

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2013

Public Authority: Telford & Wrekin Council
Address: Addenbrooke House
Ironmasters Way
Telford
TF3 4NT

Decision (including any steps ordered)

1. The complainant has requested information relating to how Telford & Wrekin Council ('the council') manages a potential conflict of interest in relation to a specific employee. The Commissioner's decision is that the council, on the balance of probabilities, does not hold any further information within the scope of the request than that already provided. Therefore he does not require any steps to be taken.

Request and response

2. On 13 February 2013, the complainant wrote to the council and requested information in the following terms:

"You write about [specific employee] confining his external activities outside the borough, I would reply he will not have to go very far to do this and in our area just across a river as you well know. How on earth can that work [name redacted]? How do you protect the Council's interests? I would like you to produce the contract which details how you manage this please under the Freedom of information act."
3. The council responded on 28 February 2013. It stated that the information was exempt under section 40 of the FOIA.

4. On 28 February 2013 the complainant requested an internal review stating that an employee of the council should not be allowed to advertise himself and work on a self-employed basis in the same field.
5. The council provided an internal review response on 11 March 2013. It provided some information from the council's constitution, a copy of the council's Business Activities and Private Work procedure, and confirmed that the council has agreed arrangements in place with the specific employee to ensure that no conflict arises and that there is the appropriate record in the Register of Interests held in Democratic Services.

Scope of the case

6. The complainant contacted the Commissioner in April 2013 to complain about the way her request for information had been handled.
7. In its response to the Commissioner's enquiries, the council confirmed that it had mistakenly applied section 40 to the employee's general employment contract but this was not within the scope of the request as it is not a contract detailing how private work arrangements are managed. The Commissioner has therefore not considered the personal data exemption at section 40.
8. During the investigation the council provided the complainant with a copy of the appropriate record in the Register of Interests. As the complainant is now in receipt of this information, the Commissioner has not deemed it necessary to consider the Register of Interests in this decision notice.
9. The council also confirmed that it had held an email confirming the employee's private work arrangements but this had not been retained. The Commissioner has therefore considered whether this information is held.
10. The complainant has expressed her concern that this council employee is the only person in his department to work on a self-employed basis in the same field and that this creates a conflict of interest. She has said that other councils have taken steps to prevent this and put a stop on self-employment in certain areas. The Commissioner cannot consider whether it is appropriate for the council employee to also work on a self-employed basis as his remit is restricted to making a decision as to whether the FOIA has been complied with.

Reasons for decision

Section 1 - Is the information held?

11. 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.
12. In cases where a dispute arises over the extent of the recorded information that was held by a 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 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.
13. In this case, the complainant has not provided any arguments as to why the information requested is held by the council. Her arguments have instead focused on why the employee should not be allowed to work on a self-employed basis as detailed in paragraph 11 above.
14. The Commissioner enquired as to the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations.
15. The council explained that the specific employee, his manager and the Assistant Director were asked if they had any information (electronic or otherwise) regarding the arrangement but none was held. The council said it was aware that the previous Assistant Director had held an email confirming the employee's private work arrangements but he left the council in 2010 and his email account was deleted. It said that the deletion took place in 2012 when revised, and more formal, arrangements were agreed and introduced in respect of the length of time mailboxes for leavers are retained. The council said that it does not have a record of the destruction and that no copies of the email were held in other locations.
16. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council said that it would be good practice to hold evidence of the

management arrangements but the entry in the Register of Interests should be sufficient. It also said that it was not aware of any statutory requirements to retain the requested information.

17. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
18. 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 further information relevant to this request. 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 evidence of a breach of section 1 of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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
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Wycliffe House
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