

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2019

Public Authority: Staffordshire County Council
Address: Staffordshire Place 1
Tipping Street
Stafford
ST16 2DH

Decision (including any steps ordered)

1. The complainant has requested information about the number of people who had been made subject to Staffordshire County Council's Policy for Dealing with 'Unreasonably Persistent Complainants' and 'Unreasonable Complainant Behaviour'.
2. The Commissioner's decision is that Staffordshire County Council's does not hold further information within the scope of the request beyond that which it has previously disclosed.
3. The Commissioner does not require Staffordshire County Council to take any steps.

Request and response

4. On 25 April 2019 the complainant wrote to Staffordshire County Council (SCC) and requested information in the following terms:
A. I wish to be provided with the full name and Job Title / Rank of the individual/ individuals who are responsible for the imposition of the "Sanctions" / "Restrictions of Contact" imposed upon me by Staffordshire County Council from the date of inception, this being 22nd June 2018.

B. I wish to be provided with the total number of individuals/ Member of the Public who have been made subject to "Sanctions"/ "Restrictions of Contact" by Staffordshire County Council over the past five years.

5. SCC responded on 1 May 2019 to say that it did not hold the requested information. On 17 May 2019 SCC wrote again, following internal review and said that a central record was not held but that *"the relevant teams"* who had been having contact with the relevant individual(s) would be aware of the restrictions.
6. However SCC did not say how the relevant officers would become aware of the restrictions of contact ("the restrictions") or explain the decision process that they had to follow.

Scope of the case

7. Part A of the request was treated as a subject access request under the Data Protection Act 2018, by both SCC and the Commissioner. Accordingly this Notice only relates to part B of the request, which was treated as a FOIA request.
8. The complainant contacted the Commissioner on 7 July 2019 to complain about the way his request for information had been handled.
9. He said that he had made complaints to SCC about the personal conduct of SCC's Chief Executive and also about the Leader of the Council. Following his complaints, he had been made subject to SCC's *2007 Policy for Dealing with 'Unreasonably Persistent Complainants' and 'Unreasonable Complainant Behaviour'* ("the policy"). He wanted to know how many of SCC's other customers had been made subject to the same policy restrictions. SCC told him that the requested information was not held.
10. In her investigation, the Commissioner considered whether information was held by SCC that fell within the scope of part B of the request.

Reasons for decision

Section 1 general right of access

11. Section 1(1) 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."

12. In matters such as this one where the public authority and the complainant dispute the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of proof of the balance of probabilities.

13. The Commissioner is therefore not required to prove categorically whether or not the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities, ie whether the probability that information is held is more or less than 50%.

14. In deciding where the balance of probabilities lies, the Commissioner considered the complainant's evidence and representations. She also considered what searches had been carried out by SCC and other representations from SCC which were relevant to her determination. SCC carried out further searches during the course of the Commissioner's investigation.

15. The complainant told the Commissioner that SCC had applied its policy to him and imposed severe restrictions on his permission to communicate with its officers. He said that SCC had never provided him with a copy of its policy; he was eventually given a copy of the policy by the Local Government Ombudsman. The complainant said he considered that imposition of the policy and of sanctions on him by SCC had been grossly unfair and was unlawful. He said that he had raised legitimate and serious issues with SCC but it would not engage with his concerns or take them seriously.

16. SCC told the Commissioner that it did not hold the information requested, either centrally or in local records. In an effort to provide

advice and assistance, SCC opined that there probably had been no other customers with the same restrictions imposed on them during the last five years so far as staff could remember. In relation to highways matters, one of his main concerns, the complainant was the only person with a current contact restriction in place.

17. SCC added that it did not hold a central record of communications restrictions. Enquiries had been made of its principal departments, many of which had regular contact with the public. These enquiries had shown that most teams did not hold a searchable record, others had indicated that they would not sanction contact restrictions.
18. SCC added that it could not find a way to provide any advice or assistance to the complainant that would enable it to provide a more definitive answer to his information request.
19. During the Commissioner's investigation, the SCC complaints manager told the Commissioner in her evidence that SCC has no central record of there having been any instances in which it had invoked the policy. The complainant's case had been very unusual as SCC normally kept dialogue with its customers open but not done so in this case. She added that the SCC legal services unit had not been involved.
20. The complaints manager added that she was not aware of the policy having been applied to any other SCC complainant. However she could not confirm that there had been no others without searching the relevant case records; this was be a major task the scope of which would far exceed the appropriate cost limit set out in section 12(1) FOIA (Cost of compliance).
21. The Commissioner saw no evidence during the course of her investigation to call into question SCC's representations that the information requested was not held. It seemed probable to SCC officers that there had been no other relevant instances of communications restrictions having been imposed but SCC have not been able to confirm that.
22. The Commissioner noted that the policy stipulates that a decision to apply communications restrictions will be made by the complaints manager with guidance from the SCC Legal Department and with the agreement of the Chief Executive and senior management. The complaints manager told the Commissioner that she was not aware of any other SCC customers who had been made subject to the policy and that SCC's legal services had not been involved.

23. Having reviewed the evidence from her investigation and having regard for the representations she has received, the Commissioner decided on a balance of probabilities, which is the test she must apply, that the information requested is not held.

Other matters

24. The Commissioner noted that both the refusal notice to the complainant and the subsequent internal review had been issued by the same member of its staff; something which the Commissioner does not regard as good practice. SCC told the Commissioner that this had happened in error and was not its usual practice. SCC added that a further response which had been sent out later had been signed by another SCC officer.

Right of appeal

25. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Dr Roy Wernham
Senior Case Officer

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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