

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **10 December 2020**

Public Authority: **Carlisle City Council**
Address: **Civic Centre**
Rickergate
Carlisle
CA3 8QG

Decision (including any steps ordered)

1. The complainant has requested information pertaining to the council's policy on Sexual Entertainment Licences. The council initially applied section 36(2) (prejudice to the effective conduct of public affairs) to withhold some information, said that other information was not held, and it also disclosed some information. During the course of the Commissioner's investigation the council withdrew its reliance upon section 36(2) and disclosed a copy of a report to the complainant. The remaining issues were therefore whether further information is held, and the time which the council took to disclose the information to the complainant.
2. The Commissioner's decision is that, on a balance of probabilities, the council was correct to state that it holds no information in respect of the time spent by its officers on the licences. He has, however, decided that the council did not comply with the requirements of section 10(1) in that it did not disclose a copy of the report falling within part 1 of the request within 20 working days of the receipt of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 8 June 2020, the complainant wrote to the council and requested information in the following terms:

"1. Carlisle City Council adopted a Sex Establishment Licensing Policy on 29th April 2011. Could we please be provided with any reports which were considered by the Licensing Committee, or any other Committee at Carlisle City Council, relating to the review of this Sex Establishment Licensing Policy, together with time sheets for the officers involved in such a review, showing how long they spent on the review and report to Committee.

2. Could we be provided with details on how many occasions the application form for a Sex Establishment Licence has changed since 20th April 2011, together with time sheets showing the amount of officer time that was spent in making the amendments to the application forms, and reporting any changes to those application forms to the Licensing Committee or other Committee.

3. Could we be provided with details of the times sheets from officers for the last three years, of how long has been spend dealing with any application for a new Sexual Entertainment Venue Licence or a renewal of a Sexual Entertainment Venue Licence by Carlisle City Council.

4. Could we have details of how many visits or telephone calls were made to any applicants for a Sexual Entertainment Venue Licence or a renewal of a Sexual Entertainment Venue Licence by Carlisle City Council.

5. If no time sheets are available for officers' time spent in any of the activities we have outlined above in items 1-3 (this has already been indicated to us is the case by the Licensing Officer), then could we please have copies of the LalPac Database Record Activity which we know does exist, and records the activities of officers dealing with points 1-3 above. If these activities are not held on the LalPac Database, could we please have details of these activities and the date that they took place on as part of this request."

5. The council responded on 3 July 2020. It denied holding some of the information but confirmed the remainder was held. However, it refused to provide the remainder citing the following the exemptions: section 36(2)(c) for question 1, (prejudice to the effective conduct of public affairs). It said that no information is held regarding time sheets of officers, and although it disclosed information in respect of part 5 of the request for information, it redacted the names, addresses and a

photograph from the information under section 40(2) (personal data). The complainant did not however raise these redactions in his complaint to the Commissioner.

6. The council subsequently refused to carry out an internal review on the basis of the time that had passed since the request was responded to before the request for review was received.

Scope of the case

7. The complainant contacted the Commissioner on 13 January 2021 to complain about the way his request for information had been handled.
8. He considered that the council was wrong to apply section 36(2), and that it was also wrong to say that it does not hold the information it has claimed. He also considered that the council was wrong to state that it holds no records of the time spent by officers carrying out tasks in respect of the question he asked.
9. During the course of the Commissioner's investigation the council reconsidered its position and disclosed a report falling within the scope of part 1 of the complainant's request to the complainant. This was the information originally withheld under section 36(2). The Commissioner has not therefore considered the application of this exemption further, other than to consider the time which the council took to respond to this part of the request under his consideration of section 10 (below).
10. The complainant did not raise the redaction of personal data in response to part 5 of the request for information as a complaint with the Commissioner. Therefore, the following analysis does not consider the application of section 40(2) to withhold information.

Reasons for decision

Section 1 – General right of access to information

11. Section 1(1) of the FOIA states 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.

12. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
13. 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 may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

15. The complainant argues that the council is unlikely to be correct in stating that no information is held regarding time sheets when it is seeking to recover its costs for work carried out on a time spent basis.
16. He also considers that there may not have been any considered consultation on the policy since it was introduced in 2011. He doubts that any amendments have been made to the form.

The council's position

17. The council said that the complainant may believe that the Licensing Team uses similar software to legal services which does log time spent on specific cases. It clarified that they do not. It said that its officers do not record the time taken to carry out individual tasks on individual tasks, projects or cases.
18. In response to the Commissioner's questions regarding the searches it had carried out to determine that no information is held, it said that no searches were necessary for the timesheet information. It said that there is no process, procedure, practice, or requirement for officers to keep time sheets linked to the specific work they do.

19. It clarified that prior to the onset of the COVID-19 pandemic, staff time was recorded through a time recording machine by swiping a staff ID card. Manual amendments were then made through email. Neither the machine, nor the manual records, recorded the work the officer was involved in.
20. It said that, currently, time is recorded by manual recording, but details of the actual work being carried out is not recorded. It simply records the amount of time the officer is on duty.
21. As regards *how many occasions the application form for a Sex Establishment Licence has changed since 20th April 2011*, the council said that it does not hold the number of occasions the application form for a Sex Establishment Licence has changed since 20th April 2011.
22. It said that the form has a 'superseded' retention policy applied to it. The last modification date recorded regarding this document was 18 June 2020. It said that the Licensing Manager also believes amendments were made to the form in 2018 in relation to the introduction of the General Data Protection Regulation, but this was only from memory, and no specific information is held in relation to it.
23. The council said that, from confirmation of the superseded nature of the form, and electronic searches of the title of the form on the Licensing department's storage drives, it is satisfied that its response that no information is held is accurate. It said that applications are generally reviewed annually, and sometimes no changes would be made. Minor changes are not required to be reported to Committee. Hence why there is only the one report which is related to this, and this it disclosed in response to the request.
24. As regards question 4, the council said that the Licensing department does not record every visit or phone call made as part of everyday operational business relating to Sex Entertainment Licences (SEL). The information is therefore not held.
25. The council said that it has only had 2 SELs in the space of the last 3 years and each has a case file in its LalPac database. The Licencing Manager manually checked the section in the two records where meetings and phone calls should be recorded, and they were blank. It accepted that this may be an example of poor recording keeping, and it said that it is now addressing this. It said that it also recognised that diary entries may have provided a degree of information, however any record would be incomplete and so it could still not answer the question asked by the complainant; which was how many visits or telephone calls were made. For that reason, its position was that the requested information is not held.

The Commissioner's conclusion

26. The Commissioner has considered the council's position.
27. Whilst the Commissioner recognises that the complainant wishes to understand how much time council officers have spent working on reviewing the policy, he considers that it is clear from the council's response that officers do not record their time per task in the way that the complainant considers they do.
28. Whilst the Commissioner notes the complainant's argument that the council may seek to recover the costs of the review, and therefore record officer's time in order to quantify this, the manner in which it calculates the costs it has expended, or how it otherwise quantifies this, is not a matter for the Commissioner. He accepts the council's assurances that it does not record officers' time in the way in which the complainant considers that it would.
29. Secondly, he notes the council's argument regarding how many occasions the application form for a Sex Establishment Licence has changed since 20th April 2011. The council has confirmed to the Commissioner that there are no records held which could provide that information to the complainant. The Commissioner has seen no evidence to contradict the council's statement in this respect.
30. Thirdly, the Commissioner notes the council's point that it has carried out manual searches of its files and confirmed that there are no records held regarding the number of visits and telephone calls made by officers in respect of the SELs. He further notes that whilst it recognises that a degree of information may be held within officers' diaries, those records would be incomplete. The Commissioner therefore accepts the council's argument that the question cannot be answered through such searches as the diary records will have been recorded on an 'ad hoc' basis, and will be incomplete. Therefore, he accepts the council's position that the requested information is not held.
31. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
32. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Section 10(1) – time for compliance

33. Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

34. The complainant submitted his request for information on 8 June 2020.

35. The council provided a copy of the report falling within part 1 of the complainant's request for information on 20 October 2021.

36. The Commissioner's decision is therefore that the council did not comply with the requirements of section 10(1) in that it did not disclose the information it held to the complainant within 20 working days of the receipt of the request for information.

Right of appeal

37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

38. 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.
39. 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

Ian Walley
Senior Case Officer
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Wycliffe House
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