

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 May 2018

Public Authority: **Harborough District Council**

Address: **The Symington Building**
Adam and Eve Street
Market Harborough
Leicestershire
LE16 7AG

Decision (including any steps ordered)

1. The complainant has asked Harborough District Council for copies of recorded information concerning the discontinuance of a claim for judicial review which had been submitted by DB Symmetry Ltd.
2. The Commissioner has decided that, on the balance of probability, the Council has complied with section 1 of the FOIA by providing the complainant with all of the recorded information it holds which is relevant to the terms of his request. The Commissioner has also decided that the Council breached section 10 of the FOIA by failing to provide the complainant with relevant information within twenty working days of its receipt of his request.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. In June 2017, the complainant submitted a request for information to Harborough District Council ("the Council") in the following terms:

"I understand that DBSymmetry have withdrawn the claim for judicial review they submitted last year, challenging Harborough Council's approval of IDI Gazeley's planning application 15/00919/FUL. Under Civil Procedure Rules (Rules and Practice, Part 38 Discontinuance) a claimant (in this case DBSymmetry) must serve a copy of the notice of discontinuance on every other party to the proceedings (in this case

Harborough District Council and IDI Gazeley) (rule 38.3), who may, within 28 days after the date when the notice was served, apply to have the notice of discontinuance set aside (rule 38.4). The absence of such an application by the defendants indicates that they have consented to the notice to discontinue. Under the Freedom of Information Act 2000, I request that you disclose to me all correspondence, including letters and emails, drafts, notes of meetings, records or telephone conversations (whether written or sound recordings), between the claimant and/or his agent on the one hand, and either or both the defendants and/or their agents on the other hand, and also between the defendants and/or their agents, covering the discontinuance of the claim.”

5. The Council wrote to the complainant on 3 July 2017, to inform him that it was extending the twenty day compliance period up to an additional twenty days to allow the Council to further consider whether section 42 of the FOIA applied to information it holds.
6. On 26 July, the Council issued a refusal notice to the complainant citing sections 36 and 41 of the FOIA as its reasons for withholding information falling within the scope of his request. The Council also confirmed that it was no longer relying on the exemption to disclosure provided by section 42 of the FOIA.
7. On 25 August 2017, the complainant wrote to the Council to ask it to reconsider its decision to withhold the information he had requested. The complainant provided the Council with reasons why he believed the Council's reasons for its refusal were not valid.
8. On 10 October 2017. The Council wrote to the complainant to advise him of its final decision following its internal review. The Council informed the complainant that it maintained its decision that the information he had requested was subject to the exemptions provided by section 41 and 36 of the FOIA and therefore it would not disclose the information to him.

Scope of the case

9. The complainant contacted the Commissioner on 10 October 2017 to complain about the way his request for information had been handled.
10. The Commissioner initially determined that the focus of her investigation should be whether Harborough District Council is entitled to rely on sections 41 and 36 of the FOIA to withhold the information the complainant asked for. In view of the events described below at paragraphs 12 – 18, the focus of the Commissioner's investigation changed to determining the extent to which the Council holds

information relevant to the complainant's request and whether it has complied with section 1 of the FOIA.

Reasons for decision

11. The Commissioner wrote to the Council on 23 February 2018 to make her enquiries about the complainant's request.
12. On 26 February, the Council wrote to the Commissioner to advise her that, "...the potential legal issues surrounding this request have been resolved by the parties over the interim period. As a result the Council and the third party have agreed to release the requested information."
13. On 28 March, the Council wrote to the complainant and provided him with recorded information which it considered met the terms of his request. The information disclosed by the Council comprised of a consent order, a council-generated letter relating to planning application 15/00865, and a chain of email correspondence.
14. Following the Council's disclosure of information, the Commissioner determined that she should close this complaint case.
15. On 29 March, the complainant wrote to the Commissioner about the closure of his complaint case. The complainant acknowledged his receipt of the information disclosed to him by the Council and he referred to that information as a "partial response". The complainant referred the Commissioner to the terms of his request and asserted his belief that the Council are still withholding some of the documentation he had requested.
16. The complainant asserted that the Council had failed to disclose a copy of a specific letter which he believed was written following discussions between DBSymmetry, its agent and the Council. The complainant pointed out that the Council had failed to provide him with with any record of those discussions or indeed of any discussions involving Gazeley, who were another defendant in the Judicial Review claim.
17. In view of the complainant's further representations, the Commissioner re-opened the complaint case and made further enquiries of the Council.
18. Section 1 of the FOIA states that

“(1) 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.

19. The Commissioner has sought to determine whether the Council holds any information which meets the terms specified by the complainant in his request. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities': This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
20. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations

21. The Council has advised the Commissioner that it searched the email accounts of the appropriate service area. The searches included the email accounts of the Council's Corporate Management Planning Department, Corporate Management Support and Legal Services, as these are the only service areas which will have had procedural or operational dealings with the information which the complainant has requested.
22. In addition to the above, the Council also searched its Document Management System for any information related to the terms of the complainant's request.
23. The Council undertook both manual and electronic searches of its available data storage, using search terms such as, 'Magna Park', 'Judicial Review', 'DBS Symmetry', 'Frampton', 'JR withdrawal' and '15/00865 and 15/00919'.
24. During the course of its renewed searches, the Council located further information which falls within the scope of the complainant's request. This information was located in a desktop computer which uses local storage. The Council advised the Commissioner that it had sent the complainant the newly found information in redacted form, together with an explanation concerning the redactions.

25. The Council informed the Commissioner that the redacted information was not within the scope of the complainant's request.
26. The Council has assured the Commissioner that it holds no paper records of the requested information as the Council has adopted paper-light working practices where the majority of data is now held electronically. Any paper files have been digitised and disposed of once they no longer have operational value.
27. Responding to the Commissioner's enquiry concerning the possibility that relevant information might have been deleted or destroyed, the Council said, "There is no record of any such deletions", and it advised the Commissioner that its "Document Retention and Destruction Policy makes provision for the recording of document disposals where information is deemed to be structurally and/ or informationally relevant, i.e. material to a case or particular issue".
28. The Council's network storage allows the backing up data to a limited degree. In this case however, this is not a consideration as there is no record of any deletion of relevant information having been made.
29. The Commissioner asked the Council whether it has a business purpose for holding information of the type described by the complainant in his request. The Council responded to this questions by informing her that the information would be held to all the Council to understand the rationale of any decision making in respect of the matter at hand. There is not statutory requirement for the Council to retain the information requested by the complainant, other than the purpose of retaining a history of planning and planning-related decision making.
30. The Council has acknowledged the legitimate concern raised by the complainant in respect of its initial disclosure of information. Having carried out further searches, it became apparent that, although a search of the most obvious locations had been conducted, the local storage on the desktop computer had been overlooked. The Council has apologised for this omission and has now assured the Commissioner that it has supplied the complainant with all the information it has located which is relevant to the terms of his request without any exemption being applied.
31. The Council assures the Commissioner that it is satisfied that all data locations have now been completely interrogated.

The Commissioner's decision

32. The Commissioner has considered the Council's representations in this matter. On the basis of these representations, the Commissioner

decision is, on the balance of probability, Harborough District Council has complied with the provisions of section 1 of the FOIA.

33. The Commissioner has also decided that the Council has breached section 10 of the FOIA. This decision is founded on the fact that each of the Council's disclosures of information to the complainant were made in excess of the twenty working days required by section 10.

Right of appeal

34. 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

35. 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.
36. 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