

## Freedom of Information Act 2000

### Decision notice

**Date:** 8 February 2017

**Public Authority:** Surrey County Council  
**Address:** County Hall  
Penrhyn Road  
Kingston upon Thames  
KT1 2DN

#### Decision (including any steps ordered)

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1. The complainant requested information from Surrey County Council (the Council) relating to the removal of a street sign.
2. The Commissioner's decision is that on the balance of probabilities the Council does not hold the requested information. Also, the Council breached section 10(1) of the Freedom of Information Act 2000 (the Act) by not responding to the request within 20 working days.
3. No steps are required.

#### Request and response

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4. On 11 July 2016, the complainant wrote to the Council and requested information in the following terms (point 7 is not a request but is included for reference):

*"7. Clearly from the photographs and signatures the road sign put in place by Bagshot Rural District Council in c 1960. The sign has been removed AND replaced by different signs.*

*8. Under the Freedom of Information Act we would like to know:*

- a) Who authorised its removal?*
- b) Who removed it?*
- c) What notification was given?"*

5. The Council responded on 21 September 2016. It denied holding any information relevant to point 8 of the complainant's letter.

6. For reasons that will be explained in the next section, no internal review was carried out of the complainant's request.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 1 August 2016 to complain that the Council had not responded to his request. The Commissioner contacted the Council and a response was subsequently sent to the complainant.
8. The complainant confirmed that he was not satisfied with the Council's response, as he considers that relevant information should be held. The Commissioner asked the Council whether it was likely its position was to change following an internal review. The Council confirmed that it had visited this matter on a number of occasions, and that it was highly unlikely its position would change due to an internal review.
9. The Commissioner proceeded to an investigation into the Council's handling of the complainant's request without the need for an internal review. The Commissioner considers the scope of the case to be whether the Council responded to the complainant's request in the statutory time limit, and whether it holds information relevant to the complainant's request.

## **Reasons for decision**

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### **Section 10(1) – time for a response to a request**

10. Section 1(1) of the Act states that upon receipt of a request a public authority must confirm or deny whether information is held, and if that information is held it must be communicated to the requester.
11. Section 10(1) of the Act states that public authorities must comply with section 1(1) within 20 working days of receipt of the request.
12. The Council confirmed that it had received the complainant's letter of 11 July 2016, but that it did not consider it to be a request for information under the Act. The Commissioner considers that part 8 of the letter asks for recorded information that might potentially be held by the Council, and that the complainant even stipulated that he wished to have these questions handled under the provisions of the Act.
13. Following the Commissioner's intervention the Council produced its response on 21 September 2016, which is beyond the 20 working day

limit. As it took longer than 20 working days to respond it breached section 10(1) of the Act.

14. As will become clear later on in the decision notice, the Council had previously informed the complainant not to send further correspondence on the subject of the sign at Road A (the subject of complainant's request) to its Customer Contact address. The Commissioner notes that the complainant had put his request under the Act in correspondence sent to that address. Whilst the request is still valid, it would be more appropriate for a request to be sent to the Council's Legal & Democratic Services address, which the complainant has previously been given.

## **Section 1 – information held**

15. 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 might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities.
16. The Council stated to the Commissioner that it did not carry out any searches for the requested information. It claimed this inaction was justified because it had visited this matter with the complainant several times before. In its view, it had provided the complainant with all information relating to the sign on High View Road, and there was nothing to be gained from going over the same subject again.
17. The Council provided the Commissioner with its letter to the complainant of 25 May 2016, which states:

*"As outlined in my previous letter to you of 25 January, when we are at the point where the Council has provided its final response on a matter but continues to receive correspondence on the same issue, then the Council will no longer acknowledge or respond to any further correspondence on that specific matter. This is now the case in relation to correspondence regarding the positioning of the sign on [Road A, subject of complainant's request] Lightwater. This matter was dealt with as a complaint under the Council's formal complaints procedure in 2011. It was explained at that time that the Council would not consider reopening this complaint unless you could provide substantial new information that was not considered as part of the complaint investigation."*

18. The Council also provided the Commissioner with the letter with the outcome of the 2011 investigation. In this letter it states:

*"Regarding the previous road sign originally located by the electricity sub station I no evidence to suggest that this was removed by Surrey*

*County Council; there would be no reason for them to do so. Road name signs are provided by the local District and Borough Councils, in this instance Surrey Heath Borough Council. Although I unable to remember the road sign in existence when I visited you in 2006 the council does hold photographs of the area taken in 2007 that includes a view of the previous road sign. I have enclosed a copy for your information.*

...

*The decision as to the current location of the road name sign for [Road A] rests with Surrey Heath Borough Council, however, in light of the above I am unable to conclude that the current position is incorrect."*

19. Following this letter the complainant went through the Council's complaint process to dispute its findings. In the Council's response letter of 19 October 2011 it stated:

*"I have been unable to find any evidence of a previous road name sign for [Road A] and am unable to evidence what any previous road sign that may have existed indicated. Surrey Heath Borough Council, who are the responsible authority for the maintenance and replacement of road name signs, have advised that they only hold records as far back as 2004 and that they have no record of the sign being replaced since then."*

20. The complainant referred the matter to the Local Government Ombudsman, which found that:

*"The complainant says the Council has removed the street name sign for the road and this has led to the Council not maintaining the road and other problems. It is my decision not to pursue the complaint. In part the law says the Ombudsman cannot investigate it [Commissioner's note – this related to the complainant disputing a Planning Inspectorate decision]. For that part which can be investigated, I have seen no evidence of administrative fault leading to injustice to the complainant."*

21. The complainant had also raised the removal of the sign in relation to a decision by the Planning Inspectorate. The complainant has alleged previously that the sign was removed in order to determine the Planning Inspectorate's Order Decision, but this document shows that the decision was made on the basis of other evidence, and it is far from certain that the presence of a sign as suggested by the complainant would have drastically altered the decision.

22. The Commissioner is satisfied with the Council's decision not to conduct further searches for the requested information in this case. The Council carried out searches for the removal of the road sign referred to in the request in its Stage 2 complaint process, as well as information about a

sign that the complainant's stated was there previously. This did not return any relevant information. This was then referred to the Local Government Ombudsman who found no fault with the Council's decision. It is evident that the Council has searched for the material appropriately, and there is nothing to suggest that a new search would be successful.

23. The complainant is adamant that the sign must have been removed by a council (whether Surrey County Council or Surrey Heath Borough Council) but the Commissioner has not seen any evidence which would suggest this means the Council holds relevant information. Without anything substantial to show that the Council has undertaken such a measure it is not clear what interest it would serve for the Council to remove it, and so there is no argument why there is likely to be information held regarding who in the Council authorised the sign's removal and who carried out the removal itself.
24. The Commissioner is satisfied that on the balance of probabilities the Council is unlikely to hold the requested information. The Council has demonstrated that it has searched for this information on numerous occasions and not identified anything of relevance. It seems clear to the Commissioner that this means it is unlikely anything is held. No steps are required.

## Right of appeal

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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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://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 .....**

**Sarah O'Cathain**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**