

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 November 2013

**Public Authority:** Mid Sussex District Council  
**Address:** Oaklands Road  
Haywards Heath  
West Sussex  
RH16 1SS

#### Decision (including any steps ordered)

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1. The complainant has requested information from Mid Sussex District Council (the council) relating to what he has referred to as its 'Lying Policy'. The council responded by advising that it does not have such a policy.
2. The Commissioner's decision is that the council has complied with its obligations under section 1(1) of the FOIA.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 16 December 2012, the complainant wrote to the council and requested information in the following terms:  
  
*"Q.1. In regards MSDC's bailiff contractor, whose responsibility within the council is it to decide policy requiring staff dealing with queries and complaints to refute allegations of maladministration without first making preliminary investigations into their validity?"*  
  
*Q.2. If it is nobody's responsibility within MSDC to decide policy details in Q1, is this decided by central government? i.e., is the council given guidelines?"*  
  
*Q.3. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating,*

*before council's policy allowed staff to consider that a complaint may be investigated, rather than dismissed?*

*Q.4. With regards the council's hierarchy, what level (if any) would an issue involving an allegation of bailiff malpractice need escalating, before council's policy allowed staff to uphold a complaint?"*

5. The council responded on 19 December 2012. In response to question 1 the council stated that it does not have such a policy. In response to questions 2, 3 and 4 it advised that a response was not applicable given it had already confirmed it did not hold such a policy in response to question 1.
6. The complainant requested an internal review stating the following:  
  
*"I am writing to request an internal review of Mid Sussex District Council's handling of my FOI request 'Mid Sussex District Council's Lying Policy.' "*
7. Following an internal review the council wrote to the complainant on 7 January 2013. It stated that no lying policy existed and therefore it was unable to provide him with a copy of such a policy.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 5 April 2013 to complain about the way his request for information had been handled. The Commissioner has therefore considered whether the council's response is compliant with section 1(1) of the FOIA.

## **Reasons for decision**

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9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him. It is therefore not required to create new information in response to a request.
10. In cases where a dispute arises over the extent of the recorded information that was held by the public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or

unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

11. The complainant, when asking for an internal review, put forward a question on how the council would respond to a complainant in a scenario where a householder is being pursued by a council's bailiff contractor for payment.
12. In response to the request for an internal review, the council advised that it does not have a lying policy. It stated that the complainant had already been advised that no such policy existed and therefore it was not possible to provide such information.
13. The complaint expressed his dissatisfaction with this response and asked that the council respond to the question he raised in his request for an internal review. In response, the council explained that the FOIA request received was for a copy of its lying policy and it had already confirmed that this could not be provided as no such policy existed. With respect to the scenario which the complainant had set out in his request for an internal review, the council responded by saying that it *'does not enter into discussion concerning hypothetical complaints'*.
14. The complainant believes that a 'Lying Policy' exists. He states that he has conducted research which indicates this and that this leads council staff to lie to complainants when dealing with certain issues. The complainant also states that his experiences with another council lead him to believe that on the balance of probabilities a lying policy will exist.
15. The council has explained to our office that it does not hold any information that is relevant to the complainant's request. It has confirmed that it does not have a lying policy and that the information requested by the complainant does not exist because the policy does not exist.
16. In reaching a decision as to whether the requested information is held, the Commissioner has considered whether there is a legal requirement or business need for the council to hold the information. He is unaware of such a need.
17. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. He does not find it difficult to accept that the council does not have a written policy requiring staff to lie. The Commissioner is therefore satisfied that,

on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any breach of section 1 of the FOIA.

## Right of appeal

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18. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. 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.
20. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**