

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 May 2017

**Public Authority:** Northamptonshire County Council

**Address:** County Hall  
Northampton  
Northamptonshire  
NN1 1ED

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Northamptonshire County Council ("the Council") about a limited company that provides financial appointee services. The Council disclosed information in response under the terms of the Freedom of Information Act ("the FOIA"). The complainant contested that further relevant information was held by the Council.
2. The Commissioner's decision is that the Council has not complied with the FOIA in respect of part 5 and part 12 of the request. For the remainder of the request the Commissioner is satisfied that no further information is held.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Reconsider part 5 and part 12 of the request and issue a fresh response that complies with the FOIA.
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

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5. On 28 March 2016, the complainant wrote to the Council and requested information in the following terms (numbering added by the Commissioner):
- 1) *Does Northamptonshire County Council have dealings with a company known as [redacted limited company] based in Wellingborough.*
  - 2) *If so, what are the nature of those dealings, in general terms.*
  - 3) *For how long has the council had dealings with [redacted limited company]?*
  - 4) *What policies/protocols were used to determine that [redacted limited company] was a suitably eligible company for the council to do business with.*
  - 5) *Currently, how many council clients/customers are being offered [redacted limited company] services.*
  - 6) *Is the council aware that, before 21 March 2016, [redacted limited company] was not registered under the Data Protection Act (DPA).*
  - 7) *When was the council first made aware that [redacted limited company] was not registered under the DPA.*
  - 8) *What actions did the council undertake, when first advised that [redacted limited company] was not DPA registered.*
  - 9) *Is the council concerned that [redacted limited company] was acting unlawfully by not being registered with the Data Protection Registrar?*
  - 10) *Is the council content that it should contact to any company the personal and sensitive financial details of any of its vulnerable customers when the company is not registered under the DPA.*
  - 11) *Does the council agree that DWP appointees such as FAB are precluded by the DWP from making any charge for acting as appointees. If the council does not agree, please advise of its interpretation of the DWP guidelines on appointees being able to charge for their services.*
  - 12) *What monthly fees does [redacted limited company] typically charge council clients for handling their finances.*

- 13) *Please advise in what circumstances, under DWP guidelines, the council can intercede and take over an existing DWP appointeeship.*
- 14) *What other companies/organisations does the council use to handle the sensitive financial information of its clients. Please supply company/organisation company names and addresses.*
6. The Council responded on 25 April 2016. It disclosed some held information, and confirmed that for some parts of the request it did not hold any relevant recorded information.
7. Following an internal review the Council wrote to the complainant on 23 May 2016. It maintained that its earlier response was correct.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 15 September 2016 to complain about the way his request for information had been handled.
9. 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**

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#### **Section 1(1) – whether information is held**

10. 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 complainant's position

11. The complainant has believes that further relevant information is held by the Council besides that already disclosed.
12. The complainant has informed the Commissioner that the request has been made in respect of a private concern that he is pursuing. In particular, the complainant believes that the limited company (which is the subject of the request) is a contracted provider to the Council, and that the Council's disclosure of information represents a denial of this.

#### The Council's position

13. The Council has informed the Commissioner that the request relates to a limited company that provides financial appointee services, and which is connected to a private concern that the complainant is pursuing. The request was therefore referred to the business area with responsibility for the subject matter, namely Adult Social Services. The Council considers that Adult Social Services would hold all relevant recorded information in relation to the request, and are the most able to respond to the specific questions contained within the request. The Council has also clarified that the complainant has already corresponded with Adult Social Services about his private concern.
14. The Council considers that it has provided all recorded information that it holds in relation to the request, which is composed of a series of questions. A proportion of these questions seek opinions, which the Council has confirmed are not held in recorded form. Likewise, a proportion of these questions seek information based on specific premises, to which the Council has confirmed that it does not hold recorded information which matches the criteria and parameters of the question.
15. In respect of part 5 of the request, the Council considers that it is not possible to identify how many of the Council's customers use the limited company. Customers are free to engage their own service providers, and whilst this may be noted on a customer's case file, there is no statutory reason for the Council to centrally record this information for retrieval. The Council also considers that the fact that an individual has engaged the services of the limited company would constitute personal data under the Data Protection Act.
16. In respect of part 12 of the request, the Council considers that charges made by the limited company to Council customers may be held in recorded form as part of the customer's social care records, but that this information is not held for the Council's own purposes.

#### The Commissioner's analysis

17. The Commissioner must decide on the balance of probabilities whether further recorded information is held by the Council that would fall within the scope of the request.

#### *Parts 1-4, 6-11 and 13-14 of the request*

18. In respect of parts 1-4, 6-11, and 13-14 of the request the Council has confirmed that its responses were provided by the relevant business area with access to recorded information and a contextual understanding of the subject matter. The request is composed of a series of questions rather than requests for specific documents, and the

Council has confirmed that where it holds relevant recorded information it has provided a response that answers the question.

19. It is noted by the Commissioner that some of the questions seek explanation or opinion, or else are based on a specific premise. In such situations the FOIA does not require the Council to create new information in order to provide a response. Whilst the complainant considers that the Council has disclosed incorrect information (i.e. that the Council's relationship to the limited company is different to that which the Council states), any dispute involving the accuracy of information falls outside the terms of the FOIA and the Commissioner's role.
20. Having considered the above, there is no evidence available to the Commissioner that indicates that the Council's response to parts 1-4, 6-11, and 13-14 does not comply with section 1(1).

*Part 5 of the request*

21. In respect of part 5 of the request, the Commissioner understands that the complainant seeks the number of Council customers "*who are being offered*" services by the limited company. The Council has indicated in its submissions to the Commissioner that relevant information may be held in individual case files, but would not be recorded in a manner that allows it to be automatically retrieved. The Council has also indicated that the sought information may fall under an exemption.
22. The Council has referred to the possibility that relevant information may be held. Whilst compliance with a request may exceed the appropriate limit in costs provided for section 12, the Council has not sought to apply any of the provisions of this section, and no clear evidence of costs has been provided to the Commissioner. The Commissioner also notes that if the sought information would fall under an exemption, the Council should engage that exemption. The Commissioner is therefore not satisfied that the Council's response to part 5 complies with the FOIA.

*Part 12 of the request*

23. In respect of part 12 of the request, the Commissioner understands that the complainant seeks the charges that have been applied by the limited company to Council customers. The Council has indicated in its submissions to the Commissioner that such information may be physically held, but not for the Council's own purposes. However this appears to be contradicted by the Council's explanation that such charges may be held by the Council as part of its audit and safeguarding responsibilities.

24. Section 3 of the FOIA provides specific circumstances where a public authority may be deemed as holding recorded information, and the Commissioner's guidance<sup>1</sup> clarifies that information may be held by a public authority if it is held for its own purposes. This includes circumstances where the public authority has access to the information and holds an interest in it. Having considered that the Council utilises the held information as part of its audit and safeguarding responsibilities, this indicates that the Council holds an interest in the information and holds it in its own right. The Commissioner is therefore not satisfied that the Council's response to part 12 complies with the FOIA.

## Other matters

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25. The Commissioner reminds the Council that public guidance on compliance with the FOIA is available through the webpages of the Information Commissioner's Office (<https://ico.org.uk/>)

26. Having considered the matters raised by the Council in its submissions, the following guidance in particular may be relevant in complying with the steps ordered in this decision:

- *"Determining whether information is held"*: available at [https://ico.org.uk/media/for-organisations/documents/1169/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.pdf](https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf)
- *"Information held by a public authority for the purposes of the Freedom of Information Act"*: available at [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)
- *"Requests where the cost of compliance exceeds the appropriate limit"*: available at [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

- "*Personal information (section 40 and regulation 13)*": available at <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

## Right of appeal

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27. 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)

28. 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.
29. 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**  
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**SK9 5AF**