

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2013

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested a copy of an email produced by a named individual at the hearing of the Standards Committee on a specified date.
2. The Commissioner's decision is that Norfolk County Council (the Council) holds the requested information on behalf of another person and therefore does not hold it for the purposes of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 22 March 2013, the complainant wrote to the Council and requested information in the following terms:
"A copy of the email of 27 March 2012 produced by [a named individual] at the hearing of the Standards Committee on February 1 2013".
4. The Council responded on 23 April 2013. It stated that a copy of the email from the hearing was not retained. It stated further that with only the date of the email it was not possible to say definitively whether or not the Council held the specific email the complainant wanted. Enquiries made by the Council revealed an email of that date, which it considers likely to be the email relevant to the complainant's request.
5. In the event that the located email is the one referred to by the complainant in his request, the Council stated that it was not held for the purposes of the FOIA. The Council determined that the email located

concerned a party political matter and in accordance with section 3(2) it was not held by the Council under the terms of the FOIA.

6. The complainant sought an internal review, the result of which was that the Council upheld its position.

Scope of the case

7. The complainant contacted the Commissioner on 19 May 2013 to complain about the way his request for information had been handled. Specifically the complainant argued that he believed the email was about an incinerator and that the Council refused to disclose it as it would be embarrassing. The complainant further argued that the email was brought into the public domain when produced at the Standards Committee.
8. The Commissioner considers that the scope of this investigation is to determine whether the Council holds the information requested and whether that information is held by the Council under the terms of the FOIA.

Reasons for decision

Section 3(2) – information held by a public authority

9. The council has explained that it took steps to search for the requested email, including a check of the email account of the individual named in the request, and identified one email relevant to the request. The Commissioner is satisfied that checks undertaken by the Council were sufficiently robust to identify information relevant to the request. The requested information is an email held on the council's computer systems but which was sent from a councillor to a political assistant.

10. Section 3(2) of FOIA provides that:

“For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority”

11. The Commissioner notes that information created by a councillor but held on a local authority's premises or computer systems will be covered by the FOIA if it is held by the authority on its own behalf. However, it

will not be covered by FOIA if it was produced by the councillor for private or party political purposes and the authority is just providing storage, office space or computing facilities. In such situations, the local authority is not holding the information to any extent for its own purposes.

12. The Commissioner's awareness guidance also states: "A common example of party political communications would be e mails between councillors which discuss party political matters. In this context the author will be communicating in their party political capacity and the emails would not relate to the functions of the public authority."
13. Having examined the withheld email provided by the Council the Commissioner observes that its content does not relate to council business. The email exchange was between a councillor and a political assistant and relates to party political business. The Commissioner notes that although the political assistant role is filled by a council employee, information held within his role as a political assistant which relates to party political matters falls outside the scope of the FOIA.
14. Because this information is not council business it cannot be argued to be held on behalf of the Council solely by virtue of being hosted on the Council's email systems.
15. It is not disputed that, once elected, councillors become members of the Council. However this does not mean that everything councillors do is council business and therefore covered by FOIA. The question is whether the information relates to functions of the council in their formal capacity as members of the Council, or whether it relates to party political matters, a constituency role or even a personal capacity.
16. The Commissioner's position is that unless the information in emails relates to council business, it is not held by the Council in its own right, and there is no right of access under the FOIA. Therefore the Commissioner's decision is that the Council does not hold the information requested.
17. The Commissioner notes that the Council has explained that the email produced at the Standards Committee meeting was returned to the individual who produced it and was not retained by the committee as it was deemed irrelevant to the proceedings. In addition, the content of the email was not referred to in the proceedings and therefore the Commissioner does not accept the complainant's argument that the email was brought into the public domain.

18. In light of these considerations, the Commissioner is satisfied that the requested information is held by the council on behalf of another person and therefore it is not held by the council for the purposes 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

Alexander Ganotis
Group Manager – Complaints Resolution
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SK9 5AF