

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2017

Public Authority: Kettering Borough Council
Address: Municipal Offices
Bowling Green Road
Kettering
NN15 7QX

Decision (including any steps ordered)

1. The complainant has requested statistics which relate to cases of bullying and/or harassment at work within Kettering Borough Council. The Council provided the complainant with a response to each part of his request. The complainant's position that the Council's answers to parts 3 and 4 of his request cannot be correct.
2. The Commissioner's decision is that Kettering Borough Council has complied with section 1 of the FOIA by providing the complaint with answers to his information request which properly reflects the recorded information the Council holds.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 21 June 2016, the complainant submitted a request to Kettering Borough Council via the WhatDoTheyKnow website. The terms of the complainant's request are:
 - "a) Please inform me of the cost of dealing with this request.
 1. How many official complaints of harassment and bullying at work did you receive between the 1st April 2009 and the 31st December 2015?
 2. How many of these complaints were upheld in favour of the complainant?

Please reply to these questions if the £450 limit is not exceeded or in order of the questions up to the limit should the limit be surpassed somewhere within these questions:

3. How many of those which were not upheld in favour of the complainant went on to Appeal?
 4. How many of those that went to Appeal were found to favour the complainant?
 5. How many complaints went on to an Employment Tribunal?
 6. How many of these were found to uphold the complaint?
 7. Out of how many of those allegations (the number given to question 1) did the complainant of bullying claim that the bullies were telling lies?
 8. How many staff does your authority have and what is the current population within your authority's area?"
5. The Council responded to complainant on 20 July 2016, providing a response to each element of his request. The Council provided the complainant with the following information in respect of his questions 3 and 4:
- "3. How many of those which were not upheld in favour of the complainant went on to Appeal? None
4. How many of those that went to Appeal were found to favour the complainant? One"
6. On 3 August 2016, the complainant wrote to the Council to query its response to questions numbered 3 and 4. He asked the Council, "How can you have one from no cases?"
7. The Council provided the complainant with clarification of its response to questions 3 and 4 on 8 August 2016. The Council advised the complainant that, "The other party Appealed, however the decision stood".
8. The complainant wrote again and asked it to confirm the numbers because he found the Council's response confusing. Again he stated, "you cannot have one case from none."
9. On 17 August, the Council wrote to the complainant and advised him of the following:
- "Questions 1 and 2: Between 1 April 2009 and 31 December 2015, Kettering Borough Council dealt with 2 formal complaints of harassment and/or bullying. Both of these complaints were upheld in favour of the complainant (ie. the victim of the harassment/bullying).

Question 3: There were no cases whereby the decision was not upheld in favour of the complainant, therefore no appeal was not [sic] brought about by any complainant.

Question 4: However, an appeal was brought about by an alleged perpetrator (and not the complainant) and the result was a decision which remained in favour of the complainant."

10. On 23 August the complainant wrote to the Council and asked it to conduct an internal review.
11. The Council's internal review was completed on 31 August and the Council wrote to the complainant to inform him of its final decision. The Council's review confirmed that the answers provided to his questions are correct and it provided further clarification in respect of its answers to questions 3 and 4.
12. The Council advised the complainant that one case was taken to appeal by the accused party in a case which was originally upheld in favour of the complainant. It was this case which is referenced in the Council's answer to question 4. This answer did not fit the terms of question 3 of the complainant's request as he had asked for the number of cases which were *not upheld* in favour of the complainant, which then went on to appeal.

Scope of the case

13. The complainant contacted the Commissioner on 6 September 2016 to complain about the way his request for information had been handled. The complainant informed the Commissioner that he maintained the position that the numbers the Council had provided in respect of his questions 3 and 4 cannot be correct, stating that, "you cannot have one successful case from no original case".
14. The Commissioner has contacted Kettering Borough Council to determine whether the answers it provided to the complainant properly reflect the recorded information it holds which is relevant to the terms of his request.

Reasons for decision

15. Section 1 of FOIA states that –

“(1) 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.

16. In this case, the complainant disputes the figures given by the Council in respect of his questions 3 and 4.
17. The Council has confirmed to the Commissioner that the figures given to the complainant represent the recorded information it holds which is relevant to the terms of his request. The Council discussed with the Commissioner the reason why its response to questions 3 and 4 for the complainant's request are seemingly confusing.
18. It is clear to the Commissioner that the issue here is not whether the answers given by the Council are correct; the issue is that the recorded information does not 'fit' the precise terms of the complainant's questions.
19. The Council has confirmed to the Commissioner that there were two instances during the period specified by the complainant, where formal complaints of harassment or bullying were made to the Council. Both of these complaints were upheld *in favour* of the persons who brought the complaints. This is the information which is recorded by the Council in its response to questions 1 and 2 of the complainant's request.
20. The Council determined that there was no instance where the decision *did not uphold* a complaint of harassment or bullying in favour of a complainant during the period specified in the request. The Commissioner accepts this answer as being correct.
21. As a result of the above, there was no appeal in any case which had *not been upheld* in favour of the two persons who complained of harassment or bullying. The Council's response to question 3 is therefore correct.
22. In respect of the Council's answer question 4, there was a single instance where an appeal was made in a case where the decision *was upheld* in favour of the complainant. It is this distinction between 'not upheld in favour of the complainant' and 'upheld in favour of the complainant' which is the source of confusion.
23. The appeal was not brought by a complainant because the original complaint had been found in his/her favour. Rather, the complaint was brought by the alleged perpetrator in that case. Notwithstanding this appeal, the decision remained in favour of the original complainant.
24. It is clear to the Commissioner that the Council's response demonstrates that it has properly met the duty under to disclose the recorded

information under section 1 of the FOIA. The Commissioner's decision must be that the Council has complied with section 1 on the grounds that the information that the Council has disclosed properly reflects its records of complaints and outcomes of harassment and bullying during the period specified by the complainant.

25. The issue here is not whether the Council has complied with the complainant's request. Rather, the issue is how the request has been interpreted. In the Commissioner's opinion the Council's interpretation is correct.
26. The complaint's question 4 is predicated on there being instances where the outcome of the case was *not found* in favour of the person who brought the complaint of harassment or bullying: There were none, and therefore the answer 'none' must be correct.
27. The Commissioner considers that the clarification given to the complainant during the course of the Council's correspondence is sufficient to lead her to conclude that the Council has met its obligation to provide advice and assistance under section 16 of the FOIA.
28. The Commissioner has noted that the Council has extended an on-going invitation to the complainant to discuss his request with a view to meeting his information needs to his satisfaction. The Commissioner considers this is wholly appropriate where there is clearly an issue of interpretation of a request.

Right of appeal

29. 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

30. 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.
31. 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