

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2012

Public Authority: Amber Valley Borough Council
Address: Town Hall
Ripley
Derbyshire
DE5 3BT

Decision (including any steps ordered)

1. The complainant has requested a range of information relating to Amber Valley Borough Council's (the "council") complaints procedure and the application of this procedure in relation to a specific complaint.
2. The council confirmed that some of the requested information had already been provided to the complainant in response to previous requests for information. It confirmed that further recorded information was not held.
3. The Commissioner's decision is that the council has correctly confirmed that it does not hold the requested information.

Background

4. The complainant represents a residents group which has been in dispute with the council since 2006 in relation to a planning matter.
5. The complainant has concerns that the Chief Executive is implicated in the handling of the matters raised in the dispute and, prior to the request which is the subject of this complaint, has submitted requests for information to establish whether this is the case. The complainant has also requested information regarding the council's general policy and approach to complaints which identify a potential conflict of interests.

Request and response

6. On 26 September 2011 the complainant wrote to the council and requested a range of information regarding its complaints procedure and the application of this procedure in relation to the complainant's complaint. The full text of the request is reproduced in the annex.
7. The council responded on 21 October 2011. It stated that some of the requested information had been provided in response to previous requests made by the complainant. It confirmed that, beyond information previously provided, no further recorded information was held. The council also directed the complainant to its published complaints procedure on its website.
8. On 10 November 2011 the complainant wrote to the council and asked it to conduct an internal review of its handling of the request. In a response dated 12 December 2011 the council confirmed that it upheld its original handling of the request and directed the complainant to the Commissioner.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner agreed with the complainant that his investigation will be confined to a consideration of whether the council has correctly confirmed that the requested information is not held.
11. The complainant has not disputed the council's confirmation that some of the requested information was provided in response to previous requests. The Commissioner has, therefore, excluded this matter from his investigation.

Reasons for decision

Section 1 – has all the information been provided?

12. Section 1(1) of the FOIA requires public authorities to confirm or deny whether requested information is held and, where it is held, to provide it to an applicant.

13. The complainant has disputed the council's confirmation that it has provided all the relevant recorded information that it holds. In responding to the request, the council directed the complainant to its complaints policy on its website and also confirmed that it did not hold further information beyond that which had been provided to the complainant in response to previous requests.
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 Information Tribunal 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 further information which falls within the scope of the request (or was held at the time of the request) beyond that which has been disclosed.
16. To assist in this determination the Commissioner wrote to the council and asked it a range of questions, including questions about searches it had undertaken for the requested information.
17. The council confirmed that, following receipt of the request, an electronic search was carried out for any documents/items entitled "Complaints Procedure", "Customer Complaints", "Customer Feedback", "Comments" and "Customer Comments". This search did not find any additional information to that which has been provided to the complainant.
18. The council explained that its Performance Review & Personnel Committee agenda are not recorded electronically and a manual search was carried out, involving an officer checking through the Minute books, including the Full Council Minutes dating back to 2000. This search resulted in no further documentation being found.
19. The council confirmed that it has a Document Retention Schedule, which recommends that documents relating to the development of Policies, Procedures and Strategies are kept permanently. The council confirmed that it does not have a record of any such documents being deleted. The Complaints Procedure has, periodically, been revised and updated and the current up-to-date version is published on the council's website.
20. The council also provided confirmation from its Assistant Director (Policy & Improvement) that, beyond the information disclosed, there is no further guidance or recorded information in relation to the council's

Complaints Procedure or its "complaints system", which requires all complaints to be logged and recorded internally.

21. During the course of the Commissioner's investigation the council identified some information which related to the formulation of early versions of its complaints procedure. Although the request identifies the current version of the council's complaints procedure and the information does not, therefore, fall within its scope, the council agreed to disclose this information to the complainant.
22. The complaint is concerned that the council does not have recorded policy or procedure for processing complaints which identify a potential conflict of interests. Although the second stage of the council's complaints procedure allows for issues to be referred to senior officers outside the directorate concerned, no provision appears to have been made for handling complaints which implicate the Chief Executive¹.
23. The council has confirmed to the Commissioner that it does not hold further information which relates to situations where Chief Officers are potentially implicated in complaints. It explained that, where such situations arise, a decision as to how to handle the matter is determined on a case-by-case basis.
24. In relation to request parts 8 and 9, the complainant has raised concerns that the council did not refer their substantive complaint to the Chief Executive and that this was contrary to the council's complaints procedure.
25. The council has confirmed that, as the complaint alleged maladministration, it was handled by the council's Assistant Chief Executive and Monitoring Officer. During the course of the council's investigation of this complaint, the complainant received correspondence from this designated officer. However, the complainant maintains that the Chief Executive should have had a role in this process and has suggested that there has been a 'cover-up'.
26. In alleging a cover-up, the complainant provided the Commissioner with a copy of a letter from a councillor to the Local Government Ombudsman (LGO) which relates to the council's handling of the matter

¹ The complaints procedure is published here: <http://www.ambervalley.gov.uk/council-and-democracy/tell-us-what-you-think/customer-complaints-procedure.aspx>

which gave rise to their substantive complaint. The letter states that minutes of relevant council proceedings are very brief and the councillor suggests that this represents an attempt to cover up inappropriate action or inaction.

27. The Commissioner does not consider that the evidence provided has any material impact on the facts of the case. In relation to the substantive complaint to the LGO, the Commissioner does not have jurisdiction over public authorities' broader administrative practice and decision-making. In relation to the council's obligations under the FOIA the Commissioner has sought explicit confirmation about the extent of information held and associated searches conducted by the council.
28. In general terms, given that it suggests that the alleged cover-up was engineered by deliberately keeping scant records, the Commissioner considers that the evidence provided by the complainant supports a view that no further relevant information is held. In specific terms, the council has confirmed that, in addition to the searches identified above, it has conducted searches of the Assistant Chief Executive and Monitoring Officer's email account and no relevant information has been located.
29. In considering the issues raised by the complainant, the Commissioner has also referred to section 5(2) of the Local Government and Housing Act 1989 which confirms that one of the designated roles of local authority monitoring officers is to investigate allegations of maladministration². The Commissioner considers that on this basis and on the basis of other available evidence, it is reasonable to conclude that the council has correctly confirmed that the Chief Executive was not involved in the handling of the complainant's complaint and that information regarding this is, therefore, not held.
30. The Commissioner has concluded that, on the balance of probabilities, it is likely that the council has provided the complainant with all the information which it holds and that, in doing so, it has complied with section 1(1) of the FOIA.

² Published online here: <http://www.legislation.gov.uk/ukpga/1989/42/section/5>

Right of appeal

31. 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

32. 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.
33. 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

Andrew White
Group Manager
Information Commissioner's Office
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