

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2019

Public Authority: Northamptonshire County Council
Address: One Angel Square
Angel Street
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant requested information about the appointment of a chief executive.
2. The Commissioner's decision is that Northamptonshire County Council ("the Council") has disclosed all the information which it holds and has therefore complied with its duty under section 1 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 31 December 2018, the complainant contacted the Council via the whatdotheyknow.com website and requested information in the following terms:

"Please can I see all recorded info with respect to the decision taken to appoint the new Chief Exec, e.g. the process used for appointing the new chief exec, the criteria used for appointing the new chief exec; how the salary for the new chief exec was decided; job description for the new chief exec; terms and conditions of the contract of the new chief exec."
5. On 21 January 2019, the Council responded and provided some information.
6. The complainant requested an internal review on 25 January 2019 as he considered that the Council held further information within the scope of

the request. The Council sent the outcome of its internal review on 15 February 2019. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 18 February 2019 to complain about the way his request for information had been handled.
8. The scope of this case is to consider whether further information is held within the scope of the request.

Reasons for decision

Section 1 FOIA - Held/Not Held

9. Section 1(1) of the 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.*

The complainant's position

10. The complainant argued that the Council would (or, at least, should) hold copies of the notes made by each of the members of the panel that interviewed candidates for the post of Chief Executive and noted in his internal review request:

"I wish to see the recorded info from these deliberations."

11. In his grounds of complaint to the Commissioner, the complainant expanded on this point arguing that:

"I find [the statement that no information was held] very difficult to believe and I am also not convinced that the authority disposed of these records in line with their retention schedule. It seems to me, releasing the documents I asked for would prove embarrassing to the authority so all relevant information in scope of my request was destroyed in order for it not to be released."

"I believe there are is additional recorded information in scope of my request that is still held and recorded which would have answered my request for information."

The Council's position

12. The Council explained that the process by which it had appointed its Chief Executive was "atypical"¹:

"Although the process for recruiting the Chief Executive was not made by the County Council, it was, however, managed by the County Council on the Commissioners' behalf and the Council's recruitment and information retention policies were applied in the normal way.

"The panel deliberations that took place involved the elected Members who attended the interviews as observers offering views to the Commissioners in an informal capacity. The decision-making was that of the Commissioners.

"NCC's policy states that such information should be retained for 6 months."

13. The Council went on to explain that, whilst the panel members had made contemporaneous notes during the interviews, these notes had been destroyed, in line with the Council's retention schedule and once the unsuccessful applicants had been afforded the opportunity to request a copy. The Council could not state precisely when the contemporaneous notes had been destroyed.
14. Nevertheless, the Council confirmed that it had checked with all the panel members (including the commissioners) to see whether any copies of the notes had been retained. None had.
15. The Council confirmed that it had searched its HR records on three occasions (when responding to the request, when carrying out an internal review and when responding to the Commissioner's investigation), both electronic and manual records. On receiving the Commissioner's investigation letter, it also checked with the commissioners to see whether they held any further information relating to the panel discussion – which they did not.

¹ In 2018, the Secretary of State took control of Northamptonshire County Council, appointing commissioners who were required to approve all major finance and governance decisions.

16. The Council did recognise that there was, initially at least, a business need to retain the information (to guard itself against challenge from the unsuccessful candidates) but that this need expired once those involved had had an opportunity to bring such a challenge.
17. In relation to the deliberation, the Council noted that it was the commissioners themselves who were responsible for taking the decision and therefore elected members were only able to give informal advice. As such, the "deliberations" between the commissioners and elected representatives were carried out verbally and not minuted.
18. In addition the Council noted that the Chief Executive's precise level of pay was determined by a verbal discussion between the commissioners and the successful candidate. The call was not recorded. The outcome of the discussion was subsequently confirmed though in an email to the successful candidate – which the Council provided to the complainant during the course of the Commissioner's investigation. The Council had previously supplied a copy of the pay-banding scale which had been used as a starting point.

The Commissioner's view

19. The Commissioner's view is that the Council does not hold any further recorded information within the scope of the complainant's request.
20. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
21. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
22. It would appear that the complainant has concerns about the integrity of the process by which the Chief Executive was appointed. However, whether recorded information, if it existed, would prove "embarrassing" to a public authority is irrelevant to the *fact* of whether such information actually exists.
23. The Council has accepted that more information, which would have been within scope, had previously existed but had subsequently been

destroyed. This would again support the conclusion that no further information is held.

24. The Commissioner therefore considers that the Council has carried out relevant and thorough searches which would be likely to identify any information which was held. She therefore concludes that, on the balance of probabilities, the Council has complied with its section 1 duty as it has provided all the information it holds.

Right of appeal

25. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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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