

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2012

Public Authority: Thanet District Council
Address: Cecil Street
Margate
Kent
CT9 1XZ

Decision (including any steps ordered)

1. The complainant requested information on Thanet District Council's ('the Council') accounting documentation, its line management structure with responsibilities and a copy of the 'Register of Contaminated Land'.
2. The Information Commissioner's decision is that the Council has provided all the information it holds within the scope of the request.

Request and response

3. The complainant made the following request on 29 April 2010:
 - "i) management representation letters for the years between 2002/3 and 2005/6 inclusive (which we are instructed form a part of the Annual Governance Report);
 - (ii) reports setting out the accounting and internal control weakness for the years between 2002/3 and 2007/8 inclusive;
 - (iii) the accounting working papers for the years from 2002/3 to 2007/8 inclusive;
 - (iv) the bank reconciliation statements for the years from 2002/3 to 2004/5 inclusive;
 - (v) a copy of the register of contaminated land;

(vi) a list of the posts of senior and middle-management employment that the Council was obliged to maintain by statute and/or by secondary legislation, i.e. by regulation, during the year 2002/3, setting out in summary form the responsibilities of each officer and a basic flowchart or table showing the line management structure."

4. The Council responded on 1 June 2010 providing some information, withholding some information by relying on section 44 of the FOIA (Prohibitions on disclosure), and stating that some information was not held by the Council.
5. The complainant requested an internal review on 30 July 2010.
6. The Council did not provide a review until after the intervention of the Commissioner on 9 June 2011. The review was provided on 27 June 2011.

Scope of the case

7. The complainant contacted the Commissioner on 19 December 2011 to complain about the Council's handling of his request for information.
8. On 14 February 2012 the Commissioner wrote to the complainant setting out the scope of his investigation, which was to consider the Council's management of the request and its compliance with the FOIA. The Commissioner noted that point (V) of the request should have been considered under the access regime of the Environmental Information Regulations.

Reasons for decision

9. **Section 44 (1)** provides that:

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment."

10. The Council's application of section 44 of the FOIA in respect of point (iii) of the request relied on section 15 of the Audit Commission Act 1998 ('the ACA'). The ACA states:

"Section 14(1) Any local government elector for the area of a body subject to audit, other than a health service body, may –

(a) inspect and make copies of any statement of accounts prepared by the body...

Section 15(1) At each audit under this Act, other than an audit of accounts of a health service body, any persons interested may –

(a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and

(b) make copies of all or any part of the accounts and those other documents."

11. The Commissioner considered the Council's reliance on the ACA as a statutory bar to disclosure and concluded that section 15(1) of the ACA does not prevent disclosure under the FOIA. The provision of a specified time to access information under the ACA, 20 working days, does not affect the right to disclosure under FOIA. The provision of a limited access does not prohibit disclosure at all times other than the twenty working days when the information is accessible under the ACA provision.
12. The Commissioner advised the Council of his informal opinion on the application of section 44 of the FOIA during his investigation. The Council informed the Commissioner that it would no longer rely on this exemption to refuse disclosure.
13. Subsequently the Council advised the Commissioner that it would make a full disclosure of the information held in respect of point (iii). The Council provided the complainant with a dvd which it advised contained the Council's Accounting Working Papers for 2002/3 to 2007/8.
14. Following this disclosure the complainant advised the Commissioner that the working papers were, in his opinion, incomplete. He explained the following:

"Some of the spreadsheets look like unfinished early drafts that have been substituted for final drafts that are not on the dvd. There is some private information that I should not have received. Therefore, I believe that the working papers have been compiled with little attention to detail."
15. The Commissioner notes this comment. The Council states that it has provided the complainant with the same working papers as provided to the Commissioner. The Council has invited the complainant to visit its offices to be guided through the information contained on the dvd which could assist the complainant in determining the exact content of the dvd in respect of point (iii) of his request. The complainant currently prefers not to take up this offer.

16. **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."

17. The Council has confirmed to the Commissioner that all the information held by the Council in respect of point (iii) of the complainant's request has been provided to the complainant. The Commissioner has considered the representations put forward by both parties and has concluded that on the balance of probabilities the Council has provided everything it holds within the scope of this point.
18. The five remaining points of the request were addressed by the Council in its response of 1 June 2010. It provided information in respect of points (ii), (iii), (iv) and (vi). It stated that the information requested in point (i) was not held by the Council at the time of the request. In its internal review the Council suggested to the complainant that the Audit Commission may hold the information.
19. The complainant explained to the Commissioner that he considered it to be inconceivable that the Council did not hold some form of copy of the management representation letters as they form an integral part of the audit process.
20. With regard to point (ii) the Council provided 'Statements of Internal Control' for the years 2002-3 to 2006-7 and an 'Annual Governance Statement' for 2007-8. In requesting an internal review the complainant clarified his request as: 'copies of the annual "Statement of Auditing Standard (SAS 610) communication of audit matters to those charged with governance" which was subsequently renamed "International Standard on Auditing (UK and Ireland) (ISA 610). These documents are produced by the Auditor rather than the public authority.' The complainant went on to request copies of the 'Governance Reports' published by the Council for the same years stated in the initial request.
21. The Council responded by explaining that it does not hold the reports clarified by the complainant for the period 2002-3 to 2005-6 (which the Council refers to as "Management Representation Letters from external auditors) and provided a copy of the Auditor's Annual Governance Report for 2006-7 to the complainant's solicitor who had initially been acting on his behalf but was at that time no longer acting. The Report

was therefore not received by the complainant until after the intervention of the Commissioner.

22. The Commissioner asked the Council to explain the searches it had undertaken to ascertain that the information requested in points (i) and (ii) – which has not been disclosed - was not held at the time of the request. The Commissioner also requested information on the statutory retention of documents held by the Council.
23. The Council confirmed that it had searched both the electronic financial directory for the relevant time periods requested and the manual records held. The Council explained that annual management representation letters were retained for six years in accordance with the Council's retention schedules. The Council went on to explain that it:

“...would also have expected the Annual Management Representation Letters to have been reported to Cabinet for the years 2002/3 and 2004/5 (i.e. until the Governance & Audit Committee was established) but unfortunately prior to 2009 the Council only holds on its 'Modern Gov' Committee Management System copies of the minutes and agendas for Council, Cabinet and Committee meetings – not reports or appendices to reports. In this regard Modern Gov reveals that the 2005/6 Annual Report (although then called the Auditor's Management Letter) was considered and accepted by the Governance & Audit Committee on 28 September 2006. For 2006/7 the External Auditor described his Annual Report as a 'Report on Financial Statements to those charged with Governance', although it continued to incorporate the Management Representation Letter. The 2006/7 Letter was approved by the Governance & Audit Committee on 27 September 2007.”
24. The Commissioner further questioned why the information detailed in paragraph 26 above was not retained. The Council had no definitive answer but suggested that it may be as a result of a corporate decision to only retain the agenda and minutes of pre 2009 committee meetings when the Council migrated from its previous electronic Committee Management System to the current Modern Gov Committee Management System in 2009, and poor record keeping prior to 2007.
25. The Commissioner has considered the Council's responses and on the balance of probabilities has concluded that the information requested in points (i) and (ii) of the request is not held by the Council and consequently cannot be provided.
26. The Council in its initial response provided the bank reconciliation statements (point (iv) of the request) for 2003-4 and 2004-5 but

explained that the statement for 2002-3 was no longer held as it exceeded the retention period of six years. The Commissioner notes that this is in accordance with the Council's retention schedule and is satisfied with the Council's explanation on this point.

27. The complainant's request for a copy of the Contaminated Land Register in point (v) of the request was refused by the Council stating that it did not have a published Contaminated Land Register. The complainant explained to the Commissioner that he was aware of contaminated land within the ownership of the Council and therefore considered this to be a failure in the Council's statutory duty to maintain a Register of Contaminated Land. The Council provided conflicting views on this point with the internal review stating that no land in the Council's area had been designated as contaminated whilst giving a verbal opinion that it would seem likely some land within the area would be contaminated. In either case the Council determined that no Register exists. The Commissioner accepts that the Register is not held, notwithstanding the requirement for a Register if contaminated land has been so designated within the Council's area.
28. The management structure and organisational information from 2002-3 requested in point (vi) is not subject to a specific retention period and was not held at the time of the request. The Council explained to the complainant that there was no legal requirement to create or maintain the information requested. The complainant did not specifically raise this point with the Commissioner; however for completeness the Commissioner is prepared to accept the Council's assertion on this point and is of the view that on the balance of probabilities the information is not held by the Council because there is no statutory duty to do so.

Other matters

29. The Commissioner has encountered some difficulties in corresponding with the Council and a lack of co-operation in adhering to deadlines. Both factors have hindered his investigation and delayed the resolution of this case in which information was requested in April 2010.

Right of appeal

30. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF