

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

### **Decision notice**

**Date:** 7 February 2020

**Public Authority:** North Yorkshire County Council

**Address:** County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

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

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1. The complainant requested from North Yorkshire County Council (the Council) information in relation to savings achieved as stated in "Total Transport: feasibility report & pilot review". The Council provided some information which was considered to be held within the scope of the request.
2. The Commissioner's decision is that the Council, on the balance of probabilities, held no further recorded information within the scope of the remaining part of the request.
3. However, the Commissioner does find that the Council breached section 10 by not disclosing the requested information within the statutory timeframe.
4. The Commissioner does not require the Council to take any steps as a result of this decision notice.

## Request and response

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5. On 5 July 2019 the complainant wrote to the Council and requested information of the following description:
  - "1. Clarification as to how the £200,000 savings were achieved, whether all of those savings were retained by the CCG and if not with which organisations were the savings shared.*
  - 2. Whether any further such work has been undertaken since and if so whether that involved consideration of integrating non-emergency patient transport services with other forms of public passenger transport in the North Yorkshire area."*
6. The Council provided the complainant with a response on 2 August 2019. In relation to the first part of the request, it stated:

*"The Council holds no information other than the information reported in the DfT published 'Total Transport: feasibility report & pilot review' (as quoted in your request p13 para 2.6) NYCC holds no further information on the management of CCG funds or savings."*
7. Regarding the second part of the request, the Council stated:

*"No further work has been undertaken in relation to integrating non-emergency patient transport services with other forms of public passenger transport in North Yorkshire."*
8. Remaining dissatisfied, on 9 August 2019 the complainant requested an internal review, explaining why he thought there should be further information held by the Council.
9. The Council provided the complainant with the outcome of its internal review in an undated letter. The complainant later confirmed to the Commissioner that he received the outcome of the internal review on 4 September 2019. In the outcome of its internal review the Council stated that:

*"following a further search for information and your clarification, the County Council does hold information to NYCC's use of funds on the Total Transport Project."*
10. A revised response was sent to the complainant, which included email correspondence on this matter dated 7 April 2017.
11. Later, in November 2019, the Council identified additional information consisting of a report named *"Total Transport pilot schemes: final*

*report*” which should have been disclosed to the complainant. The Council wrote to the complainant once again, providing him with this recently identified information and apologised for omitting to disclose it in its original response.

## Scope of the case

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12. The complainant contacted the Commissioner on 13 September 2019 to complain about the way his request for information had been handled.
13. During the course of the Commissioner’s investigation, the complainant expressed his view that that the Council should have been in possession of further information within the scope of his information request.
14. The scope of the analysis that follows is to determine whether or not, on the balance of probabilities, the Council held further information to what was already disclosed, within the scope of the request at the time the request was submitted.

## Reasons for decision

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### Section 1 – Determining whether further information is held

15. 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 information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.”*

16. In this case, the Council asserted that it does not hold further information in recorded form within the scope of the request, to that which was disclosed over a number of occasions. The complainant, however, stated that he remained dissatisfied and argued that further information should have been held.
17. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner

will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

18. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the Council to check whether the information is held and any other reasons offered by the Council to explain why the information is not held. In addition, she will consider any reason why it is inherently likely or unlikely that information is not held.
19. 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 proof of the balance of probabilities.
20. As part of her investigation, the Commissioner wrote to the Council requesting submissions in respect of a number of questions relating to the allegations raised by the complainant. The Commissioner's questions were focused on the Council's endeavours in providing the requested information to the complainant, its searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.
21. In its response to the Commissioner, the Council admitted that as a consequence of inadequate searches in its initial response and in the outcome of its internal review, it incorrectly stated that it held no information.
22. The Council stated that in its efforts to identify relevant information to the complainant's request, it conducted searches which included email archives, along with electronic file storage held on the Council's computer network. The Council explained that documents related to the specific topic of the request "Total Transport Project" (TTP) were stored together in an electronic folder which was set up when the project commenced. *"In addition, staff involved with the project were asked for help and guidance on where any relevant information may be located."*
23. The Council explained that upon receiving the present information request, it approached the lead staff member for the TTP, who in the meantime had moved to another role within the Council, for advice and guidance. This official was believed to be most likely to be aware of information within the scope of the complainant's request, as *"he had extensive knowledge of the project and had been involved in the detail and therefore the information held on the project was well known to him."* In addition, the Project Sponsor who became involved in the project in March 2015 was asked to check his personal files for the purpose of identifying any relevant information.

24. The Council asserted that confusion was caused due to the existence of two similarly named documents: "*DfT Total Transport Feasibility Report and Pilot review*" and "*DfT Total Transport Pilot Schemes: final report*". This led the officer preparing the response to the complainant's information request to omit the information that was later disclosed to the complainant.
25. The Council explained that the searches were conducted electronically since all the information held relevant to the request was in digital format.
26. The Council confirmed that no information falling within the scope of the request was deleted or destroyed.
27. Regarding its documents and records management policy, the Council explained that the relevant documents were the Council's Document and Records Management Policy and the Council's Retention and Disposal Schedule. The Council provided the Commissioner with copies of these documents. The Council stated that "*Section 3.9.1 of the attached Council's retention schedule states that reports to government should be retained for 7 years from closure. As this project was undertaken with DfT grant fund documents will be kept in line with this.*"
28. In relation to the business purpose of retaining information falling within the scope of the request, the Council stated that "*the information is held for evidential and accountability purposes.*"
29. The Council stated that there is no statutory requirement for retention of the information falling within the scope of the request.

### ***The Commissioner's view***

30. The Commissioner has examined the submissions of both parties. She has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
31. Having considered the scope of the request, the Commissioner is satisfied that, although not in a timely fashion, the Council carried out necessary searches to identify the requested information that was held at the time of the request.
32. In the absence of evidence to the contrary, the Commissioner is satisfied that the Council has provided the complainant with all of the relevant information which it held falling within the scope of the request.

33. Therefore, the Commissioner is of the view that, on the balance of probabilities, the Council did not hold further information within the scope of the request.

### **Section 10 - Time for compliance**

34. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
35. As explained above, the Council stated that when it responded to the complainant's first request of 2 August 2019, it provided him with the information which it believed was held. However, when the complainant asked the Council to review how it handled his information requests the Council discovered that at the time of the first request, it held further information to what was initially provided.
36. In addition, further information was identified after the complainant submitted the complaint to the Commissioner.
37. As the information request was submitted by the complainant on 5 July 2019 and the requested information was not fully disclosed until November 2019, it is evident that the Council failed to comply with the statutory deadline of 20 working days provided in section 10 of the FOIA.

### **Other matters**

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38. Although not forming part of the formal decision notice the Commissioner uses this section to highlight issues that have arisen during her investigation.
39. Whilst the Commissioner has found above that the Council holds no further relevant information, it remains the case that it stated incorrectly at both the initial response and internal review stages that it did not hold any further information. Had the Council identified the relevant information it held at either of the earlier opportunities it had to do so, this complaint to the Commissioner may have been avoided.
40. The Council must ensure that its request handling procedures are fit for the purpose in identifying all the relevant recorded information it holds whenever it receives an information request.

## Right of appeal

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41. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**