

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 March 2019

Public Authority: Cardiff Council

Address: foi@cardiff.gov.uk

Decision (including any steps ordered)

1. The complainant requested information held between Cardiff Council ('the Council') and a named Councillor about a specific issue. The Council initially stated that it did not hold the information requested, however, during the course of the Commissioner's investigation the Council disclosed the information held relevant to the request. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further recorded information falling within the scope of the request. However, in failing to disclose the information held within the required timescale the Commissioner finds that the Council breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 14 May 2018 the complainant wrote to the Council and requested information in the following terms:

*"Could we please see all information held between Cardiff Council and Councillor [name redacted] covering the subject of '**Cardiff Council irregularities**' between the following dates:*

19/03/18-14/05/18

And where the following is mentioned:

'Premier Cardiff Council owned real estate is being commercially utilised, yet the council make nothing tangible in return,

There is currently no financial benefit to the council that is measurable, that has been formally audited and is proportionate to the revenues being generated'

.....This would include (and is not limited to) all correspondences, emails and the likes and redacted where necessary".

3. The Council responded on 12 June 2018 and stated that following a search of its record no information relevant to the request was identified.
4. On 12 June 2018 the complainant requested an internal review of the Council's handling of the request.
5. The Council wrote to the complainant on 14 June 2018 asking him to clarify which aspects of its response he was dissatisfied with.
6. The complainant responded on 14 June 2018. He referred to previous FOIA requests he had made to the Council, and associated complaints to the Commissioner. He stated that due to the Council's handling of previous requests he had *"lost confidence in the councils [sic] ability to provide the requested information as per associated guidelines"*.
7. The Council provided the outcome of its internal review on 25 June 2018 and upheld its position that it did not hold any information relevant to the request.

Scope of the case

8. The complainant contacted the Commissioner on 26 June 2018 to complain about the way his request for information had been handled.
9. In his complaint to the Commissioner, the complainant advised that it had recently been brought to his attention that an email was sent by the councillor named in the request ('Councillor B') to a private individual on 5 April 2018, which contained *"RE: Cardiff Council irregularities"* in the subject line. He therefore considered that the searches the Council originally conducted in respect of his request were inadequate as they did not identify the email in question.

10. During the course of the Commissioner's investigation the Council conducted additional searches which identified information held relevant to the request which it disclosed to the complainant, subject to some names and email address being redacted.
11. The scope of the Commissioner's investigation into this complaint is to determine whether, on the balance of probabilities, the Council holds any further recorded information relevant to the request of 14 May 2018.

Reasons for decision

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
14. In terms of the searches conducted in order to identify information relevant to the request the Council advised the Commissioner that its Members Services team were asked to search their records and to ask Councillor B to search his records for relevant information. Details of these searches are below:

"Members Services Support Officers undertook Searches of Outlook Email (received and sent items) and Microsoft Word (Correspondence files); Using search terms 'Cllr [Cllr B name redacted]' and 'Cardiff Council Irregularities'. Period of search 19/03/18 – 14/5/18.

Searches included information held by Cardiff Council in relation to Councillor [Cllr B name redacted]'s;

1. *Microsoft Word correspondence files in the Members Services Drive – includes scanned letters received via Members Services to Councillors;*
2. *Outlook Emails received or sent from the Members Services Mail box;*
3. *Responses to correspondence prepared by Members Services at the request of the Cllr or following a receipt of a response to enquiries raised in relation to Cllr casework which would be stored in Microsoft Word correspondence file in the Members Services Drive.*
4. *Outlook Emails passed to or sent by the Member Services Support Officer for Cllr [Cllr B name redacted].*
5. *Member Enquiry Nethelpdesk System (Using the following criteria*
 - *[Cllr B surname redacted] – all enquiries sorted by date*
 - **'irregularities'**
 - *Advertising*
 - *Drums*
 - *[name of individual referred to in paragraph 9 above redacted]*

*Cllr [Cllr B name redacted]'s Outlook Council Email system
Officers assisted Cllr [Cllr B name redacted] to search using the
following search criteria:*

'irregularities' – searched Inbox, Sent items and Deleted items;

'[surname of another Cllr redacted]' – searched Sent items and Deleted items".

15. In addition to the searches undertaken within the Members Services Department, the Council confirmed that searches were also undertaken within its City Centre Management and Scrutiny Departments, using relevant search terms.
16. The Council advised the Commissioner that, based on the wording of the request and its knowledge of dealing with other FOIA requests on the subject matter of advertising drums, it identified that information relating to the request would only be held within the departments within which searches were conducted. The Members Services department provides administrative support for Councillors, the City Centre Manager is responsible for the advertising drums scheme and Scrutiny officers provide support for Scrutiny Committee Members. Councillor B was a member of the Economy and Culture Scrutiny Committee during the period covered by the request.
17. The Council explained that its records retention schedule is built on content type and it is the responsibility of the creator/receiver of information to determine whether it needed to be retained for business purposes. The Council confirmed that it is not aware that any information relevant to the request had ever been deleted or destroyed.

18. In reaching a view on this complaint, the Commissioner has considered what information she would expect the Council to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the Council to the questions posed by her during the course of her investigation.
19. The Commissioner has seen no evidence to suggest that there is any motive to withhold information relevant to the request. However, it appears that the initial searches which the Council undertook were inadequate as they failed to identify the information that was disclosed during her investigation. However, the Commissioner accepts that the Council has now carried out adequate searches of where relevant information would be held. The Commissioner does not consider there is any further evidence that undermines the Council's position that it has now identified all of the relevant information. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed.

Section 10 – time for compliance

20. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
21. In this case the request was submitted on 14 May 2018 and the Council did not disclose the information held until 22 February 2019. As the Council failed to comply with section 1(1)(b) within the required timescale it breached section 10(1) of the FOIA.

Other matters

22. Although not forming part of the formal decision notice the Commissioner uses this 'Other Matters' section to highlight issues of concern that have arisen during his investigation.
23. When dealing with complaints the Commissioner is reliant upon the cooperation of public authorities in her investigation. Where public authorities fail to provide timely, comprehensive responses to her enquiries, this can result in the Commissioner's investigation being unnecessarily prolonged. As an investigation can result in information

previously withheld or not identified being disclosed to complainants, the Commissioner considers that such delays represent a failure by the authority in question to act within the spirit and the letter of the FOIA.

24. The Council's repeated failure to respond to the Commissioner's enquiries in this case resulted in her issuing an Information Notice on 25 January 2019 to compel it to respond.

Information held

25. Prior to the Commissioner's investigation the Council's position was that it did not hold any information relevant to the request. In addition, during the Commissioner's investigation the Council initially confirmed that Councillor B had not responded to an email about "Cardiff Council irregularities" nor had his office. However, when the Council finally provided a substantive response to the Commissioner's enquiries it identified a number of documents falling within the scope of the request. These included emails which Councillor B and/or his office had responded to/forwarded.
26. Whilst the Commissioner does not expect public authorities to conduct an extensive, unfocused search of all its records in every case she does expect that a reasonable and proportionate search is conducted at the outset to identify all the information held relevant to a request. A failure to do so can result in a breach of section 10 of the FOIA, as it has in this case.
27. Whilst the Commissioner is satisfied that sufficient searches have now been completed, it is clear that significant time and resources could have been saved if the information that was eventually uncovered had been identified when the Council initially dealt with the request. The Commissioner wishes to place on record in this decision notice her concerns about the Council's handling of this request in the hope that it will prevent a similar situation occurring again with another request or investigation in the future.

Right of appeal

28. 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

29. 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.
30. 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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