

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2020

Public Authority: North Tyneside Council
Address: The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY

Decision (including any steps ordered)

1. The complainant requested from North Tyneside Council (the Council) information relating to policy and guidance documents, and training materials for staff dealing with Penalty Charge Notices (PCNs). The Council stated that it did not hold the information requested.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any recorded information falling within the scope of the request. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 19 February 2019 the complainant wrote to the Council and requested information in the following terms:

"Query 1: I would like to request a copy of all policy and guidance documents that are available to council officers who are tasked with considering the question of whether a Penalty Charge Notice should be cancelled.

For the avoidance of doubt, this request covers any policy that is published or otherwise publicly available, plus any internal council guidance or policy that is only available internally to council staff (such as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN).

Query 2: Please could you also disclose the training material that is used to train the council officers who make decisions regarding the cancellation of PCNs. This should cover only training material that is directly relevant to their role in deciding whether a council PCN should be cancelled, any other training material (such as generic council training, health and safety, GDPR or training related to other roles or functions) is not within the scope of this request.

Again for the avoidance of doubt, both queries above cover policies and training material available to council officers who deal with informal representations, formal representations and appeals to the tribunal."

4. The Council responded and confirmed that it did not hold policy, guidance and training documents. The Council explained to the complainant about an external software letter generation product which is used by the team that consider appeals to PCNs.
5. On 8 May 2019 the Council provided the complainant with an explanation relating to its external software system.
6. On the same day the complainant made a follow-up FOI request of the following description:

"I now make a new FOI request, specifically I ask that "the policies that were configured into the software at the time of implementation" be provided to me. I understand that you do not have copies of the tick box exercise that was undertaken at the time, but it should be possible to extract the policy configuration from the software."
7. On 31 May 2019 the Council responded and informed the complainant that it was not possible for the Council to extract configuration data from the system. It advised the complainant that the Council could assist him on guidance on a specific enforcement/appeals policy or that he could contact the parking control team directly.
8. On the same day the complainant requested an internal review as he considered the Council's response unclear. He considered that the Council had not provided a response which complied with the provisions of the FOIA.
9. On 30 July 2019 the Council provided its internal review outcome and responded to the points raised by the complainant. The Council said that its previous response should have been clearer. It now stated that the information requested was not held and acknowledged that a clearer explanation as to why the requested information was not held should have been provided to the complainant.

Scope of the case

10. The complainant contacted the Commissioner on 30 July 2019 to complain about the way his request for information of 8 May 2019 had been handled.
11. The complainant brought to the Commissioner's attention that he believed that some of the information he requested is built into the Response Master software. He said that he considered that there *"does not appear to be a real impediment to extracting and providing the information."* Therefore, the complainant was of the view that the recorded information he requested is held by the Council.
12. The following analysis focuses on whether the Council holds any recorded information within the scope of the complainant's request of 8 May 2019.

Reasons for decision

Section 1 – information held/not held

13. Section 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 the information within the scope of the request,

b) and if so, to have that information communicated to him."

14. In cases where there is some dispute between the public authority and a complainant as to whether the information requested was held by the 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 public authority to check that the information was not held and any other reasons offered by it to explain why it was not held.
15. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

The complainant's position

16. The complainant highlighted to the Commissioner an internal review outcome by a different public authority, and a subsequent decision notice¹ served by the Commissioner which required a disclosure of the information. The complainant argued that the other public authority also used the Response Master software developed by Barbour Logic, which is what the information he is requesting relates to in this case. The complainant believed that the outcome of that previous case indicated that the information he sought in this case was held by the Council.
17. However, the Commissioner reviews each case individually. She will consider all of the circumstances of the case and submissions from both parties before making her decision on whether or not the public authority handled the request in accordance with the FOIA. Therefore, because another public authority has disclosed information in response to a similar request, does not necessarily have a direct bearing on the outcome of this case.

The Council's position

18. The Commissioner asked the Council a series of questions to determine whether any relevant recorded information was held. This included questions about the searches the Council conducted to locate the requested information and she asked for details about the possible deletion or destruction of information which might be relevant to the complainant's request. The Commissioner also asked the Council to provide any general explanations or arguments as to why it should not be expected to hold information relating to the request.
19. The Council explained that its previous Parking Enforcement Guidelines document was produced by the Council's Parking and Regulation Manager prior to the Council purchasing the Barbour Logic Response Master Software system. It said that the document was discontinued after this date and any hard copies distributed to the Appeals Officers were destroyed to ensure that there were no discrepancies between the historic guidance document and the current information configuration within the software system.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616924/fs50840320.pdf>

20. The Council confirmed that an electronic search of all the Parking Control staff's folders was undertaken to confirm that historic copies of the documentation were not retained. The Council said that staff were also asked if they had retained any hard copies of the historical document in their own storage areas, and the staff confirmed that they had not.
21. The Council explained that the document was initially produced as a guidance document. It said that a hard copy would have been held by each of the Appeals Officers, and an electronic Word copy of the document held by the Parking & Regulation Manager to update and distribute as required. The Council reported that a PDF version of the document was also published on the Parking Control pages of the Council website. It confirmed that all copies were destroyed or deleted when the Council purchased the Barbour Logic Response Master Software system.
22. With regards to any recorded information ever held relevant to the scope of the request that had since been deleted or destroyed, the Council confirmed that there had been. It reported that a copy of the previous Parking Enforcement guidelines document was published on the Council website in PDF format, and that this was prior to the Council purchasing the Barbour Logic Response Master software system. The Council stated that an electronic Word version of the documents was also held by the Parking & Regulation Manager prior to this date, in order to update and distribute as required.
23. The Council reiterated that the requested information is not held. It said that the Council first entered into a contract with Barbour Logic for the provision of Response Master on 1 December 2010. The Council explained that any copies of the redundant Enforcement Guidelines were destroyed and removed from the website during the weeks following the system going live, and that this was when *"it was confident that it was stable and working as expected"*.
24. The Council said that the previous Parking Enforcement Guidelines that were published on its website, had been simply a guidance document and not a formal published Council policy document.

25. The Council clarified that *"The guidelines were intended to provide information to any interested parties about circumstances that regularly occur in letter, representations or appeals to the Adjudicators, although it was not a definitive list of all situations. The document was never intended as a guide to processing Penalty Charge Notices or appeals, nor was it intended to replace or replicate information contained with the traffic regulations order associated with the waiting, loading or permitted parking restrictions or the Operational or Statutory Guidelines relating to Civil Parking Enforcement that were published by the Department for Transport."*
26. The Council stated that the information had no relevance to any other service of the Council. It added that the Barbour Logic Response Master software system replaces and, where appropriate, replicates any guidance that was included in the previous document. The Council said that the requested information *"is simply no longer held by the Authority since the introduction of the third-party supplier in December 2010."*

The Commissioner's view

27. It is clear that the complainant is not satisfied with the Council's explanation relating to the information held within its external software system, and he does not believe that the response is compliant, but that does not amount to a reason as to why the information should be held.
28. The Commissioner has sought to determine whether the Council holds the information within the scope of the complainant's request. To make a determination the Commissioner applies the civil test which requires her to consider the request in terms of "the balance of possibilities." This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
29. The Commissioner has investigated whether the Council holds recorded information relevant to the request by asking the Council questions about the searches it has made to locate the information which the complainant seeks, and questions about the possible deletion or destruction of information which might be relevant to the request. She also asked the Council to confirm whether or not information falling within the scope of the request is held on the Council's Barbour Logic Response Master software system.

30. The Council advised the Commissioner that it carried out searches of all of its existing paper sources and relevant electronic records, in order to locate the information specified by the complainant in his request. The Council also confirmed that the requested information is not held on the Response Master software system. It said that the relevant team had checked with Parking Control on a number of occasions and that each time it was reported that the information is not held.
31. Having considered the Council's response and on the basis of the evidence provided to her, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold the requested information.

Right of appeal

32. 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

33. 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.
34. 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

Ben Tomes
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