

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2024

Public Authority: Morecambe Town Council
Address: Morecambe Town Hall
Marine Road East
Morecambe
LA4 5AF

Decision (including any steps ordered)

1. The complainant requested a copy of an internal audit report. Morecambe Town Council (the "Council") confirmed that the information was not held. The complainant disputes the Council's position.
2. The Commissioner's decision is that the Council correctly confirmed that it did not hold the requested information and complied with section 1(1) of the FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 7 December 2023 the complainant wrote to Morecambe Town Council (the "Council") and asked for the following information:

"1 A copy of the internal audit report relating to the financial year ending 31 March 2023 undertaken by JDH Business Solutions.

2 A copy of the council minutes confirming that the Internal Audit report for the Financial Year Ending 31 March 2023 undertaken by JDH Business Solutions was considered and accepted by the Council."
5. The Council responded on 9 January 2024 and stated that it did not hold the requested information.
6. Following an internal review Council wrote to the complainant on 7 March 2024. It confirmed that its position remained the same.

Scope of the case

7. On 3 April 2024 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The complainant confirmed that they considered the Council had wrongly confirmed that it did not hold the requested information, or elements of the requested information.
9. The Commissioner has considered whether the Council's handling of the request complies with the duty set out under section 1(1) of the FOIA.

Reasons for decision

Section 1 – duty to provide information held

10. Section 1(1) of the FOIA states:

"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."

11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The position of the Council

13. The Council has confirmed to the Commissioner that the requested internal audit report for 2022/23 (the "Report") was carried out by an external party (JDH Business Solutions) and was not completed and provided to the Council until April 2024.
14. The Council's position, therefore, is that neither the Report, draft versions of the Report or constituent parts of the Report were held at the time of the request. It follows that the information specified in part 2 of the request was also not held at this time.

The position of the complainant

15. The complainant disputes the Council's position and has argued that it wrongly confirmed that relevant information was not held at the time of the request. In their view the Council would have held either a draft version of the Report or other elements of the information at the time of the request. They have argued that the Council's response, therefore, should instead have been that it held information intended for future publication and issued a refusal notice citing section 22 of the FOIA.
16. The complainant has also complained that they still have not been provided with the requested Report.

The Commissioner's Decision

17. It is the Commissioner's view that, on the civil standard of the balance of probabilities, the Council did not hold any of the requested information at the time of the request.
18. The available evidence supports the conclusion that the requested Report was generated by an external party and was not provided to the Council until its completion in April 2024. It follows that the Council correctly confirmed that the information was not held at either the time of the request or the internal review.

19. The Commissioner has, therefore, concluded that the Council's handling of the request complies with section 1(1).

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Christopher Williams
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