

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2022

Public Authority: Hambleton District Council
Address: Civic Centre
Stone Cross
Northallerton
North Yorkshire
DL6 2UU

Decision (including any steps ordered)

1. The complainant requested from Hambleton District Council ("the Council") information relating to a loan it had made to Broadacres Housing Association ("BHA"), deriving from the two-year period ending 5 March 2016. The Council disclosed information in response, but the complainant contested that further recorded information was held.
2. The Commissioner's decision is that the Council has disclosed all held recorded information.
3. The Commissioner does not require the Council any steps.

Request and response

4. On 19 June 2019, the complainant wrote to the Council and requested information in the following terms:

"Information relating loans or advances made or considered to be made from Hambleton District Council to members of the Broadacres group for the two year period ending 5 March 2016. To include all contracts, committee papers, minutes, agendas, discussion documents; internal or external correspondence and details of dates and any notes of meetings undertaken by or for the Council in relation to the matters.

Purpose of request: To establish the involvement of the Council in the Sowerby Gateway scheme."

5. The Council responded on 21 August 2019. It stated that some of the requested information was already publicly accessible (and provided URLs to access it), but that the remainder was withheld under section 41(1) (Information provided in confidence) and section 43(2) (Commercial interests)
6. Following an internal review, the Council wrote to the complainant on 9 September 2020. It maintained the application of section 41(1) and section 43(2), but provided additional URLs to access information already publicly accessible.

Scope of the case

7. The complainant contacted the Commissioner on 21 September 2020 to complain about the way his request for information had been handled, and specifically that the Council was not entitled to withhold information under section 41(1) and section 43(2).
8. Following the Commissioner's determination in a related case¹, which considered a similar request for information for the three-year period ending 5 March 2019, the Council revised its position in respect of this case and disclosed the formerly withheld information on 5 November 2021.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/4018391/ico-42754-k5l1.pdf>

9. The complainant subsequently contacted the Commissioner to dispute the completeness of the Council's disclosure.
10. During investigation, the Council identified further information that it considered fell within the parameters of the request and disclosed this to the complainant on 20 December 2021.
11. The scope of this case and of the following analysis is whether the Council has disclosed all held information.

Reasons for decision

Section 1 – General right of access to information

12. 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.*
13. 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.
 14. 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 Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
 15. In other words, in order to determine such complaints, the Commissioner 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

16. Following the Council's disclosure on 5 November 2022, the complainant informed the Commissioner that he disputed the completeness of the disclosure on the following basis:

"Missing documents I would have expected to see include the to and from correspondence; initial informal approaches and internal discussion amongst senior officers and councillors relating issues of changing decades old policies and practice; consideration of alternative uses for the money and other alternative policies and practices. I would then expect to see documentation of the more formal consultation between senior officers councillors and a wide range of internal and external financial, legal and policy specialists as the terms of the loan were developed (not just a single, after the event report from Deloitte's). I would have expected to see consultation with the Regulator of Social Housing and Government Office for Yorkshire and Humber. I would expect to see discussion with potential syndicate partners including neighbouring and overlapping local authorities and Homes England. I would expect to see informal and formal consideration and discussion of the potential conflicts of interest including those relating to councillors having shares in Broadacres Housing Association; Hambleton's Chief Executive holding a seat on the Board of Broadacres; Hambleton's own intended participation in Broadacres' Sowerby Gateway scheme and Sowerby Gateway's place in Hambleton's LDF process - a scheme approved by Government Inspector, sitting as an Officer of the High Court, only after Hambleton explained the land would be provided free of charge and therefore there would be no funding issues."

The Council's position

17. The Commissioner referred the complainant's concerns (as quoted in paragraph 16) to the Council and asked it to provide its position in respect of the points raised, as well as outline the searches it had undertaken.
18. The Council responded that in light of the complainant's concerns, it considered that it had overlooked some of the information potentially sought by the request, specifically that about the initial request for the loan and subsequent Member involvement. The Council therefore undertook a search for any relevant information, and has identified emails between lead councillors, information shared between the Council and BHA, and the relevant Cabinet reports relating to both the report commissioned from Capita about the investment, and the prior decision to the commissioning of that report. This information was provided to the complainant on 20 December 2021.
19. The Council confirmed to the Commissioner that it has otherwise taken the following steps to retrieve all information that falls within the parameters of the request:

- It has searched Cabinet and Council decisions between 2014 and 2016 in respect of the substantive matter (a loan made to Broadacres Housing Association).
 - It has searched the e-mail account of the former Finance Director who was involved in the substantive matter.
 - It has searched the finance electronic filing system.
 - It has reviewed the specific files maintained about the substantive matter.
 - It has consulted the former Director of Law and Governance who worked at the authority during 2014-2016, in addition to the former Director of Resources during 2014-2016 (who is now Chief Executive Officer).
20. The Council posits that some of the information the complainant appears to expect it to hold, such as consultation with the Regulator of Social Housing and Government Office for Yorkshire and Humber, or Homes England, are not held as there was no business need for those actions to be taken.

The Commissioner's conclusion

21. The Commissioner has considered the Council's position, in conjunction with the request.
22. The Council has outlined the specific searches it has undertaken to retrieve the information that would fall within the parameters of the request. It is reasonable for the Commissioner to consider that, in respect of the searches undertaken, these are proportionate and relevant in respect of the subject matter of the request.
23. Whilst the Commissioner notes the complainant's ongoing concern that specific actions do not appear to have been taken by the Council, this is not a matter that falls within the terms of the FOIA. The purpose of the FOIA is to provide a right of access to official information held by public authorities. If a public authority has not identified any business need to undertake a specific action, then the Commissioner would not reasonably expect it to hold any recorded information about it.
24. On this basis the Commissioner has concluded that, on the balance of probabilities, all relevant information has now been disclosed.

Right of appeal

25. 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

26. 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.
27. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF