

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2018

Public Authority: South Kesteven District Council

Address: Council Offices
St Peters Hill
Grantham
Lincolnshire NG31 6PZ

Decision (including any steps ordered)

1. The complainant requested from South Kesteven District Council ('the Council') guidance information concerning applications to reduce the amount of council tax payable under section 13(a) of the Local Government Act 1992.
2. The Commissioner's decision is as follows:
 - At the time of the request the Council did not hold the specific information requested but it breached section 1(1)(a) of the FOIA as it did not clearly confirm that the information was not held.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. Having originally submitted a request for this information on 30 August 2016, on 3 July 2017 the complainant wrote to the Council and requested the information again, in the following terms:

"...we began a correspondence some time ago on SKDC's policy on applications under section 13(a) Local Government Act 1992 to use the Council's discretion in certain circumstances to reduce the amount of council Tax payable. I am enclosing the relevant correspondence – the initial response...summarised the Council's "guidance" and from this I assumed that there was a corresponding document containing that guidance... I am renewing the request for the relevant document, or if that does not exist, a confirmation that the email per se constituted the guidance and that there is no corresponding written document"

5. The 6 July 2017 the Council responded. It said that guidance used for determining a section 13(a) discretion was contained in an email it had previously sent to the complainant dated 30 June 2016. The Council said that, if it would be helpful, it would make a copy of this email available to him.
6. Following the Commissioner's intervention, the Council provided a review on 20 October 2017. The Council said that at the time of the request dated 30 August 2016 it had not held the information the complainant had requested – namely a discrete section 13(a) guidance document. The Council said that in the interim it had put in place a more formalised guide and it released this to the complainant.

Scope of the case

7. The complainant originally contacted the Commissioner on 24 August 2017 to complain about the way his request for information had been handled.
8. Following the Council's internal review response, in which it released to the complainant guidance on section 13a applications that it had gone on to produce, the Commissioner contacted the complainant to see whether he was prepared to withdraw his complaint so that the matter could be resolved informally. Though he appeared to accept that he had now received the information he was seeking, the complainant preferred to conclude his case formally, through a decision notice.
9. The Commissioner explained that, due to the passage of time, she was not able to consider a complaint about the request of 30 August 2016. The Commissioner's investigation has focussed on the complainant's request of 3 July 2017 and whether the Council complied with its obligations under section 1(1) with regard to this request.

Reasons for decision

Section 1 – general right of access to information

10. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her, providing an exemption in Part II of the Act does not apply to it.
11. In response to the Commissioner's questioning the Council did not confirm the actual date when it produced the formal guidance document but *did* confirm that it was produced after the complainant's request of 3 July 2017. It had therefore not held this particular information on 3 July 2017 (or on 30 August 2016). The Commissioner sees no reason why she should not accept that this was the case and on the balance of probabilities she is satisfied that, at 3 July 2017, the Council did not hold the specific information requested.
12. The Commissioner has considered how the complainant expressed his request. He asked again for the document in question (that is, guidance on section 13a applications) or, if that did not exist, asked the Council to confirm that an email he had received from the Council previously constituted all its guidance and that there was no corresponding written document.
13. In its response, the Council said that the guidance used for determining a section 13(a) discretion was contained in the email it had previously sent to the complainant dated 30 June 2016. It might be inferred from this, and bearing in mind the complainant's request, that this was the Council's confirmation that, at that point, it did not hold a 'formal' section 13a guidance document.
14. However, section 1(1)(a) of the FOIA required that the Council confirm clearly that it did not hold this specific information. Because it did not do this, the Commissioner must find that the Council breached section 1(1)(a) on this occasion.

Right of appeal

15. 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

16. 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.
17. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF