

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2019

Public Authority: North Lincolnshire Council
Address: Civic Centre
Ashby Road
Scunthorpe
South Humberside
DN16 1AB

Decision (including any steps ordered)

1. The complainant has requested information about the number of Licensing officers with speeding offences. North Lincolnshire Council ("the Council") denied holding the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information and has therefore complied with its duties under section 1 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 15 April 2019 the complainant requested information of the following description:
"How many licencing officer's and staff have been court speeding.
"How many have points on the driving licence.
"The names who has been court speeding." [sic]
5. On 16 May 2019, the Council responded. It denied holding any information within the scope of the request.

6. The complainant requested an internal review on 17 May 2019. The Council sent the outcome of its internal review on 27 July 2019. The Council upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 15 July 2019 to complain about the way his request for information had been handled. At that point, the Council had not completed its internal review and thus the Commissioner's intervention was necessary to bring this about.
8. Having received the outcome of the internal review, the complainant then asked the Commissioner to investigate whether further information was held.
9. The scope of the analysis that follows is to make an assessment whether or not, on the balance of probabilities, the Council holds information within the scope of the request.

Reasons for decision

Section 1 (Held/Not Held)

10. Section 1(1) of the 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.*
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether 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.

The complainant's position

13. The complainant was adamant that the Council held the requested information. He suggested that there was a legal requirement for the Council to acquire and retain this information – although he was unable to suggest which area of legislation might contain this requirement.

The Council's position

14. In response to the Commissioner's enquiries, the Council explained that all its employees who used council vehicles, or who used their own vehicles for council purposes would need to have their licences checked periodically.
15. However, in addition to checking that they have valid MOT and insurance certificates, the Council only checked whether an employee had a valid driving licence and did not have any pending convictions which would cause them to lose their licence.
16. Checks were done by employees submitting a self-declaration to the effect that that they had all the appropriate documentation and were not subject to pending convictions which would cause their driving licence to be revoked. However, the Council noted that employees who failed to submit a declaration or who failed to provide their documents for inspection on request could be subject to disciplinary proceedings.
17. The Council confirmed that it had a responsibility, under the Health and Safety at Work Act 1974, to take appropriate steps to ensure the safety of its employees – but it noted that this did not extend to recording information of the type the complainant was seeking and that there was no business need to retain such information.

The Commissioner's view

18. Having considered the Council's submissions, the Commissioner considers that it does not hold information within the scope of the complainant's request.
19. Whilst the Commissioner accepts that the Council would have a business need to know that any employees using council-owned vehicles, or their own vehicle for council purposes, had a valid driving licence, she does not accept that it would need to know which employees had speeding points (or indeed any other type of motoring offence) on their licences.

20. The Commissioner was provided with a copy of the declaration form that employees must submit and has noted that it does not require an employee to provide details of any motoring offences – unless they had a pending conviction which would cause them to be disqualified from driving.
21. The fact that managers within the Council may become *aware* that an employee has received a speeding penalty – either by inspecting that employee's driving licence or via hearsay – does not mean that the Council *holds* the information for the purposes of the Act. The information must be held in recorded form. The Commissioner can see no reason why the Council would need to keep a record of the type of information which the complainant has sought.
22. On the balance of probabilities, the Commissioner is therefore satisfied that the Council does not hold the requested information. As it informed the complainant that it did not hold the information within 20 working days of the request been made, the Council has therefore complied with its section 1 duties.

Right of appeal

23. 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

24. 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.
25. 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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**