

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2020

Public Authority: Worcester City Council

Address: Guildhall
High Street
Worcester
WR1 2EY

Decision (including any steps ordered)

1. The complainant has requested a specific briefing note, minutes of a meeting and any information relating to a previous FOI request referred to the ICO and which was the subject of an appeal to the First-tier Tribunal. The Council originally applied section 14 FOIA as it considered the request to be vexatious but subsequently responded to the request confirming that it did not hold information falling within the scope of the first part of the request under section 1(1)(a) FOIA and providing the information located falling within the scope of the second part of the request. The complainant does not accept that he has been provided with all recorded information held by the Council falling within the scope of both parts of his request.
2. The Commissioner considers that on the balance of probabilities no further information is held falling within the scope of the request under section 1(1)(a) FOIA other than that which has now been provided.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 21 July 2019 the complainant made the following request for information under the FOIA for:

"Recent events have led me to review the information provided in the comprehensive schedule you sent me. You state that the period covered by the request is 21 June to 19 July 2017. I note that in some of the

emails sent to [name redacted] a briefing note is requested and [name redacted] promises one for the week beginning 3 July. I note that he scheduled a meeting with [name redacted] for Monday 3 July. However, in the information you provided me with there is no copy of a briefing note. Nor are there any minutes of the meeting. Even if both were delayed by a week they would fall into the time period of my request.

Can I ask you to investigate this matter and get back to me as soon as possible? You will, of course, be aware that withholding information is a criminal offence under the legislation.

Can I also make a new request for all recorded information distributed to Councillors and Council Officers about the outcome of my appeal to the ICO and the Tribunal Hearing to be unlimited by any date? This covers emails, notes, briefing notes and reports. There is no need to duplicate what you have already provided to me. If you are uncertain about any aspect of this request, please feel free to contact me for clarification."

5. On 28 October 2019 the Council responded. It refused to comply with the request as it considered it to be vexatious under section 14 FOIA.
6. The complainant requested an internal review on 28 October 2019. The Council failed to carry out an internal review. The Commissioner proceeded to investigate its handling of the request in the absence of an internal review.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation the Council amended its response.
9. The Council confirmed that no information was held falling within the scope of the first part of the request and provided the complainant with the recorded information held falling within the scope of the second part of the request.
10. The Commissioner has therefore considered whether any further recorded information is held by the Council under section 1(1)(a) FOIA falling within the scope of both parts of the request.

Reasons for decision

11. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". Section 1(1)(b) of FOIA states that, "If that is the case, to have that information communicated to him".
12. In relation to the first part of the request, the Council explained that it had undertaken a reasonable search of its mail servers and document folders. No minutes or briefing notes were identified. All written records identified in the search had already been disclosed to the complainant.
13. It went on that a conversation between [four names redacted] referred to in the information disclosed, took place on the afternoon of Sunday, 25 June 2017. It confirmed a meeting was held the next day where this matter would have been discussed. This would have given no time for a report to be prepared and this is not the way in which these meetings work. These were fairly informal meetings and used as a regular means of communication (verbal) rather than as a means to consider any 'formal' reports.
14. Ultimately the Council confirmed that it does not hold the information requested.
15. In relation to the second part of the request, the Council conducted a reasonable search of mail servers and document folders and provided the complainant with the information located.
16. The Commissioner asked the Council for further details regarding the searches conducted in relation to both parts of the request.
17. The Council explained that electronic databases were searched. Results were put into folders and then officers reviewed the folders to extract all relevant search results. The first electronic database searches (part 1 of the request) were conducted in July 2017 and the second electronic database searches (part 2 of the request) were conducted in September 2020. These searches would have been likely to retrieve any relevant information because they provide the widest coverage of the information stored on the Council's system. The extent of the searches conducted for part 1 of the request are explained in the emails that the Council disclosed to the complainant. In relation to part 2 of the request, these searches were detailed in the Council's revised response to the complainant dated 18 September 2020. This detailed the range of search terms that were requested from ICT Services and the range of locations which were searched.

18. In its submission to the Commissioner the Council confirmed that no paper records have been located. In relation to part 1 of the request, electronic data searches were conducted and the Council provided a contemporaneous email from the individual who conducted the searches back in July 2017 which explained the searches undertaken and the questions asked of the individuals whom the complainant believes should have notes of meetings. Attachments to that email demonstrate that two members of Council staff and three Councillors confirmed they did not have notes of meetings requested by the complainant.
19. For part 2 of the request, a search was undertaken by ICT Services using the complainant's surname (as the request related to the outcome of a complaint and appeal made by the complainant) on all Council mailboxes. This searched the mailboxes on its network of all current employees of the Council. The search returns were then put in a database and reviewed.
20. The Council said that former employees' mailboxes are deleted after they leave and so these mailboxes no longer exist to be searched. The Commissioner asked the Council whether it was possible to recover any of the deleted email accounts for the purposes of this search. The Council's IT department confirmed that it is not possible to search the deleted mailboxes as it does not hold backup copies of mailboxes beyond six months. The Council confirmed that there is no way to retrieve this information.
21. Councillors' mailboxes have not been searched because: (a) councillors use a range of private email addresses and (b) for those councillors which use "Worcester.net" email addresses, the Council has to commission an ICT contractor and pay a fee (approx. £200-£300) to conduct a search of those mailboxes. The Council does not consider this is an appropriate or necessary application of public funds and so has not commissioned such a search. The Commissioner asked whether the Councillors could be contacted to individually search their mailboxes. The Council explained that there are 35 councillors operating from individual email systems. The Council does not consider it proportionate to ask each of those individuals to search their mailboxes in view of all the searches that have already been made in this case and because the Council does not expect such a search would identify any additional relevant information.
22. The Council considers that the search conducted for part 2 was reasonable and would have been very likely to have found any relevant information. If an email had been sent by a now-departed officer or by a Councillor then it is highly likely that the Managing Director would have been copied in or the Policy and Strategy team mailboxes. The search

conducted for part 2 did include those mailboxes and no such email has been found.

23. Finally the Council explained that personal drives were not searched because emails would be saved on the network and word documents and pdfs would be saved into network folders similarly. In any event it would not be possible to identify which hardware should be searched, in view of the considerable passage of time and changes in personnel and hardware.
24. Based upon the Council's submissions, regarding the way in which the relevant meeting would have been conducted and the fact that searches of relevant mail servers and document folders have been completed, the Commissioner can only conclude on the balance of probabilities, that further recorded information is not held under section 1(1)(a) FOIA, other than that which has now been provided to the complainant. The Council has assured the Commissioner that the searches conducted are proportionate as it is highly unlikely any additional information is held by individual Councillors or on personal staff hardware drives as the Managing Director or the Policy and Strategy team mailboxes would have been copied in due to the subject matter and information on personal hardware drives would be saved to the network so any information held in these locations would have been located anyway.

Other matters

25. Whilst the Council has provided the complainant with information in relation to the second part of the request and confirmed that no further information is held, given the wording of the second part of the request it is likely that at least some of this information would be the complainant's own personal data which is absolutely exempt from disclosure under section 40(1) FOIA. Whilst the Council has provided the complainant with the information it holds, the Commissioner would take this opportunity to reiterate the importance of being clear, when disclosing information, which access regime the information is being provided under. If it is the personal data of the applicant disclosure is under the Data Protection Act 2018 rather than FOIA.

Right of appeal

26. 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

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

27. 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.
28. 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.....

Gemma Garvey
Senior Case Officer

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