

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 October 2024

**Public Authority:** Mid Suffolk District Council  
**Address:** Endeavour House  
8 Russell Road  
Ipswich  
IP1 2BX

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Mid Suffolk District Council (the Council) regarding a decision made in a complaint they submitted.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 1 December 2024, the complainant wrote to the Council and requested information in the following terms:  

"I repeat my request for a thorough review and complete disclosure of any documents, strategy for determination, and the determining officers notes which must clearly have set out any standards taken into account and reasoning."
5. The Council responded on 4 December 2024. It refused the request under section 40(2), a position which it maintained during its internal review.

## Scope of the case

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6. The complainant contacted the Commissioner on 19 June 2024 to complain about the way their request for information had been handled.
7. During the Commissioner's investigation, the Council disclosed some information within the scope of the request but advised that it did not hold any additional information within the scope of the request. The Commissioner contacted the complainant regarding this new response and the complainant confirmed they were not satisfied with the response and still wished for the Commissioner to investigate.
8. The Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any further information within the scope of the request.

## Reasons for decision

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### Section 1 – general right of access

9. Section 1(1) of 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."
10. The task for the Commissioner where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request is to determine whether, on the balance of probabilities, the public authority holds any information relevant to the request which it has not already disclosed to the complainant.
11. In making this determination, the Commissioner will consider the complainant's evidence and argument and the actions taken by the public authority to check whether the information is held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held.
12. The Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of

probabilities. Applying the civil test of the balance of probabilities is in line with the approach taken by the Information Tribunal when it considered the issue of whether information was held.

13. The Council explained to the complainant that a Monitoring Officer's remit is extremely limited. The position is a statutory role in accordance with S.5 of the Local Government and Housing Act (1989) and is strictly refined to reviewing the behaviour and conduct of elected officials in direct relation to their adopted code of conduct.
14. It stated that as part of its code of conduct complaints handling procedure it conducts an "Initial Assessment" on all of its complaints. This allows the Council to determine whether or not the required "threshold" has been reached for a further, fuller investigation.
15. The Council advised that, upon review of the complainant's complaint, the relevant Monitoring Officer determined that the complaint did not constitute a significant code of conduct issue and therefore the complaint was not progressed to investigation.
16. The Council confirm that the determination was made by reviewing the complain against the Council's handling procedure. It added that it is in the Monitoring Officer's discretion as to whether the contents of the complaint meet the required threshold for further investigation within the assessment period, and ultimately their determination is final. It added that there were no written records detailing how the decision was made.
17. The Council advised that when it receives a code of conduct complaint, each complaint is assigned a reference number and a specific folder. All emails and correspondence relating to this complaint are saved in this folder.
18. The Council advised that, on receipt of the request, a primary search took place in the Monitoring Office inbox and the Council's shared folders using the code of conduct complaint reference and an abbreviation of this reference. The Council advised that it only located information which had been provided to the complainant, confirming that no further information was held.

### **The Commissioner's decision**

19. The Commissioner would like to remind the complainant that FOIA does not consider information which may be contained in someone's head, nor is the Commissioner required to consider what a complainant believes should be held in matters such as these. The Commissioner's role is to determine whether, on the balance of probabilities, the Council holds any additional information within the scope of the request.

20. The Council have clearly explained that appropriate searches have been undertaken; in doing so, the Council has been able to locate information within the scope of the request and disclosed this to the complainant.
21. Having reviewed the Council's position, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.

### **Procedural matters**

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22. The Commissioner considers it to be a form of good practice for internal reviews to be completed within 40 working days. In this case the complainant requested an internal review on 16 January 2024 and the Council did not issue its internal review response until 5 April 2024.
23. The Commissioner therefore would like to remind the Council that it should be ensuring future internal reviews are carried out within 40 working days

## Right of appeal

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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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**