

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2016

Public Authority: Kirklees Metropolitan Council

Address: Civic Centre
High Street
Huddersfield
West Yorkshire
HD1 2TG

Decision (including any steps ordered)

1. The complainant has requested information from Kirklees Metropolitan Council ("the Council") about any communications between the Council and the Crown Prosecution Service ("the CPS"). The Council responded that no information was held. The complainant subsequently contested the Council's response.
2. The Commissioner's decision is that the Council has failed to comply with section 1(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response that complies with section 1(1) or issue a valid refusal notice under section 17.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 April 2016 the complainant requested:

*Under the freedom of information act I require to know how many times any one at the KASBP or legal division at Kirklees council were in touch with the Crown Prosecution Service.
Either the council contacting the CPS, or the CPS contacting the council.
This between the dates 1/10/14 and 1/2/15.*
6. On 26 April 2016 the Council responded. It stated that no recorded information was held.
7. The complainant requested an internal review on 26 April 2016.
8. The Council sent the outcome of its internal review on 18 May 2016. It maintained its original response.

Scope of the case

9. The complainant contacted the Commissioner on 18 May 2016 to complain about the Council's response.
10. The Commissioner considers the scope of this case to be the determination of whether the Council has complied with section 1(1).

Reasons for decision

Section 1(1) – Whether information is held

11. Section 1(1) 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 them. This is subject to any exemptions or exclusions that may apply.

The Council's position

12. The Council has informed the Commissioner that in responding to the request it has consulted with officers in both the Kirklees Anti-Social Behaviour Partnership ("KASBP") and the Legal Services department.
13. The KASBP would only have cause to communicate with the CPS in the event of an application for a Criminal Behaviour Order or Restraining

Order. The database in which such cases are managed does not allow for keywords such as 'CPS' to be searched for. Any communication with the CPS would have been likely to be by telephone or in person, and as such may not be recorded, whilst any email correspondence that took place may or may not have been uploaded to the database. To determine if any relevant communications took place the Council would need to manually search each case in progress or issued up to and including 1 February 2015.

14. Legal Services officers do not routinely contact the CPS, and none could recall an instance of having done so. It is possible, but unlikely, that communications may have been had with the CPS; however these would not have been centrally recorded, and any related note would be contained within the (normally) hardcopy records for a case.
15. In both parts of Council, the Council has stressed that there is no statutory or business reason to centrally record any communications with the CPS.

The Commissioner's conclusion

16. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom possible to prove with absolute certainty that there either isn't any information or anything further to add. The Commissioner will apply the normal civil standard of proof in determining the case, i.e. she will decide on the balance of probabilities whether the information is held.
17. In the circumstances of this request the Council has provided detailed submissions that explain the steps it has taken in response to the request. However, having referred to these submissions, it appears that the basis for the Council's position is that any communications with the CPS are not recorded in a way that can be immediately referred to and totalled, as there is no business or statutory reason for this to be done. If any recorded communications between the Council and the CPS took place, these would be done on an ad hoc basis within individual case files.
18. In these circumstances, the Commissioner considers that the Council has provided evidence that contradicts its position under section 1(1). The Council has clearly referred to the possibility that communications may have taken place and been recorded in some form within case files. Although any totalled sum may be time consuming to provide, this does not provide a basis for confirming that it is not held. The Commissioner also notes that even if any totalled sum is inaccurate (because it only represents the amount of times a communication with the CPS was recorded, not the amount of times that communications with the CPS

took place in reality), this again does not provide a basis for confirming that information is not held.

19. For the above reasons the Commissioner must find that the Council has failed to comply with section 1(1).

Other matters

20. The Council appears to argue that compliance with section 1(1) would represent significant cost. In scenarios where compliance with section 1(1) would exceed the appropriate limit, the Council should refer to the provisions of section 12.

Right of appeal

21. 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

22. 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.
23. 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