

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2012

Public Authority: Essex County Council
Address: County Hall
Market Road
Chelmsford
Essex
CM1 1QH

Decision

1. The complainant has requested information about a roadside Variable Message Sign installed at a specific location in Colchester. The public authority dealt with the request in general correspondence, outside the procedures required by FOIA. The complainant indicated that he had not received a response to his request for an internal review, and his associated belief that the response provided was not a full response to his request.
2. The Commissioner's decision is that Essex County Council has disclosed all the information held which matches the description in the complainant's request, however he finds that the council's response to the request is deficient in certain areas and he notes procedural breaches of section 1, section 10 and section 17 of FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

Background

4. The complainant had previously been in correspondence with Essex County Council (the council) about the location of a roadside Variable Message Sign (VMS). The Commissioner has seen correspondence which dates from July 2010, between the complainant and the council, about the location and operation of this particular sign whose location has, at some point, been identified as unsuitable by a safety audit.

5. On 26 April 2011, the complainant wrote to Essex County Council (the council) and requested information in the following terms:

"copies of all correspondence between the Council and the contractor(s) that relates to the safety inspection of the sign and the subsequent plans to have it moved."

6. The council responded on 3 May 2011. It answered various questions the complainant had put to it in the same letter and disclosed a section of a safety audit relating to the positioning of the specified sign.
7. Following an internal review the council wrote to the complainant on 3 June 2011. It provided a further copy of the relevant section of the safety audit, and an extract from an email from the contractor to the council about the proposals to establish a new location for the sign. It explained that the agreement for the contractor to move the sign at no cost to the council had been reached verbally, and was confirmed in the email now disclosed to him.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. His initial complaint, of 26 July 2011 was that he had not received any response to his request. Following intervention by the Commissioner, the council assumed that the complainant had not received its 3 June 2011 letter. A further copy was sent to the complainant by the council on 15 September 2011. The complainant subsequently confirmed that he had received the 3 June copy, but remained dissatisfied.
9. The Commissioner wrote to the complainant on 18 October 2011, setting out the scope of the investigation he proposed to conduct, which would be to ascertain what information, described in his request, is held by the council and determine whether it has been disclosed to him. He asked the complainant to bring to his attention any other matters which he believed should be addressed.
10. The complainant did not respond to this email and the Commissioner considers the scope of the case is therefore to determine, to the normal civil standard of 'the balance of probabilities, what information is held by the council which falls within the scope of the complainant's request, and whether it has been disclosed to him.

Reasons for decision

General Right of Access

Section 1(1) of the Freedom of Information Act 2000 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."

11. The Commissioner asked the council to clarify the nature of any searches it conducted for the information described in the request. The Council has explained that its response was partly given on the basis of the personal knowledge of the relevant staff member as to what correspondence existed, but that a search was also conducted.
12. The council explains that a specified staff member works very closely with the partnering contractor, and the discussions about moving the sign, following the safety audit, were done verbally. The only correspondence was the emailed confirmation of the extent of the works whose cost would be borne by the contractor, which has been disclosed to the complainant.
13. The Commissioner has examined the full copies of the documents whose extracts were disclosed to the complainant and is satisfied that the extracts which have been disclosed to him are the only elements in those documents which relate to the matters described in the request.
14. The council has confirmed that it followed up with internal enquiries to clarify whether it was normal that there would be no additional emails or correspondence. The Commissioner accepts that there is no clear reason why further correspondence would be required, nor any reason why the matters could not be dealt with verbally.
15. The council has further explained that, due to the processes required, a VMS sign cannot simply be moved, but will be removed and any subsequent installation must be treated as a new installation, not simply relocating an existing sign. Therefore, at the time of the request there were no *'subsequent plans to have it moved'* because any plans involved a new installation, not simply moving the existing sign. The installation of a new VMS sign is understood to be a long and complicated project

and this particular sign was to be dealt with as a new installation for the following financial year. (The sign was not in use, and posed no safety hazard, so removing it was not a matter of urgency).

16. In summary, the council has explained to the Commissioner that once the safety audit has flagged up the problem with the current location, the sign is not activated, it will be removed in due course, and a new installation will be contemplated for the next financial year. Once the costs to be borne by the contractor are agreed, then the matter of the existing sign is effectively closed and efforts are focussed on planning the new installation, which is an entirely independent process.
17. The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standard of the balance of probabilities. In other words, is it more likely than not that the requested information is held? In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information *is* held, including whether it is inherently unlikely that the information so far located represents the total information held.
18. From the council's response to his enquiries, the Commissioner recognises that it is not inherently unlikely that, following on from the safety audit, much of the business surrounding this sign could have been dealt with verbally. Similarly, the council has confirmed that searches were done, and that the information disclosed was located with the assistance and knowledge of the staff member responsible for dealing with the matter. He can see no reason to suspect that this process was not sufficient to locate the relevant information in the circumstances.
19. The council has given its view that, under an objective interpretation of the request, its scheme of works for installation of the VMS sign in a different location on the same road does not fall within the scope of the request for two reasons:
 - The scheme of works makes no reference to the previous VMS sign; and
 - The new location is treated as a new installation, not as moving an existing sign.
20. The complainant has given his view that this is not correct, and refers to the correspondence between him and the council on the matter, where

the Council refers repeatedly to 'moving' and 'relocating' the sign. The complainant has used the council's own terminology in his request and argues that to make such a distinction at this stage to exclude certain relevant information is unreasonable.

21. Given that the complainant's request used terms which had previously been adopted by the council, and indeed the council's internal review letter of 3 June 2011 continues to refer to *"the agreement for the contractor to **move** the sign at no cost to the Council"* the Commissioner agrees that to change the meaning of those terms in this way was not reasonable. He therefore finds that the council's scheme of works for installation of the VMS sign in a different location on the same road for 2012 falls within the description of *"the subsequent plans to have it moved"* specified in the request. The Commissioner has confirmed that these plans were held at the time of the request and notes that, following his intervention, this information was disclosed to the complainant on 22 November 2011.
22. The complainant also argued that:

"My request was for full correspondence between the Council and the contractor about a specific matter, not just excerpts".
23. The right of access under section 1(1) of the Freedom of Information Act 2000 is a right of access to information, not to documents. The Commissioner has already confirmed that he is satisfied that the information disclosed to the complainant is the information, contained in the relevant documents, which conforms to the description in his request. In the terms used in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹, this is considered to be 'extracting the information from a document containing it'.
24. The complainant also commented on the council's failure to deal with his request properly under FOIA and indicated that he required the Commissioner to consider any associated technical breaches of FOIA which had been committed.
25. The Commissioner has therefore identified the following technical breaches of the Act:

¹ <http://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made> See regulation 4(3)(d)

- The council's response was informal, not itself a breach of FOIA, but by this approach it failed to confirm or deny that information was held matching the description in the request. This is a breach of section 1(1)(a) of FOIA.
 - It also failed to inform the complainant of any internal appeals process it operates, or his right to ultimately bring an appeal to the Information Commissioner. This is a breach of section 17(7) of FOIA.
 - Some information, found to be caught by the description in the request, was disclosed on 22 November 2011, a period of 147 working days. The Commissioner accepts that this was not disclosed because the council did not believe it fell within the scope of the request, nevertheless this is a breach of section 10(1) of FOIA.
26. As all the requested information held by the council has now been disclosed, the Commissioner does not require any further action to be taken.

Right of appeal

27. 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

28. 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.
29. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF