

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

### **Decision notice**

**Date:** 17 December 2019

**Public Authority:** East Riding of Yorkshire Council

**Address:** County Hall  
Cross Street  
Beverley  
East Riding of Yorkshire  
HU17 9BA

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

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1. The complainant has requested specific information held by the council relating to Welcome to Yorkshire (WTY). The council said that it only holds information falling within the scope of the request on behalf of WTY rather than on its own behalf. It argued therefore that it does not hold any information for the purposes of its obligations under the FOI Act.
2. The Commissioner's decision is that the council was correct to find that it holds no information falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 25 March 2019, the complainant wrote to the council and requested information in the following terms:

*"Please provide the information held as following:*

*Board papers for Welcome to Yorkshire (WtY) from the start of 2016 to present*

*Any separate reports held into the conduct of [name of individual redacted] at WtY and any separate reports on expenses claims at WtY.*

*I understand East Riding Council is represented on the Board at WtY."*

5. The council responded on 26 April, 2019 (in a letter dated 23 April 2019). It said that WTY had not given it permission to disclose Board minutes. It also said that it was not aware of any expenses claims being carried by the council at the time of the request.
6. It also applied section 21 to information on whether the council is a Board member on the basis that a list of Board members of WTY is publicly available at <https://industry.yorkshire.com/about/the-Board>.
7. The complainant requested that the council carry out a review of its response on 16 May 2019. He clarified that:

*"I note you state Welcome to Yorkshire has not given you permission to release Board papers. However, I am not clear how or whether by saying this you are applying an exemption under the FOI Act. You will be aware you should provide an exemption if you are declining to provide information that is held.*

*With regard to point 2, I was referring to any such reports that were held by East Riding, not inquiries that had been carried out by East Riding.*

*I would therefore be grateful if you would reconsider your response and provide the information requested."*

8. Following an internal review the council wrote to the complainant on 24 June 2019. It said that:
- It does not hold any reports relating to the conduct of [name of individual redacted] at WTY or any separate reports on expenses claimed at WTY.

- It said that Board's minutes are held on behalf of another person (i.e. WTY), and therefore not held by the council for the purposes of FOIA.

## Scope of the case

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9. The complainant contacted the Commissioner on 25 June 2019 to complain about the way his request for information had been handled.
10. He argued that the council has an interest in the Board, that it is not a reasonable proposition for the council to state that it has no access to, or an interest in, the Board papers it holds, and therefore the council's argument in this respect is incorrect.
11. The Commissioner also notes that independent reports have now been published on WTY's issues.<sup>1 2</sup>
12. The Commissioner therefore considers that the complaint relates to the withholding of Board papers, and, in particular, whether the council holds that information for the purposes of the FOI Act.

## Reasons for decision

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13. Section 1(1) provides 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."*

14. Section 3(2) provides that -

*"For the purposes of this Act, information is held by a public authority if*  
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<sup>1</sup> <https://industry.yorkshire.com/media/69539/clarion-report-july-2019.pdf>

<sup>2</sup> <https://industry.yorkshire.com/media/69542/bdo-report-july-2019.pdf>

*(a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority."*

15. The council clarified that it only holds one set of Board papers for WTY. It argues that this is held on behalf of WTY rather than its own behalf. The complainant argues that that is not the case as the council itself has an interest in the information, and therefore it will be holding it for its own purposes.

The complainant's arguments

16. The complainant argues that the council has an interest in WTY, that it, along with many other authorities, provides significant amounts of public money to the company, and that the council's former leader has a seat on WTY's Board. He therefore argues that the information which it holds will be held on the council's own behalf, and therefore caught within the scope of the Act for the purposes of section 1.
17. The complainant argues that WTY was set up by local authorities and that it (WTY) is the recipient of significant amounts of public money. He points out that, since both expenses and governance issues have been exposed within WTY, local authorities have effectively taken a much greater role in the running of WTY, and now have greater representation on its Board<sup>3</sup>. The latter point has however occurred since the request for information was received by the council.
18. He argues that councillors were not invited onto the Board as individuals, but due to their roles as councillors and council leaders.
19. He also understands that the constitution of Welcome to Yorkshire specifically referred to public representation on its Board.
20. His argument is therefore that it is clear that council leaders sitting on the WTY Board did so as representatives of the council, and therefore information held by the council is held for its own purposes, and therefore held for the purposes of FOIA.

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<sup>3</sup> <https://www.yorkshirepost.co.uk/news/politics/welcome-to-yorkshire-boss-ousted-after-council-bosses-demand-change-1-10038858>

### The council's position

21. The council is a member of WTY. It said that *"The membership fee provided to Welcome to Yorkshire is on the basis that Welcome to Yorkshire promote tourism to the region which is a benefit to the area"*.
22. The council argues that it only holds the Board papers on the basis that its former leader received an invitation to sit on the Board of WTY. It argues that the information it holds falling within the scope of the request is not 'council information' as the former leader's appointment to the Board was not 'exclusively' a council based position. It explained this point further.
23. It said that prior to him taking his seat on the Board, correspondence between WTY and the former leader occurred through his council email address. It said that once he had taken his place on the Board, correspondence then occurred via the former leader's private email address, and the council does not hold any information falling within the scope of the request from this point.
24. It argues that its former leader took a seat on the Board as a result of a private invitation from WTY. It argues that the position he holds in this capacity was not part of his council duties, and the information it holds as a result of this is not council information. It argues that the information it holds is purely as a result of this private relationship, and that it has no purpose or interest in holding that information for its own purposes. It therefore concludes that the information is held on behalf of WTY rather than on its own behalf.
25. The council provided evidence of its position to the Commissioner. It provided a copy of the invitation to join the Board of WTY which was sent to its former leader. In the invitation WTY does not specify that the invitation relates to the former leader's position in the council as one of the reasons for inviting him to join its Board. The invitation appears to be personal in nature; not linked to the former leader's position at the council.
26. The council clarified that if the appointment had been made on behalf of the council, and his position on the Board provided as a representative of the council, the usual situation would have been that an individual would be nominated to the Board by the council. It said that this was not the case here.
27. It also argued that the council would also have nominated a successor upon the retirement of the former council leader from the council, which again was not the case here. It argues that this demonstrates that the former leader's position was an independent appointment, and he was not acting as a representative of the council on WTY's Board.

28. It said the independent nature of the position is further evidenced by the fact that the former leader retained his position on WTY's Board once he had retired from his position at the council. Again it provided written confirmation that that was the case from correspondence with WTY. The Commissioner considers, however, that this evidence is inconclusive. The WTY letter, dated 8 April 2019, stated that "[name redacted] is on the WTY Board as a Councillor but will continue to be on the Board in a personal capacity after his retirement..."
29. It can therefore be argued that WTY did see the former leader's role as partly a representative of the council, although it is not clear in what capacity it considered this to be the case from this evidence.
30. The council clarified that it is not aware whether WTY's constitution requires a representative of the council to sit as part of its Board.
31. The council said that it does not provide administrative support to WTY. It said that it only holds information in the form of the initial invitation and one set of minutes which were sent to the former councillor prior to him taking part in the first Board meeting. From that point, it understands that all further correspondence between the parties was sent to the former leaders private email address. Again it argues that this is evidence that the position was not as a result of the former leader's position with the council; that his position on the Board was a private arrangement between the former leader and WTY.
32. It said that as it has no interest or reason for holding those papers itself, the Board papers are the property of WTY and it is not in a position to disclose them to third parties without the permission of WTY. It only holds them in its possession as they were sent to a council email address.

#### The Commissioner's analysis

33. The Commissioner notes that WTY is a private company but receives more than £1m in public funding each year from councils across the region<sup>4</sup>.
34. In 2009 the Yorkshire Tourist Board was made into a private limited company by its then Chief Executive. In the last 10 years it is reported that WTY has received millions of pounds of public money from public authorities, as well as money from small to medium size businesses.

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<sup>4</sup> BBC 7 October 2019 <https://www.bbc.co.uk/news/uk-england-leeds-49966531>

35. The complainant's arguments therefore have a strong degree of pertinence. As WTY is a private company, the issues surrounding the use of expenses which were levelled at individuals within WTY cannot be directly questioned with WTY by the public because, as a private company, it falls outside the scope of the Act. The Commissioner has noted above, however, that WTY has now published independent reports surrounding these issues.
36. The Commissioner notes that the council is reported as having provided WTY with over £500,000 over the last 4 years.
37. The council argues that its leader sat on the Board in an independent capacity, and therefore the information it does hold is only as a result of WTY's initial approaches to him to ask him if he would like to sit on the Board. From that point on, correspondence between the parties took place via private means. The council's provision of significant funds to WTY, and any associated scrutiny this entailed, does not therefore appear to have resulted in the council holding any further WTY Board papers. This is considered further in the section of this notice relating to whether further information is held.
38. The Commissioner notes that the council's description of events is partially supported by the correspondence she has seen from WTY. However, it is obviously likely that the invitation may have, at least partially, resulted from the former leader's position on the council, or again at the very least, as a councillor. Hence WTY's statement to the council that he was on the Board 'as a Councillor'. Ironically, to some extent this also adds to the complainant's arguments.
39. WTY's invitation to the former leader does however state that the Board is well represented by 'individuals' who live in North and West Yorkshire; it does not refer to councillors or council leaders specifically. Nor does it refer to the former leader's role on the council at all when inviting him to sit on its Board.
40. The Commissioner also notes that the Clarion Report into the management and governance of WTY (dated July 2019), states on page 7 that:

*"Whilst not unusual for a non-executive Board of unpaid volunteers in a small organisation, the Board was (until recently) not known to employees below SMT level and attendance of the Board at WTY's offices has been intermittent."*
41. It also confirms this point on page 6:

*"However, it was also acknowledged that the Board is voluntary and unpaid, with the exception of the Chair."*

42. The invitation to sit on the Board reads as a personal invitation, rather than a formal invite to the council for representation on its Board. Whether WTY intended the invitation to be a means of obtaining formal council representation on its Board or not is unclear. However it is clear that both the council and its former leader understood that not to be the case. The fact that no further Board minutes or correspondence between the leader and WTY is held by the council, and the fact that the former leader's further correspondence with WTY occurred via private means following their initial correspondence, is strong evidence that the council, and its former leader did not consider that his position on the Board was as a formal representative of the council. Conversely then, it is evidence that the council does not hold the information for its own purposes.
43. The fact that it holds so little information indicates that the council only holds the information as incidental correspondence, captured during the initial correspondence between WTY and its former leader as a result of its initial invitation being sent to the former leader via the council's email address. As so little information is being held, and given the explanation which the council has provided, it is clear that the council did not, and was not, using Board papers gathered by its former leader as a means of scrutinising WTY and its use of public funds.
44. The question for the Commissioner is not what the intentions of WTY were in inviting the council's former leader onto its Board. It is a question of how the council understood that relationship to be, the purposes it had when collecting that information, and its reasons for continuing to hold that information at the time that the request was received.
45. The Commissioner considers that WTY would appear to have no continuing purpose in the council holding the information it holds, and it does not have day to day control over the information which is held by the council. The council does not provide administrative support to WTY.

### Conclusions

46. Having taken the above factors into account, the Commissioner has decided that, under the circumstances, the council is correct to state that the information it holds is held on behalf of WTY, and it is only held as a result of the private relationship between its former leader and WTY.
47. Regardless of WTY's initial intentions (which remain unclear), what appears to be the case is that neither the council nor its former leader believed that he was sitting on the Board in a formal capacity as a representative of the council. He was however asked to join the Board as a result of his position as a councillor, although his continuation on

the Board following his retirement suggests that this was accepted as being in an informal capacity.

48. In her guidance '*Information held by a public authority for the purposes of the Freedom of Information Act*<sup>5</sup>, at paragraph 24 the guidance states:

***"Local councillors** are likely to have a number of different roles. Information will not be held for FOIA purposes if it relates to their function as elected members (for example, corresponding with residents in their ward, discussing council business with fellow members in the context of voting strategy or campaigning on behalf of a political party). However, some information will relate to the functions of the local authority and will be held for FOIA purposes (for example, being a cabinet member and having executive responsibility for a service area, carrying out administrative functions or representing the authority, such as on a regional forum)."*

49. The Commissioner therefore considers that councillors can be acting in a number of roles, only some of which will obtain or generate information which will be recorded as 'council' information. For instance, councillors acting in their political role will generate and obtain information which is recorded on council servers, but which is not held as 'council information' for the purposes of FOI.

50. In her guidance regarding official information held in private email accounts<sup>6</sup>, the Commissioner provides a number of questions to aid authorities in determining whether an individual is acting on behalf of an authority in order to decide whether correspondence within their private email accounts is held on behalf of the authority. This guidance provides relevant questions in this instance, where some emails received by the council may have been sent to the leader of the council in his capacity as a councillor acting other than on behalf of the council itself. The guidance suggests that authorities consider the following points:

*"The ICO recommends that, as a matter of good practice, public authorities establish procedures for dealing with such situations. These should outline the relevant factors to be taken into account in deciding*

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

<sup>6</sup> [https://ico.org.uk/media/for-organisations/documents/1147/official\\_information\\_held\\_in\\_private\\_email\\_accounts.pdf](https://ico.org.uk/media/for-organisations/documents/1147/official_information_held_in_private_email_accounts.pdf)

*whether it is necessary to ask someone to search their private email account for information which might fall within the scope of an FOI request the public authority has received. Relevant factors are likely to include:*

- the focus of the request, indicated by the words used by the requester;*
- the subject matter of the information which falls within the scope of the request;*
- how the issues to which the request relates have been handled within the public authority;*
- by whom and to whom was the information sent and in what capacity (e.g. public servant or political party member); and*
- whether a private communication channel was used because no official channel was available at the time."*

51. The Commissioner is satisfied that both the council's former leader and the council believed, and worked from the position being, that the former leader was sitting on the Board in his personal capacity. From the nature of its invitation, WTY appears to have invited him onto its Board due to the personal experience that his role as a councillor and as council leader could provide. Neither the council, nor its former leader, believed that he was sitting in a capacity as a representative of the council and the Commissioner has seen no evidence persuading her that WTY considered that to be the case.
52. The Commissioner has seen no evidence to suggest that the council, or the former council leader, intended to hold this information for its own purposes, such as the scrutiny of the actions of WTY regarding the funds it provided. It holds this information only because it has retained a record of the emails which were received by its former leader, in this particular instance, in his role as a councillor representing the area, and the interests of the people, of East Yorkshire, rather than as a formal representative of the council.
53. The invitation email was sent via the council address initially, however this changed to a private email address once the relationship had been established and the council's former leader had taken his place on WTY's Board. Essentially, its initial approach does not provide evidence that WTY intended the invitation to be seen as a request that the council provided formal representation on its Board.
54. The Commissioner has considered the alternative. If the council's former leader was representing the council on WTY's Board, then the correspondence with WTY which he subsequently received or sent via his private email address would also be council information for the purposes of FOI. The question would therefore arise as to why the WTY and the

former leader would take a deliberate step to move their correspondence to a private email address when the parties were intending that the leader's position was being undertaken as part of his council duties. There is no evidence to suggest that this step was taken in any attempt to hide information. It would also make little practical sense for the council to agree this change as it would lose the oversight it would otherwise have gained into WTY's actions and decisions.

55. Using the above factors, and considering the evidence outlined above, the Commissioner has therefore decided that the council was correct to say that the information it confirms it holds is not held by the council for the purposes of the FOI Act.

Is further information held by the council?

56. The council said that it only holds one set of WTY Board meeting papers as the remainder were sent to the private email address of its former leader. The Commissioner therefore asked the council what searches it had carried out in order to determine whether any further information is held falling within the scope of the request.
57. When considering the council's response, the Commissioner has borne in mind both the former status of WTY as a public authority, and the funds the council provides to WTY. Thus, the Commissioner considered whether any degree of oversight or methods of scrutiny which the council has in place might have captured information falling within the scope of the complainant's request for information.
58. As noted above, section 1 of FOIA provides 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."*
59. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
60. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

61. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Council held further information within the scope of the request.
62. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.
63. During the course of her investigation, the Commissioner asked the Council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how the Council established whether or not it held further information within the scope of the requested.
64. The council clarified that searches were carried out of the Council email system of the ex-Leader and his management assistant. It said that this would have been likely to locate any relevant information because the initial contacts were via the former leader and then his office. It said that no other information is held as it understood that subsequent communications were sent via the former leader's personal email address.
65. It said that the areas which it searched were limited because the request was specifically for information which would only have been received from WTY.
66. In terms of the first part of the request they would only have come to recipient – the former leader of the council. Therefore the management assistant to the leader was asked to undertake a search of the email archive of her and the former leader's accounts to ascertain what information was held.
67. As regards the second part of the request, it confirmed that no such report had been produced by WTY at the time that the request was received, although it is aware that a report has subsequently been produced, in July 2019. It said that any draft report would have been

sent to the Board member, and the above search would therefore have located this. As noted above, two independent reports have now been published and are available on WTY's website<sup>7</sup>.

68. It said that any emails that are held are held in a networked system which would contain emails back to 2016. It confirmed that no emails have been deleted, and that it has no statutory requirement to retain such emails as they do not relate to council business, but to WTY's.
69. It said that there is no business purpose for which the council needs to retain the information.
70. Finally, the Commissioner also notes that on page 16 of the Clarion Report the recommendation is as follows:

*"Whilst unusual for a small private company, it is encouraging that a hybrid approach has been implemented to take account of the public sector interests in WTY. Publicising appropriate Board papers (such as agendas and minutes) will be beneficial in the interests of transparency. Keeping this under review and considering any further appropriate public elements to Board arrangements in future would be a further positive step."*

71. It appears clear to the Commissioner that this paragraph, and those following this point, suggest a climate where Board members sat independently from their other roles, whether in public authorities or not. The practice of sharing Board papers appears not to have been in place by the WTY at the time of the request.

#### The Commissioner's conclusion

72. The Commissioner has carefully reviewed the submissions of both parties and their arguments put forward.
73. Under the circumstances described she believes that the council has carried out adequate searches in appropriate places to determine whether any further information is held falling within the scope of the complainant's request.
74. Therefore, the Commissioner's decision is that, on the balance of probabilities, no further information is held by the council falling within the scope of the request for information.

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<sup>7</sup> <https://industry.yorkshire.com/archive/news/welcome-to-yorkshire-behaviour-investigation>

## Right of appeal

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75. 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@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)

76. 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.
77. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**