



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0039

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Ms Melanie Howard
and
Mr Henry Fitzhugh

Between

Edward Dilwyn Chambers

Appellant

-and-

The Information Commissioner

Respondent

Sitting at Field House on 26 July 2018

Representation: The Appellant appeared in person

The Commissioner was not represented

DECISION AND REASONS

The request, the response and the Decision Notice

1. The Appellant made a request for information on 27 March 2017 to Brent Council (the Council) in the following terms:-

I would be grateful if you would supply me in paper form please with copies of all comments recommendations and decisions made by any person in response to the 2016 consultation on the Draft Cultural Strategy.

2. On 24 March 2017, the Council provided information in response to the request, and did not seek to rely on any exemptions. The information provided was a tabulated document which summarised the responses to the consultation and a short note describing a proposed response. The Appellant sought a review and on 15 June 2017 the Council confirmed that all information within the scope of the request had been provided. However, the Council accepted a point made by the Appellant in seeking the review, namely that the information disclosed had not included the many suggestions he had submitted to the consultation process. The Council produced an updated document that now includes many of the Appellant's points.
3. However, the Appellant was of the view that there should be more information to disclose in relation to the consultation and therefore he complained to the Commissioner.
4. The Commissioner took up the matter with the Council and was told that the information disclosed came from an online consultation portal, its

digital post system and paper correspondence. The Commissioner also ascertained that (i) paper correspondence was scanned into the digital post system; (ii) searches had been carried out by references to topics and names of senders; (iii) information is only shared on a central drive and not on individual devices; (iv) none of the information about the cultural strategy had been destroyed, and it continued to retain it.

5. There was one aspect that the Commissioner pursued further, noting to the Council that the Appellant had requested 'decisions made by any person...' (see above).
6. The Council explained on 30 January 2018 that:-

At the end of the consultation, responses were reviewed by the Cultural Service. Decisions were made at this stage by relevant Council officers who assessed the comments and made revisions to the strategy where relevant and appropriate. The revised version was then submitted for consideration of the Lead Member for the service and the senior management team within the Council.

7. The Council went to explain that at that time 'as a result of internal changes within the Council' it was decided to put the strategy on hold and no further action was taken in relation to it, and therefore there was no further information to disclose.
8. The Commissioner responded to ask whether the Council held any information in recorded form relating to the process/decision making described, and mentioned specifically 'correspondence from the Lead Member or senior management team? Or written briefing or email on the final decision not to publish the strategy?'

9. The response from the Council on 5 February 2018 confirmed that, other than the Feedback document sent to Mr Chambers 'there are no other evidence/documents available'.
10. In the Decision Notice dated 19 February 2018, the Commissioner concluded on the balance of probabilities no further information was held by the Council.

The appeal

11. The Appellant appealed on 5 March 2018. He is aggrieved about the amount of information disclosed, and we ascertained from him at the hearing that he believes there is more information. He is also clearly aggrieved by more general matters about the Council's services, and also feels that his suggestions submitted to the consultation process have not been properly considered. One of the matters raised in his appeal is that there were 'no responses from other Council departments and external organisations' published, which seems to reflect his view that his suggestions should have been actively considered.

Discussion and decision

12. Public authorities are under a general duty to disclose information they hold where it is requested: section 1 FOIA. By s1(1)(a) FOIA 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. By section 1(4) FOIA the information is the information in question held at the time when the request is received, and information itself means information recorded in any form: see section 84 FOIA.

13. When a public authority says that it does not hold the information requested (or any further information), the Commissioner (and now this Tribunal) has to consider the searches made by the public authority and the explanations given and decide, on the balance of probabilities, whether the public authority is holding the information requested. We are concerned with recorded information that is held by the Council, and not the knowledge or understanding of an individual or individuals, for example, about the reasons why the cultural strategy was not pursued.

14. We understand why the Appellant thought that there might be more information, and perhaps it is a little surprising that the process by which cultural strategy came to be put on hold is not recorded by the Council, but we also recognise that not all decisions and discussions are recorded or minuted. In relation to the Appellant's suggestions, the Council said that they did not relate directly to the strategy under consultation and therefore in our view what happened to those suggestions (if anything) would not have been disclosed as part of the present request. We would note that as a result of the Council's response to the Commissioner, the Appellant does now know that there is a draft cultural strategy document, with revisions made as a result of the consultation process. This document would not have fallen within the scope of the current request (which was for comments, recommendations and decisions').

15. We have set out above the searches that the Commissioner has recorded as being carried out by the Council. We have no reason to believe that the Council have not carried out the searches they say they have carried out, with the results as reported by the Commissioner. We agree with the Commissioner that the searches were appropriate and were sufficient to identify any information within the scope of the request. We agree with the Commissioner that the fact that the searches were carried out and no information identified means that on the balance of probabilities the information is not held, and we so find.

Conclusion

16. For the reasons set out above we are satisfied that that the Council does not hold the information sought by the Appellant and we dismiss the appeal.

17. This decision is unanimous.

Signed *Stephen Cragg QC*

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 30 July 2018.

(Case considered by Panel on 26 July 2018).

Promulgation date: 1 August 2018