

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2018

Public Authority: Sheffield City Council
Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested information relating to an image of protestors against tree felling that appeared in The Star newspaper. Sheffield City Council (the Council) stated that it did not hold any information falling within the scope of this request.
2. The Commissioner's decision is that on the balance of probabilities the Council did not hold information falling within the scope of the majority of the request and so it complied with section 1(1)(a) in relation to those elements. However, in relation to one part of the request, the Commissioner's decision is that this should have been dealt with separately and that in failing to do so the Council breached sections 1(1) and 10(1) of the FOIA. The Council is now required to provide a separate response to that part of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Respond to the part of the request set out at paragraph 20 below.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Background

5. The request concerns a photograph of two individuals protesting against tree felling in Sheffield that appeared in The Star newspaper¹.

Request and response

6. On 14 October 2017 the complainant wrote to the Council and requested information in the following terms:

"[In relation to an image which appeared in The Star on Wednesday 11 October 2017] Which department provided the headline image to the Star, if it was provided directly by a senior head of department or service, identify this.

Identify how the image was transmitted to The Star, i.e email, hand-delivered on compact disk, carrier pigeon, USB stick...

Provide a copy of the transmission of this image with accompanying notes. Please provide any attachments/images in their raw format and not a modified or abridged version.

Please identify how the image was captured, stored and details of any copies or distributions which have been made."

7. The Council responded on 10 November 2017 and stated that it did not hold any information falling within the scope of this request.
8. The complainant responded on 10 November 2017 and requested an internal review. The Council responded with the outcome of the internal review on 31 January 2018. The Council maintained that it did not hold the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 1 January 2018 to complain about the response to his information request. At this stage
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¹ <https://www.thestar.co.uk/news/picture-sheffield-masked-tree-protesters-sat-inside-exclusion-zones-are-breaking-the-law-1-8799897>

the complainant was advised that he should wait for the internal review to be completed.

10. Following completion of the internal review, the complainant contacted the Commissioner again on 22 February 2018. The complainant stated at this stage that he remained dissatisfied following the completion of the internal review as he maintained that the Council held information within the scope of his request.
11. The scope of this case and the following analysis concern whether the Council was correct to state that it did not hold any information within the scope of the complainant's request.

Reasons for decision

Section 1

12. Section 1(1)(a) of the FOIA provides that a public authority is obliged to confirm or deny whether it holds information that has been requested. Clearly this means that a public authority is required to establish accurately whether it holds information that has been requested.
13. In this case the complainant alleged that the Council stated incorrectly that it did not hold the information he requested, which would be a breach of section 1(1)(a). The task for the Commissioner here is to make a decision as to whether the Council was, on the balance of probabilities, correct and in compliance with section 1(1)(a) to state that it did not hold the information requested by the complainant. Making this decision on the basis of the balance of probabilities is in line with the approach taken by the First-tier Tribunal (Information Rights).
14. During the investigation of this case, the Council was asked to provide to the ICO an explanation of the searches that were carried out in response to the complainant's request, as well as any other reasons it had for concluding that it did not hold the requested information. The Council's response and its further reasoning was as follows.
15. The Council explained the searches it had carried out. It stated that these searches had focussed on its Highways and Maintenance Division, which was the area responsible for the programme of tree felling taking place in Sheffield. The searches of that area included consulting with staff members responsible for communications relating to the tree felling programme. Those staff members stated that they had no records that would fall within the scope of the request.

16. The Council also described consultations that it carried out with other staff members for relevant information. It stated that it was Council policy that all communications with the media are made through the Council's Communications Service. The Council stated that it consulted with the officer within the Communications Service with responsibility for communications on the tree felling programme, as well as with the head of that department. Both of those individuals stated that they did not believe that the Council held any information falling within the scope of the request.
17. The Council also stated that manual and automated searches of emails were carried out in relevant areas, but that these located no information falling within the scope of the request.
18. The Council described further efforts that it had made to attempt to narrow its search for information relevant to the request. This involved contacting the journalist who had written the article to which the complainant's request referred to seek information on the source of the photograph used with that article. The journalist refused to reveal their source, however.
19. Turning to the Commissioner's view, in relation to those parts of the request that are focussed on the transmission of the photograph to a journalist, the Commissioner finds the explanation from the Council convincing. She is of the view that, on the basis of the descriptions given by the Council, it took appropriate steps to establish whether it held information falling within the scope of the request and has demonstrated that, on the balance of probabilities, it does not hold information falling within the scope of those parts of the request that relate to the transmission of the photograph to a journalist. In relation to those parts of the request, the Commissioner therefore concludes that the Council stated correctly and in accordance with section 1(1)(a) of the FOIA that the requested information was not held.
20. However, in relation to the remaining part of the request, the Commissioner has reached a different conclusion. That part of the request is:

"Please identify how the image was captured, stored and details of any copies or distributions which have been made."
21. The complainant raised this part of the request when requesting internal review and asked for a response that addressed this part of the request specifically, as the Council had not addressed it specifically in its refusal notice. It was evident from the wording in the refusal notice that the Council had focussed on the other parts of the request, all of which concerned how the photograph in question was shared with The Star.

Despite the complainant having flagged this point, the Council failed to separately address the above part of the request separately in the internal review outcome. The Council also did not separately address this part of the request in its correspondence with the ICO.

22. The Commissioner's view is that this element was distinct from the other parts of the request. It did not, unlike the other parts of the request, concern the transmission of the image in question to The Star. Instead it was concerned with the capture and storage of this image within the Council. As this part of the request was distinct from the remainder, it required addressing separately. Not addressing this part of the request separately means that the Council has not provided a response to this request that satisfies the requirements of section 1(1) of the FOIA.
23. The Commissioner's decision is that, in failing to address this part of the request separately, the Council breached section 1(1) of the FOIA, and section 10(1) in failing to do so within 20 working days of receipt of the request. At paragraph 3 above it is now required to issue a response to this part of the request.

Right of appeal

24. 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>

25. 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.
26. 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
Team Manager
Information Commissioner's Office
Wycliffe House
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