

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2016

Public Authority: North Dorset District Council
Address: Nordon
Salisbury Road
Blandford Forum
DT11 7LL

Decision (including any steps ordered)

1. The complainant has requested a copy of a report, meeting notes and minutes relating to a meeting attended by members of Shaftesbury Town Council and a member of North Dorset Council relating to a complaint made about him by members of staff at Shaftesbury Town Council. Shaftesbury Town Council provided the majority of the information under the Data Protection Act, however North Dorset Council said that it held no information in response to the request.
2. The Commissioner's decision is that on a balance of probabilities, North Dorset Council was correct to state that it holds no relevant information falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. Following protracted earlier correspondence the complainant wrote to the council on 6 August 2015, and requested information in the following terms:

"I have asked on several occasions for information on meetings held between Shaftesbury Town Council and North Dorset District Council concerning matters discussed about Councillor[name redacted], now [name redacted]."

I have provided you with the references to the documents as supplied to me by Cllr [name redacted] of Shaftesbury Town Council in his delegated actions as [role of individual redacted], I have informed you that Shaftesbury Town Council state they cannot provide me with the copy as it belongs to North Dorset District Council, Ref the documents I sent with the reply to my FoI request. I once again provide the record as reference.

You need: -

- 1) The EW email from 22 March 2012 which alleges [redacted].*
- 2) Appendix B from the [redacted] report extracts from Clerks letter 28.11.12 this initiated our enquiry.*
- 3) You need the Clerks complaint letter 28.11.12*
- 4) You need the document [name redacted] constructed from witness statements to support her letter.*
- 5) There is also a Document called 'Staff report to [names redacted] 8 Oct 2012, that contains allegations of [redacted].*

These documents are all on the Town Hall server.

Regards

[name redacted]

[name redacted]

I have in addition the surrounding [initial redacted] emails to point number 4

Also the NDDC HR / STC meeting notes.

You have the main material that was used in our investigation into the [name redacted] report allegations."

5. Further, on 13 August 2015 to this he also made the following request:

"1. As I do not wish to bring NDDC officers into what appears to be the fabrication of evidence, distribution of my personal data held by STC, and promulgating attacks on my integrity without my knowledge or following the proper established procedures.

Q Did any NDDC officer attend the NDDC HR/STC meeting referred to by STC?

Q Did [name of officer redacted] or any other HR personnel from NDDC play any part in this matter.

2. There is no evidence NDDC actually were involved as it is reported below, they have no documents.

Q Please confirm STC are making false claims about NDDC involvement?

Q Have NDDC destroyed the records relating to the alleged meetings referred to?

Q If so why have documents referring to a criminal act and containing personal data on me, been destroyed?

NDDC CEO's have confirmed that it plays no role in the function and processes of STC, I will assume this to be a fact and you will confirm no involvement by NDDC in these accusations against me, or the promulgation of my personal data, which leaves me with only one option requiring two actions.

1. To report under the code of conduct all STC members for bringing the Town Council into disrepute by making public accusations against me for which they have provided no substantive evidence base to substantiate them, they have also failed in their duty of care to their staff by not proceeding with the reporting of the act to the police.

I attach the email record which includes the Town Councils resolution to investigate and report back, no report or HR minutes have been produced, or the matters addressed.

I am sure you are aware that this is the case, and the Town Council has also refused to address its qualification from 2013/14 accounts and is now under investigation for the 2014/15 accounts, the failure of governance is now so serious that no working relationship involving any finance can be agreed with them.

Please advise as to how, or if a complaint against all members should proceed?

2. Subject to answers to the above all this information will then go to the police.

[name of correspondent redacted] it would be a lot easier if NDDC would make a clear statement on its involvement, either yes we were involved, or no we were not. I would then be able to concentrate on STC but while they continue to substantiate their claims based on what they say is NDDC advice that is not possible."

6. The council responded on 13 August 2015. It stated that *"none of the above notes, records or documents have been identified as being information within the Council's possession"*.
7. Following an internal review (in fact an email from the Chief Executive to the complainant referring to the fact that the matter had been raised by the complainant and considered over a considerable time by the council), it wrote to the complainant and confirmed its position that no information is held and that the complainant should make a complaint to the Commissioner if he remained unhappy with that response.

Scope of the case

8. The complainant initially contacted the Commissioner on 13 August 2015 to complain about the way his request for information had been handled.
9. Primarily his issue is that the Town Council and the District Council had previously denied that it held relevant information. The Town Council subsequently said that information was held on the servers of the District Council and that that information was confidential to the District Council. For its part the District Council denied that it held any information.
10. The complainant has an associated data protection case against the Town Council with the Commissioner which was being investigated concurrently with this case against the District Council. During the course of the Commissioner's investigation on this case the Town Council disclosed a copy of the report to the complainant with third party names redacted. It also confirmed that the meeting was informal and that no record or minutes were taken.
11. A further issue in this case is the nature of the 'requests' for information which the complainant added to his initial request on 13 August 2015. Under the FOI Act an applicant is entitled to request recorded information held by a public authority. In this case many of the 'requests' are in fact questions seeking clarification from the council over its involvement with the issue of the complaints.
12. Although these are not valid requests for recorded information for the purposes of the FOI Act, where recorded information is held which can answer those questions a public authority is under a duty to consider that information for disclosure under the terms of the Act. If the report which forms part of the request, and any associated notes or minutes are held by the District Council then this would respond to the complainant's questions as regards this issue.

13. The Commissioner therefore considers that the complaint is effectively whether any information is held by the District Council relating to the complaints made about him, and the meeting between the then head of HR of the District Council and members of Shaftsbury Town Council relating to those complaints.

Should the complaint have been dealt with under the DPA?

14. The Commissioner considered whether the case should have been considered under the terms of the Data Protection Act 1998 (and in particular under section 7 of that Act). Section 7 of the DPA provides the right for a data subject (i.e. an individual) to ask a data controller to provide him with a copy of all information held about him. The Town Council responded to the complainant's request under the DPA.
15. If the information was solely about the complainant then the district council should apply section 40(1) to exempt the information from the FOI Act, but would then need to consider the request under the DPA. Section 40(1) provides an exemption under the FOI Act to any personal data which relates to the applicant for the information. However the council responded under the FOI Act, stating that no information was held.
16. The Commissioner considered that there was a strong possibility that the documents requested by the complainant may relate to third parties as well as containing personal data relating to the complainant. The issue was complaints made about him by third parties, and therefore it was more than possible that third party personal data might be contained within any information held. Accordingly the Commissioner decided that he should initially consider the complaint under the FOI Act, and refocus the complaint to consider it under the DPA if this proved to be appropriate
17. The Commissioner therefore informed the complainant verbally that the case may need to be considered under the DPA if information was held which was his personal data, but initially he would continue to consider the request under the FOI Act
18. As the decision is that no information is held he has considered the request under the FOI Act.

Reasons for decision

Section 1(1)

Is information held falling within the scope of the request?

19. Section 1(1) of FOIA states that

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

20. 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 ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

21. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

22. 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 arguments. 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.

23. The Commissioner therefore wrote to the council asking it a number of questions relating to the searches it had carried out in order to determine that a copy of the lease was not held.

24. In response to this the council clarified that it had not needed to carry out searches for relevant information, but had instead interviewed the then Head of Human Resources regarding her participation in the meeting with the Town Council.
25. She confirmed that she had taken part in the meeting in question, but that she had done so on an advisory basis only. She clarified that the meeting had been 'informal', and that as she was present in an advisory capacity only she did not remember taking or receiving any notes as part of that attendance. The issue was essentially an internal matter within Shaftesbury Town Council, and was an informal meeting and so there was no requirement for her to take notes or record the advice for the business purposes of the District Council.
26. The council also confirmed that, although she could not remember taking any informal notes at the meeting (which had taken place 4 years ago), if she had then these were not retained for 'even a limited period of time'. It confirmed that her only contribution was to give oral or verbal informal advice during the meeting.
27. The Council further confirmed therefore that no information, no record or minutes and no notes are held by it which fall within the scope of the request.
28. The Commissioner has considered the council's argument. He has also considered a redacted copy of the report (which the Town Council disclosed to the complainant during the course of his investigation).
29. He considers that the issue was a Town Council issue relating to issues with, and between, council staff at the Town Council and the complainant which the Town Council was seeking to address. Although the relevant expertise of the District Council HR Manager in handling such matters was called for, there appears to the Commissioner to be little reason why she might have retained any information relating to the matter for any length of time given that the matter was not a District Council matter.
30. The meeting took place in 2012 and therefore the Commissioner accepts that even if information, (particularly the report), had been held at that time it was likely to have been retained for a short period only, if at all, given that it was not a District Council matter. The meeting was dealt with on an informal basis by the Town Council (whether rightly or wrongly), and the issues raised by the complaints were dealt with by the Town Council shortly thereafter.
31. Based upon the evidence and the assurances of the District Council, the Commissioner therefore considers that, and on a balance of

probabilities, no information is held by the District Council falling within the scope of the request.

Right of appeal

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

Website: 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF