

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2017

Public Authority: North Norfolk District Council
Address: Council Offices
Holt Road
Cromer
Norfolk
NR27 9EN

Decision (including any steps ordered)

1. The complainant has requested the costs associated with a legal case. North Norfolk District Council ("the Council") disclosed information in response. The complainant contested that further relevant information was held.
2. The Commissioner's decision is that Council has provided all held information in response to the request, but has breached section 10(1).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 6 September 2015, the complainant wrote to the Council and requested information in the following terms:

I hereby request disclosure of all costs (direct and indirect) relating to the legal case Champion v NNDC connected with the subject planning application. This should include but not be restricted to:

- 1. The costs associated with the legal case Champion v NNDC paid by NNDC.*
 - 2. The officer time allocated to it expressed both in time and cost (including overheads).*
 - 3. Any part of these costs recovered from other sources.*
5. The Council responded on 5 October 2016. It disclosed information. Following a query from the complainant, the Council provided clarification to its response on 14 January 2017.
 6. On 24 January 2017, the complainant requested an internal review on the basis that the response was incomplete.
 7. Following an internal review, the Council wrote to the complainant on 31 March 2017. It stated that further information had been identified, and consequently disclosed this, along with contextual information about the subject matter.

Scope of the case

8. The complainant contacted the Commissioner on 24 April 2017 to complain about the way his request for information had been handled, and specifically, that the Council's response to parts 1 and 3 were incomplete.
9. The Commissioner considers the scope of this case to be the determination of whether the Council has complied with parts 1 and 3 of the request.

Reasons for decision

Section 1(1) – General right of access to information

10. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of Information Tribunal decisions in applying the civil standard of the balance of probabilities.

12. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds further recorded information besides that already disclosed.

Context

13. The request seeks the disclosure of all costs associated with a case brought before the High Court, and subsequently the Court of Appeal and Supreme Court.
14. During the Court of Appeal and Supreme Court cases, the Council was jointly represented with a third party; Crisp Maltings Group Limited ("the company").

The complainant's position

15. The complainant considers that the Council has failed to recognise that the request seeks '*all costs (direct and indirect)*'. In particular, the complainant considers that the Council should hold a record of the costs incurred by the company that it was jointly represented with, and that these costs should be declared in order to comply with part 3 of the request.
16. The complainant also contests that the Council has withheld information (by redacting parts of a disclosed document) without applying an exemption provided by the FOIA.

The Council's position

The High Court case

17. In respect of the High Court case, the Council has informed the Commissioner that it disclosed held information (namely the total costs incurred by the Council) on 5 October 2016. The Council disclosed further held information on 31 March 2017 (namely the updated total cost following the identification of an additional payment to an external Counsel).
18. However, in response to the Commissioners investigation it has accessed the original invoices and supporting fee notes, and has identified further held information that it is able to disclose. This further recorded information is a breakdown of the total cost by Counsel fees, Solicitor fees, and Court fees. This information was subsequently disclosed to the complainant on 2 October 2017 (and a copy of this correspondence has been provided to the Commissioner).

The Court of Appeal and Supreme Court cases

19. In respect of the Court of Appeal and Supreme Court cases, the Council has informed the Commissioner that it does not hold any recorded information relating to the associated costs. This is because the Council entered into an agreement with the company (with which the Council was jointly represented) in which the company would bear the legal costs of a successful appeal. In the event that the appeal was not successful, the agreement specified that the Council and the company would share responsibility for the legal costs. As the appeal was successful, the Council was not responsible for the payment of any costs.
20. The Council has further confirmed that it has undertaken searches in the case files for any documents in which the costs borne by the company have been recorded, or otherwise shared with the Council. However, no such recorded information has been identified.

The part-redacted document

21. The Council has informed the Commissioner that it has provided the complainant with a document titled '*Record of the exercise of a delegated power*'. This document relates to the decision to seek leave to appeal to the Court of Appeal. The document also confirms the Council's authority to enter into the associated costs agreement with the company.
22. The Council has elaborated that this document does not fall within the parameters of the request, but has been provided (as part of the Council's duty to provide advice and assistance under section 16) in order to assist the complainant in understanding why no record of associated costs is held for the Court of Appeal and Supreme Court cases.

The Commissioner's conclusion

23. The Commissioner has considered the submissions of both parties.
24. In respect of the High Court case, the Commissioner has noted that further recorded information has now been identified by the Council, and subsequently disclosed to the complainant. Having considered this further disclosure, and the searches undertaken by the Council in response to the Commissioner's investigation, the Commissioner concludes that all recorded information is now likely to have been disclosed.
25. In respect of the Court of Appeal and Supreme Court cases, the Commissioner has noted that no legal costs were incurred by the Council, as such costs would only be borne in the event that the appeal was lost. Additionally, the Commissioner understands that there is no

apparent business or statutory need for the Council to hold details about the legal costs borne by the company, and that searches of the original case files have been undertaken to identify if any details about these costs have otherwise been shared with the Council. Although the Commissioner has noted the complainant's position that the Council should disclose the costs incurred by the company in order to fully comply with part 3 of the request, the Commissioner must first consider whether this information is held in recorded form by the Council. Having considered the searches undertaken by the Council, and in the absence of any necessity for the Council to hold the information, the Commissioner must conclude that this information is unlikely to be held.

26. In respect of the part-redacted document that the Council has provided to the complainant, the Commissioner has reviewed both the request and original (and un-redacted) document. Having done so, the Commissioner does not consider that the document falls within the parameters of the request, and has concluded that it has been provided under the Council's duty to provide advice and assistance to the requestor under section 16 of the FOIA. As no valid request for the document (under section 8 of the FOIA) has been made, the Commissioner is not able to proceed to a decision (under section 50 of the FOIA) about the Council's redaction of information; however the Commissioner notes that the complainant remains able to submit a request for this document.

Section 10(1) – Time for compliance

27. Section 10(1) states that an information request should be responded to within twenty working days of receipt. In this case the Council disclosed held information outside of this timescale.
28. On this basis the Commissioner finds that the Council has breached section 10(1).

Other matters

29. The Commissioner reminds the Council of its responsibilities under the Section 45 Code of Practice. In particular, the Commissioner expects that an internal review should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. The Commissioner's guidance for public authorities on applying the Section 45 Code of Practice can be accessed at:

<https://ico.org.uk/media/1624144/section-45-code-of-practice-request-handling-foia.pdf>

Right of appeal

30. 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

31. 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.
32. 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
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