as to why the information was not held.
7. On the 19 August 2015 the complainant requested an internal review from the Council. The Council provided an internal review decision on the same day and upheld their original response.

Scope of the case

8. The complainant contacted the Commissioner on 29 October 2015 to complain about the way his request for information had been handled.
9. Although the internal review refers to four requests for information, the Commissioner has only addressed the first request in this decision notice as this was the request provided in support of the complaint.

Reasons for decision

Section 1(1)

10. Section 1(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".*

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

the time that the request was made. The Council explained that when it receives correspondence in relation to planning applications, it can be received either in hard copy, electronically in emails or through online application processes hosted on the Council's website. The Council explained that it uses a document management system called Idox to retain all information electronically and that correspondence is retained in its planning database called Acolaid.

13. The Commissioner asked the Council to explain why information relating to this request would be held along with planning application information. The Council explained that one of the conditions to grant planning applications is to make sure the trees in the area are protected. In this case the inspection of the trees and use of the air spade related to a planning application.
14. The Council went on to explain that planning application files where the decision is a refusal are retained for a period of 6 months from the date of decision in case of an appeal, and then disposed of. It also explained that hard copy documents are retained for a period of up to 6 months after scanning and then securely disposed of.
15. The Council confirmed that officers maintain a paper copy working file for active planning or tree work applications but it explained that once the application is determined, the file is disposed of, in line with the timescales stated above.
16. It explained that if appropriate, correspondence received relevant to a planning application will be uploaded to the planning application file on the Council's website. It explained that hard copy documents, letters or photographs are scanned using the Idox system and will also be contained in the appropriate planning file.
17. In regards to the complainant specifically requesting photographs, the Council explained that if photographs were provided to it, they would have been sent via email or through the post. If received, hard copy documents would have been scanned and saved in the planning database Acolaid. The Council explained that in trying to source the information requested it searched the following:
 - the planning database
 - the planning website
 - individual arboriculture officers' email accounts
 - generic email accounts for both planning applications and tree works applications

18. The Council also confirmed that it searched for electronic data using the following search terms:

- Planning Application Reference APP/14/01341 and Site Address
- email sender name of consultant
- email sender name of developer

It was the Council's position having carried out these searches that no relevant information was held.

19. The Commissioner asked the Council whether any further recorded information was ever held relevant to the scope of the complainant's request but that has now been deleted or destroyed.

20. The Council initially stated that no information within the scope of the request was held. However, a letter to the Council from the arboriculture consultant advises that he had copied the letter to the developers by way of a reminder for them to forward any photographs they had taken. The Commissioner therefore asked the Council to confirm whether photographs were ever forwarded to it as the letter suggests this should have happened. The Council confirmed that there is no record of any photographs ever being provided to it by the developer.

21. The Commissioner asked the Council whether there is a business purpose for which the requested information should be held and if so what that business purpose is. The Council explained that it approved a method statement that explained how the works were to be undertaken and received a letter from the consultant confirming works had been completed as agreed; the Council stated that this correspondence is available on its website.

22. The Council also explained that its Senior Arboriculturist undertook a site visit and confirmed verbally that no damage had been caused to the protected trees and that the Council would therefore not seek further evidence to support this. The Council also confirmed to the Commissioner that there were no statutory requirements to hold information relating to the request.

23. In the complainant's internal review request he explained that the method statement produced by the Council's Arboriculture Officer stated the following:

"A photographic record of the works on site will be retained by the Arboriculturist and made available to the Local Planning Authority if they so require".

24. The Commissioner asked the Council to clarify whether it held photographs falling within the scope of the request.
25. The Council explained that the Council's Arboriculture Officer attended the site during the works and as a result of this and discussions he had at the time, it was determined that the Local Planning Authority did not require the photographs. The Council confirmed that they did not hold any evidence to suggest the contractor was asked to send the photographs to the Council.
26. The Commissioner asked the Council to explain why it did not inform the complainant that the letter from the consultant mentioned above at paragraph 21 had been posted on its website.
27. The Council explained that it publishes appropriate documentation relating to planning applications on its website, including representations from interested parties and contractors. It explained that due to the large number of documents involved it is not possible for the Council to routinely notify everyone involved in a planning application when new documents are published. It explained that the complainant is a regular contributor to planning applications and will be aware of the Council's approach to publishing information in this way, it stated the following:

"According to our website, the document in question was uploaded on 31 July 2015 and the complainant provided the quote above from it in his repeated request received on 13 August 2015."
28. The Commissioner understands that the complainant was aware of the information on the website as he quoted from it in his request for information. That the complainant was aware of the existence of this information did not, however, alter the fact that it was held by the Council and was within the scope of the request. If the position of the Council was that it did not believe it was necessary to supply this information to the complainant as he was already able to access it, the Council should have confirmed that this information was held but cited section 21 of the FOIA as the basis for not disclosing it.
29. The Commissioner has, therefore, concluded that the Council breached section 1(1)(a) of the FOIA by incorrectly stating that it did not hold any information falling within the scope of the request. The Council is not required to take any steps in relation to that breach as this information is available to the complainant on the Council website.
30. On the basis of the explanations given by the Council, the Commissioner concludes on the balance of probabilities that no further information is held by the Council within the scope of the request.

Other matters

31. As well as her finding above that the Council breached section 1(1)(a) in this case, the Commissioner would stress to the Council that the section 1(1)(a) duty applies in relation to all information, even information the requester is already aware of. As noted above, it may be that in such situations section 21 of the FOIA applies, but that does not mean that a public authority can disregard such information entirely.

Right of appeal

32. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. 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.
34. 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

Ben Tomes
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