

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2017

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has asked Leeds City Council for its guidance, rules and codes which relate to reports concerning apparent incorrect conduct of a Planning Officer. The Council responded to this request by providing the complainant with its compliments and complaints policy, the Council's constitution and its information access regime.
2. The Commissioner has decided that, on the balance of probability, Leeds City Council does not hold any further information which meets the terms specified by the complainant in his request and therefore it has satisfied section 1(1) of the FOIA.
3. The Commissioner requires no further action to be taken in this matter.

Request and response

4. On 3 December 2015, the complainant wrote a letter to the Council's Chief Executive Officer ["CEO"] headed 'Formal Report of Concerns re Apparent Incorrect Conduct of LCC Planning Officer'. At the end of this letter the complainant asked for the following information:

"Could you please therefore provide all relevance [sic] LCC guidance, rules and codes which apply to this situation."

5. On 9 December 2015, the Council's Senior Policy and Performance Officer wrote to the complainant on behalf of the CEO and provided him with a link to its complaints procedure.

6. Having received the Council's response, the complainant determined that it was incomplete and the Council had not interpreted his request correctly. In a further three letters – to the CEO, the Information Compliance Administrator and the Senior Policy and Performance Officer, the complainant repeated his request for information.

7. On 17 December 2015, The Council's CEO wrote to the complainant to confirm that he had been provided with all the information held under the EIR. The CEO stated:

"The authority is of the view that any such requests under the Environmental Information Regulations should now be considered as 'manifestly unreasonable' under Regulation 12(4)(b) and we will not, as a consequence be considering these.

8. The CEO's letter went on to refer to the complainant's request for "information on relevant council policies and procedures". To assist the complainant, the Council provided him with links to the Council's constitution, complaints policy and information access regimes. The Council's letter concluded by stating:

"In conclusion, the authority is satisfied that it has considered all of your concerns appropriately and we will not respond further to any correspondence from yourself on this matter".

Scope of the case

9. This Decision Notice is made following the decision of the First Tier Tribunal in an appeal brought by the complainant¹, and following renewed complainants concerning the failure of the Commissioner to consider the responses made by Leeds City Council in respect of his request of 3 December 2015.

10. The Commissioner acknowledges the decision of the Tribunal in the complainant's appeal. She accepts that the complainant's request of 3 December 2015 was not previously investigated in case FER0615064 and therefore the Commissioner has investigated whether the Council handled that request in accordance with the FOIA/EIR.

11. The Commissioner's investigation sought to determine what information relevant to the complainant's request was held by the Council at the

¹ EA2016/0182 First Tier Tribunal (General Regulatory Chamber) Information Rights

time the request was made and, if the Council has withheld any relevant information, whether the Council has any grounds under the FOIA/EIR for doing so.

Reasons for decision

FOIA or EIR

12. The Commissioner has considered the nature of the information which the complainant seeks, i.e. guidance, rules and codes, in the context of an allegation of "incorrect conduct" by one of the Council's Planning Officers.
13. The nature of the requested information and its context, strongly suggests to the Commissioner that it would not satisfy the definition of Environmental Information which is provided by the Environmental Information Regulations 2004 ["the EIR"]. The requested information, if it is held by the Council, has no relationship to environment, other than it would concern the conduct of a planning officer. In the Commissioner's opinion, the relationship between the conduct of a planning officer and matters affecting the environment is too remote to satisfy the definition of environmental information which is described by Regulation 2 of the EIR. The Commissioner has therefore decided that the complainant's request falls to be considered under the FOIA.

Section 1 of the FOIA

14. Section 1 of the FOIA states that

"(1) 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.

15. The Commissioner has sought to determine whether the Council holds any information which meets the terms specified by the complainant in his request.
16. The Council responded to the Commissioner's enquiry by stating:

"In our view, the only recorded information which could reasonably fall within the terms of [the complainant's] request is the information which was provided via the Council's letters dated 9 December, and 17

December 2015 [...] in other words the compliments and complaints policy, the constitution and the information access regime.

17. Asked whether the Council is satisfied that its response to the complainant met the terms the complainant's request and is appropriate to the requirements of the FOIA and/or the EIR, the Council answered:

"Yes, the Council is satisfied that its letters referred to above meet the terms of [the complainant's] request in full."

18. In addition to the above assurances and assertions, the Council has confirmed to the Commissioner that it has not withheld any recorded information from the complainant which meets the terms of his request and it is strongly of the view that the Council has responded in full to the complainant's request.
19. The Commissioner made a specific enquiry of the Council in respect of whether it holds any other documents – by way of policies, guidance and codes of practice, which are used internally by the Council to investigate complaints against Council staff.
20. In response to this enquiry, the Council confirmed to the Commissioner that it holds two further documents which relate to Reporting Fraud and Corruption and Raising Concerns. However, in view that neither of these documents provide guidance in respect of staff investigating complaints against staff, the Council considers that they are not relevant to the specific terms of the complainant's request and again the Council has assured the Commissioner that it holds no additional internal guidance which concerns the internal investigation of complainants made against its staff.

The Commissioner's decision

21. The Commissioner notes the Council's confirmation that its previous reliance on Regulation 12(4)(b) is not relevant to this request. She also notes the Council's position that it has withheld no information from the complainant which meets the terms specified in his request.
22. Having considered the Council's representations in this matter and in the absence of any evidence to the contrary, the Commissioner is obliged to accept the Council's assurance that it has provided the complainant with all of the information it holds which meet the terms of his request and that it has not withheld any information.
23. The Commissioner's decision is therefore that, on the balance of probabilities, the Council complied with section 1 of the FOIA by providing the complainant with information relevant to his request in its letters of 9 and 17 December 2015.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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.

Signed

Andrew White
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