

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 October 2015

**Public Authority:** Copeland Borough Council  
**Address:** The Copeland Centre  
Catherine Street  
Whitehaven  
Cumbria  
CA28 7SJ

### Decision (including any steps ordered)

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1. The complainant requested information from Copeland Borough Council ("the council") relating to a collection of art works known as "The Copeland Collection". The council sent a reply however it took longer than 20 working days to respond and it did not complete an internal review. The complainant complained about these issues and also alleged that the council had not provided all the recorded information held. The Commissioner's decision is that the council breached section 1(1)(a) and 10(1) of the Freedom of Information Act 2000 ("the FOIA") for not confirming that it held some of the information and that some of it was not held within 20 working days. It also breached section 1(1)(b) and section 10(1) because it did not respond to the request within 20 working days and it did not provide all the information it held at the time. The Information Commissioner ("the Commissioner") does not require any steps to be taken.

### Request and response

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2. On 18 August 2014, and following receipt of an extract from the council's "Modes Complete" catalogue provided on an informal basis, the complainant requested information from the council in the following terms:

*"Firstly, thank you for providing the document detailing information on 'The Copeland Collection'.*

*-Freedom of Information request -*

*1. The document provided listed an inventory of works which embody 'The Copeland Collection'. Could you confirm that this document is both a complete and accurate indication of all items included in the collection".*

*2. Which works are currently on loan and which are currently in your care?*

*3. Can you confirm that those works on loan are housed in public buildings and available for public viewing?*

*4. Can you confirm that should either a representative of a public body or indeed a member of the public wish to view the work this can be carried out with prior arrangement?"*

3. The council responded on 18 September 2014. It confirmed that the list provided was a complete list as far as it was aware. It said that about 80% of the collection is out on loan within The Copeland Centre. It said that the rest are housed at The Beacon. It confirmed that if the complainant wished to view the work, this could be arranged by appointment, including the ones in storage and it provided the relevant contact details.
4. The complainant wrote to the council again on 9 October 2014. He alleged that the council had not provided all the information requested.
5. The council did not respond.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 28 November 2014 to complain about the way his request for information had been handled. He complained that the council had failed to respond to his request within 20 workings and to conduct an internal review. He also alleged that the council had not provided all the recorded information it held. The Commissioner clarified with the complainant that he had concerns about the response provided in relation to all points of his request. He said that he did not consider that the council had properly responded to points 1 and 2 and this could therefore affect the accuracy of the responses to points 3 and 4 as well.

7. For clarity, the failure to conduct an internal review is not a breach of the FOIA. However, some comments have been made about this in the Other Matters section at the end of this notice.
8. The complainant also raised other concerns about the accuracy of the information provided to him. These concerns fell outside the scope of the Commissioner's investigation under section 50 of the FOIA since in this context of this complaint the Commissioner may only consider the extent to which the recorded information held has been provided, whether it is accurate or not. Nonetheless, the Commissioner does have an interest in the records management of public authorities and he has briefly commented on this in the Other Matters section of this notice.

## **Reasons for decision**

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### **Section 1(1)**

9. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
10. 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 was not held and he will consider if the authority is able to explain why the information was 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 balance of probabilities".<sup>1</sup>
11. By way of background, "The Copeland Collection" is a collection of publicly owned art works by local amateur and professional artists in various forms including paintings, etchings and sketches of the Copeland area.

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

12. Request 1 was in the following terms:

*"The document provided listed an inventory of works which embody 'The Copeland Collection'. Could you confirm that this document is both a complete and accurate indication of all items included in the collection".*

13. The Commissioner considered the extract from the catalogue pages known as "Modes Complete" which were provided to the complainant shortly before his request for information on 18 August 2014. In general, this information provided the record number of the art work, the category e.g. "painting" along with a brief description and a photograph of the art work although a number of the descriptions and photographs were not included.
14. Comments made by the complainant as the Commissioner's investigation progressed suggested that his request had been seeking confirmation on whether he had been provided with complete and accurate catalogue pages concerning "The Copeland Collection". The complainant highlighted that he had noticed that some photographs were missing and that there seemed to be other "gaps" and "inaccuracies" in the document, and this seems to have prompted the request. The complainant also highlighted that it had become apparent from subsequent versions of the document disclosed to him that all the locations had been removed from the initial document provided. (For clarity, the council provided more up to date versions of the catalogue pages to the complainant during the Commissioner's investigation in an attempt to informally resolve the complaint however the complainant remained dissatisfied and continued to allege that the information was incomplete or inaccurate).
15. The Commissioner considered the terms of request 1 and the interpretation of it. The request could be interpreted as only asking for confirmation that the catalogue pages listed all of the items in the collection. There seems to be no reason to doubt that the pages provided did list all of the works in the collection, however, the complainant's concern was actually that the other information included in the pages, associated with the individual works, was inaccurate or incomplete. Although the Commissioner notes that the complainant did not state this explicitly or provide any specific reasons why he thought the information might be inaccurate or incomplete in his original request, the Commissioner has decided that it would be reasonable to interpret this request as asking for confirmation that the document provided was complete and accurate in terms of all the information it contained. The request clearly related to the pages provided and suggested concerns about the accuracy and integrity of the information. The council accepts that this would have been an objectively reasonable interpretation of the request.

16. As noted above, the Commissioner's investigation is limited to the recorded information held at the time of the request. The document in question was provided in August 2014 at some point before the council received the request on 18 August 2014. It is possible that the information may have changed by the date of the actual request, but unfortunately the council was not able to confirm whether or not that was the case because it has not retained a copy of the catalogue pages as they existed at that time. It said that it was very likely however that the document would have been largely the same, though it is possible that some annotations may have been added during the relevant time period. However what is clear is that the council removed the location details from the catalogue pages it provided to the complainant in August 2014. It told the Commissioner that it had done this for "security reasons" however it did not inform the complainant that it had removed this information at the time.
17. The Commissioner also considered other concerns expressed by the complainant to the Commissioner about the document provided in August 2014. Those concerns were that, "photographs were lacking, other gaps in information existed and other inaccuracies were evident". The complainant also alleged that an art work under record number CC12 was listed as a "painting" by the Royal Academician Raymond Cavern but his own research indicated that it was actually a "photographic print" of the original work. The complainant also said that art work under record numbers CC75 and CC76 had been listed as being held at Union Hall in Whitehaven, a building which the complainant alleged had been in disuse for several years since being sold. He highlighted that these items were listed as being at Union Hall even on the updated lists subsequently provided by the council. The complainant said that he had attempted to view these items in July 2015, having been told that they were actually at the Copeland Centre. However he alleges that only one was available to view on the day and the other could not be located at the time and it remains the case that one art work has not been located.
18. The council explained to the Commissioner that the catalogue pages reflected the information that had been collated at that time. It said that during the relevant period there had been significant organisational changes and as a result, the pages were a "work in progress" and the location of some of the art works was not recorded. The council explained that it would not have held any additional photographs or brief descriptions of the art work as shown in the catalogue where these were "missing" from the document. The council highlighted to the Commissioner that it also held a document known as the "Copeland Asset Register" listing the works in "The Copeland Collection" in addition to the catalogue pages and it provided a copy of this to the Commissioner for inspection, although it noted that this document did

not date from the time of the request in August 2014. It said that there would have been an asset register in August 2014 but it was no longer held. In any event, it was apparent that this document would not have included any photographs or brief descriptions of the art work as shown in the catalogue pages.

19. In relation to the "inaccuracies" noted by the complainant, as already noted, the Commissioner can only consider the extent to which the council has responded appropriately under the FOIA and provided the recorded information held, whether accurate or inaccurate. The complainant has expressed concerns about the council's inability to account for the location of some of the art works, even in more up to date catalogues. While those concerns are understandable, these issues cannot be addressed by the Commissioner in this decision notice because they fall outside the scope of the Commissioner's investigation under section 50 of the FOIA. The Commissioner has an interest in the records management of public authorities however and he has made some comments about this in the Other Matters section at the end of this notice.
20. The council said that it had conducted reasonable searches to confirm its position. It confirmed that it had consulted relevant management and had consulted relevant departments, including finance and legal. It confirmed that it had deleted or destroyed the catalogue pages and asset register held at the date of the request, but it had not kept a record of this and that this was the usual practice. It said that there was no reason why it would have expected to have held any other information falling within the scope of the request.
21. Taking all of the above into account, the Commissioner's view is that the council breached section 1(1)(a) and (b) of the FOIA because it did not confirm that the catalogue pages were incomplete because it had removed the location details. It held recorded information that would have allowed it to respond in this way. In relation to confirming whether the document was accurate, the council said that the only other information source that it would have been able to use to check some of the details of "The Copeland Collection" was the asset register. The version of this from August 2014 is no longer held however the council said that this would have mirrored the information in the catalogue. It seems unlikely therefore that a comparison between the two sources of information would have shed any further light on the concerns about accuracy. It seems to be the case that on the balance of probabilities, this information was not held and the council breached section 1(1)(a) because it did not state that in its response. As the analysis in this decision notice has confirmed the situation, the Commissioner has not ordered any steps for the council to take.

22. Request 2 was in the following terms:

*"Which works are currently on loan and which are currently in your care?"*

This request covers some of the same ground as request 1 because to answer this request, the council would need to know the location details of the art works at the time of the request on 18 August 2014. The council confirmed to the Commissioner that it would have been able to respond to this particular request using the available location details. The catalogue pages it provided in August 2014 had the location details removed for security reasons and that location information is no longer available as explained above. It seems likely that the asset register held by the council at the time would have included location details, but again, that information is no longer held. In an effort to assist, the council did respond to this request as the situation stood in May 2015, which was the only information it was able to provide by the time the Commissioner began his investigation of this complaint.

23. Taking the above into account, the Commissioner's view is that the council breached section 1(1)(a) and (b) for failing to state that it held this information and for failing to provide it at the time of the request. It appears to be the case that it would not have been possible to identify the location of some of the art works as this was not recorded information held at the time. The council should have confirmed that it did not hold this information in relation to some of the art works and not doing so was a breach of section 1(1)(a) of the FOIA. The Commissioner cannot order the council to provide any further information because the information is no longer held. On the balance of probabilities, the Commissioner accepts that this is the case.

24. Request 3 and 4 were in the following terms:

*"Can you confirm that those works on loan are housed in public buildings and available for public viewing?"*

*"Can you confirm that should either a representative of a public body or indeed a member of the public wish to view the work this can be carried out with prior arrangement?"*

25. As explained above, the council no longer holds location details from the date of the request in August 2014 but it would have held this information at the time in relation to the majority of the art works and so it would have been able to confirm that these art works were housed in public buildings at the time using the recorded information that it held. The council has confirmed that the work had always been housed in public buildings. As mentioned, it appears that the location of some

art works would not have been recorded at the time so that information would not have been held.

26. In relation to confirmation on whether an individual would be able to view the work with prior arrangement, the council said that following consultation with relevant staff members, it did not consider that any recorded information was held recording the fact that public viewings could be arranged. It was not aware that this had ever been publicised and it said that the complainant's request to view the collection was the first it had received. However, it confirmed that the art works were available to view with prior arrangement albeit that it may very well have proved difficult to locate and retrieve some of the items in reality.
27. The Commissioner notes that the complainant has provided a document written by the former leader of Copeland Borough Council, who was leader twice between 1974-76 and 1979-1991. This document stresses that the Copeland Collection is available for public viewing. It was not clear where the complainant had obtained this document from and the council was unaware of it. However, it is entirely plausible that it would no longer be held by the council given its age. In any event, the complainant already possesses this document and appropriate confirmation has been provided by the council that the art works continue to be available for public viewing.
28. The Commissioner's view is that the council breached section 1(1)(a) of the FOIA because it did not confirm that it held some information allowing it to confirm that the works on loan were housed in public buildings. It did not hold this information in relation to all of the art works and it therefore breached section 1(1)(a) for not confirming that this was the case. It also appears that the council did not hold any recorded information that would confirm that the art works were available for public viewing with prior arrangement. It breached section 1(1)(a) for not stating that fact in its response however it has provided the answer to the request in any event, which is that in theory all the art works are available for public viewing although it may prove difficult to locate some of them. The issue that the complainant appears to have had is that he doubted the accuracy of the council's statements that all the art works were housed in public buildings and were available for public viewing. There is no evidence available to the Commissioner to suggest that the council is able to provide any further recorded information to the complainant about these particular requests.



## **Procedural issues**

### **Section 10(1)**

29. The complainant made his request on 18 August 2015, however the council did not respond until 18 September 2015. It subsequently told the Commissioner that it did not consider that it had received a formal request under the FOIA and therefore it had no obligation to respond under the FOIA. The Commissioner confirmed that the request was valid under section 8 of the FOIA. The council subsequently accepted this. The council should have responded to the request within 20 working days, provided the information that was held, and appropriate confirmation where information was not held in a recorded form. The failure to do so on this occasion was a breach of section 10(1).

## **Other Matters**

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30. The complainant complained that the council had not conducted an internal review. The council said that it had no record that an internal review had been requested however, the complainant was also able to provide a receipt to demonstrate that the council had received the letter requesting an internal review. The council said that it had not treated this request as a formal request under the FOIA and that this decision led to a number of shortcomings in its handling of this matter, including the failure to retain a copy of the recorded information held at the time of the request in August 2014. The council has reassured the Commissioner that it will make improvements to its request handling in the future. The Commissioner's guidance is that internal review requests should generally be dealt with within 20 working days. Further guidance is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk).
31. As mentioned in the decision notice, the complainant expressed concerns to the Commissioner about the accuracy of the information provided to him. He expressed particular concerns that the council was not able to provide, at any stage, a complete account of the location of every art work. The Commissioner can appreciate that concern and considers that the council would be likely to benefit from reviewing its records management procedures to ensure that they are adequate in accordance with the Code of Practice issued under section 46 of the FOIA.

## Right of appeal

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32. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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**