

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 January 2016

Public Authority: Southwark Council
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the Southwark Council ("the Council") relating to a named individual.
2. The Commissioner's decision is that the Council does not hold the requested information.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 30 September 2015, the complainant wrote to the Council and requested information in the following terms:
"1. Please state the job title and job description of [named individual].
2. Please state whether [named individual] is certificated to act as a bailiff or is a member of his trade organisation.
3. Please state whether [named individual] has had complaints relating to his behaviour from members of the public.
4. Please state whether the Authority has checked whether he has signed a Code of Conduct and it has been seen by London Borough Southwark HR Officers/Managers.
5. Please state whether any criminal checks were made on [named

individual] *background prior to his employment with Southwark Council*".

5. The Council responded on 6 October 2015 and advised the complainant that the requested information was not held.
6. Following an internal review the Council wrote to the complainant on 11 November 2015. It maintained its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 12 November 2015 to complain about the way her request for information had been handled.
8. The Commissioner has had to consider whether the Council holds the requested information.

Reasons for decision

9. 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".

10. 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.
11. 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).
12. In its submissions to the Commissioner, the Council explained that it had checked with its Human Resources Department who confirmed that the named individual *"is not employed and has not been employed by Southwark Council"*. The Council therefore holds no information about the named individual as an employee.

13. The Council explained that the named individual has acted on behalf of the Council as a process server. The Council explained:

"If the council has a need to use a process server to serve court documents, it can do so by appointing a local firm, depending on availability and location for service. When employing such firms, the council does not require information to be provided about those firms' employees or ask for copies of codes of conduct. The council does not therefore have details of employment titles or membership of trade organisations".

14. With reference to request 3, the Council explained that it had contacted the Council's complaints team who confirmed that it has not received a complaint about the named individual and therefore the information sought in request 3 is not held.
15. The Commissioner is satisfied on the balance of probabilities that the requested information is not held by the Council.

Other matters

16. With regard to request 3, whilst the Council has confirmed to the Commissioner that it does not hold information relating to complaints made against a named individual, we would expect the Council to have been clearer when responding to the complainant. For example, the Council should have specifically confirmed to the complainant that no complaints have been made against the named individual.

Right of appeal

17. 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

18. 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.
19. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF