

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2023

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant requested information about compensation claims made against the council relating to pothole damage. The council disclosed some information but said that other information is not held by it
2. The Commissioner's decision is that Hampshire County Council (the council) holds further information falling within the scope of the request.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the complainant to part 5 of the request, either providing the information it holds or issuing a valid refusal notice under the FOIA.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 14 April 2023 the complainant made the following information request via the WhatDoTheyKnow website (the Commissioner has numbered the request for ease of reference in the decision notice):

“For the period 01/01/2019 to the current date, please provide me with the following, separated by:

 1. Total number of compensation claims for damage as a result of a pothole.

Of these claims:

 2. How many were unpaid
 3. How many were paid willingly
 4. How many were paid as a result of civil legal action
 5. How many were paid by way of a settlement to avoid legal action. For each of these four categories, please provide the Minimum; Maximum; Mean and Median value for each claim (excluding any legal costs)”
6. The council responded on 5 May 2023 providing a spreadsheet of figures for the first four parts of the request for each year from 1 January 2019 up to 17 April 2023.
7. For the fifth part of the request, the council said it did not hold the information in the requested format.
8. The complainant expressed dissatisfaction with the response on 6 May 2023 and then requested an internal review on 17 May 2023.
9. The council provided its internal review response on 23 May 2023. It found that it had provided all the information it holds to parts 1 and 2 of the request.
10. For parts 3 and 4, the council provided a revised response to the complainant. It said that it does not actually collate the information against the terms used by the complainant and is therefore not held.
11. Instead, the council provided the minimum, maximum, mean and Median payments made, by year for “Claims where damages were paid to claimant but there were no third-party solicitor costs paid.” And “claims where damages were paid to claimant and there were third party solicitor costs paid”.

12. Lastly, for part 5 of the request, "How many were paid by way of settlement to avoid legal action", the council said that it is not able to extract this information as it does not retain it in the format requested.
13. On 27 May 2023 the complainant contacted the council further to complain that it has provided him with information to parts 3 and 4 of the request which he has not requested, that being information relating to third party solicitor costs. He also provided example scenarios to show the information he is trying to obtain.
14. On 2 June 2023 the council advised the complainant he must now take his complaint to the Commissioner as he had exhausted the internal review process.

Scope of the case

15. The complainant contacted the Commissioner to complain that the council has not provided him with all the information he has requested.
16. The scope of the case is for the Commissioner to determine whether the council holds any further information falling within the scope of the case.

Reasons for decision

Section 1 of the FOIA – Information held/ not held.

17. Broadly, section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
18. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
19. The council has explained to the Commissioner that searches for the requested information was carried out in its Legal services Claims Handling Database and has confirmed that this is the only place where decisions relating to civil claims against the council for highway issues are recorded, including potholes.

20. It confirmed that no information has been deleted or destroyed relevant to the request.
21. For parts 1 and 2 of the request, the council said that it has checked its system and has provided all the information it holds.
22. The Commissioner asked the council to clarify its position with regards to parts 3 and 4 of the request as it stated in its internal review that its system does not collate the information against the terms that has been used by the complainant in his request, yet stated information was held in its initial response.
23. The council clarified that although the terminology used in the complainant's request is different to the terms used to store information in its database, the information provided is actually the information held relevant to each part of the complainant's request.
24. The council told the Commissioner that it could have been clearer in its responses to the complainant; it could have provided explanations as to why it provided the information it has.
25. The council also told the Commissioner that after further review, it does hold information relevant to part 5 of the request, and so it was wrong to state that the information is not held in its responses to the complainant.
26. On review of the above, the Commissioner is satisfied, on the balance of probabilities, that the council has carried out relevant searches in the appropriate place and provided the information held to the majority of the request.
27. However, the Commissioner finds that the council does hold further information to part 5 of the request. He therefore requires the council to either provide the information to the complainant, or to issue a valid refusal notice, in accordance with the requirements of FOIA.

Other matters

28. For part 3 and 4 of the complainant's request, the council told the Commissioner that it could have provided a much better explanation to the complainant as to why the information it provided him is the information relevant to the request.
29. Although the FOIA does not require a public authority to provide explanations, the council has indicated that it wants to provide to the complainant contextual explanations to the information it has provided.

30. When issuing its further response to the complainant, as set out in this decision notice, the council may choose to provide the complainant with those explanations.

Right of appeal

31. 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

32. 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.
33. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF