

The Freedom of Information Act 2000 (the FOIA)

Decision notice

Date: 12 August 2021

Public Authority: **South Somerset District Council**
Council Offices
Brympton Way
Yeovil Somerset,
BA202HT
dpo@southsomerset.gov.uk

Decision (including any steps ordered)

1. The complainant requested various information from South Somerset District Council in relation to the Future of Local Government in Somerset project.
2. South Somerset District Council disclosed all the information it claimed to hold based on its interpretation of the request. Subsequently, the complainant obtained additional information from another public authority which he believed had been intentionally withheld by South Somerset District Council. Although South Somerset District Council claimed not to hold this it subsequently transpired, following the Commissioner's investigation, that further information was held. This was disclosed as part of her investigation.
3. The Commissioner's decision is that South Somerset District Council has breached Section 10(1) of the FOIA (time for compliance with request) by failing to respond to the request within 20 working days.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 19 August 2019 the complainant wrote to South Somerset District Council (the Council) and requested information in the following terms:

'SSDC [South Somerset District Council] is the coordinating authority for the Future of Local Gov in Somerset (FLoGiS) project.

<https://www.southsomerset.gov.uk/your-co>

SSDC will hold recorded information on FLoGiS for all Somerset Councils who are all public bodies and fall within the FOI Act.

Q1. Please supply copies of the Governance and oversight arrangements, project boards, methodology, audit etc.

Q2. Please supply copies of all meeting notes (with agendas, minutes etc) for all FLoGiS meetings.

Q3. Please supply the latest copy of the FLoGiS Risk Log.

Q4. Please supply copies of all option recommendations, progress reports etc whether in final or draft form and any outcomes as to the recommended option?

Q5. Please supply a breakdown of all costs and payments from the inception of FLoGiS to the current date showing:

a) the total payments to date broken down by each supplier/contracted party/consultancy;

b) the total costs of project management and oversight to date etc;

Q6. Please supply information on the funding contributions to FLoGiS by each participating Council to date.

Q7. Please supply the latest estimates for FLoGiS project costs to completion and the date for a likely completion to preferred option[s]'.

6. In the absence of a response, the complainant chased the Council on a number of occasions in September and October 2019.
7. The Council responded on 17 October 2019. It stated that it was not the coordinating authority and there was no 'project'. However, it added there was a 'discussion' launched by its Leader in May 2018. The Council disclosed information in relation to questions 5 and 6 of the request but said that none was held in relation to the remaining questions.
8. On 22 October 2019 the complainant requested an internal review.
9. Following an internal review, the Council wrote to the complainant on 5 December 2019. It clarified some of the terminology used in its earlier response and said it had disclosed all the information it held.

Scope of the case

10. The complainant contacted the Commissioner on 27 January 2020 to complain about the way his request for information had been handled. In particular, he said he was unhappy with the delays by the Council in responding to his initial and internal review requests, the lack or adequacy of records held and the apparent attempts to unfairly withhold or deliberately conceal the information requested.
11. The Commissioner wrote to the complainant on 3 April 2020 noting he had now received the main information sought and requested, not directly from the Council, but from another public authority. She therefore offered to contact the Council for an explanation as to why this information was not disclosed directly and also the reason for the delays in responding.
12. The complainant responded the same day saying his main concern was the belief the Council had deliberately denied the existence of or deliberately withheld the requested information in breach of the FOIA. He added that timeliness was a secondary issue.
13. Subsequently, the complainant identified the information requested which he believed the Council held at the time of his request but deliberately withheld.
14. The Commissioner then referred the matter to her Criminal Investigations Team (CRT) in April 2020 who after considering all the documents and correspondence concluded there was insufficient evidence to support a criminal investigation that the Council intentionally blocked or concealed the requested information.
15. The CRT subsequently reconsidered all the papers in June 2020 at the complainant's request but maintained their position there was insufficient evidence to bring a Section 77 prosecution that the Council acted with criminal intent.
16. Although the complainant accepted some of the information in his request was disclosed or not held on a balance of probabilities, he was firmly on the belief that the remaining was held and intentionally withheld, blocked or concealed.
17. Between April 2020 and May 2021 the Commissioner corresponded extensively with the Council in relation to this outstanding information requesting details of all the searches and enquires it had carried out to identify and locate it.

18. Due a number of issues including staff absences and shortages the Council eventually issued a detailed response in May 2021 following extensive input from its Chief Executive in which it provided the Commissioner with details of all the searches and enquiries it carried out together all relevant information falling within the scope of the complainant's request.
19. It was apparent to Commissioner the Council had interpreted the request too narrowly and that some of the information disclosed to her would have fallen within its scope and therefore should have been disclosed to the complainant, or withheld under the FOIA if applicable.
20. On 10 June 2021 the Commissioner provided the complainant with a copy of the Council's detailed response together with a list of the documents disclosed, some of which pre-dated his request and therefore arguably should have been disclosed on a reasonable interpretation of it. Other documents post-dated the request and therefore fell outside its scope.
21. The complainant responded on 15 June 2021 requesting the Commissioner proceed with a Decision Notice finding the Council had breached the FOIA. He also expressed concern at the quality and adequacy of the Council's record keeping and retention practices and policies.
22. As the complainant accepts he has now received the information he requires falling within the scope of his request, the ambit of the Commissioner's investigation will be limited to any intentional blocking or concealing of information by the Council and the timeliness of its responses under the FOIA.

Reasons for decision

Sections 1 and 10 of the FOIA

23. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
24. Section 10(1) of the FOIA provides that a public authority must comply with Section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
25. The request in this case was submitted on 19 August 2019. However, it was not until 17 October 2019 that the Council provided its substantive response. Further to this, the council did not supply all the information

held within the scope of the request until May 2021, following the Commissioner's investigation.

26. The Commissioner therefore finds that WYP breached Section 10(1) of the FOIA by failing to comply with Section 1(1) within the statutory time period of twenty working days.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Internal reviews – responding to information and internal review requests

28. The FOIA does not require an authority to have a review procedure in place. However both the Code of Practice made under Section 45 of the FOIA (the "Code") and the Commissioner recommend it is good practice to have one.
29. Paragraph 5.1 of the Code recommends that "It is best practice for each public authority to have a procedure in place for dealing with disputes about its handling of requests for information. These disputes will usually be dealt with as a request for an "internal review" of the original decision. Public authorities should distinguish between a request for an internal review, which seeks to challenge either the outcome or the process of the handling of the initial response, and a general complaint, which should be handled as general correspondence."
30. 5.2 of the Code states "Public authorities are obliged, under section 17(7) of the Act, when responding to a request for information, to notify applicants of whether they have an internal review process and, if they do, to set out the details of their review procedures, including details of how applicants request an internal review. They should also inform the applicant of their right to complain to the Information Commissioner under Section 50 if they are still dissatisfied following the outcome of the public authority's internal review."
31. Although there is no statutory time limit for carrying out a review, the Commissioner would expect a public authority to do so within twenty working days or in exceptional circumstances, forty working days.
32. In this case, the Council responded to the complainant's initial request on 17 October 2019 but did not mention its internal review procedure. Furthermore, in its internal review response dated 5 December 2019 the Council did not make reference to the complainant's right to refer the

matter to the Information Commissioner's Office. The time taken to respond was in excess of 20 working days but less than forty.

Section 77 issues

33. Paragraph 1.13 of the Code states "Public authorities should make sure that their staff are aware that under Section 77 of the Act it is a criminal offence to alter, deface, block, erase, destroy or conceal any information held by the public authority with the intention of preventing disclosure following a request under the Act for the information".
34. The Commissioner would like to take this opportunity to remind the Council of the Code of Practice recommendations particularly those in relation to internal reviews and Section 77 of the FOIA.

Section 46 – records management code of practice

35. The FOIA is principally concerned with the provision of information in response to a request. However, it follows that the efficient administration of the FOIA is only possible if a good standard of records management is maintained by public authorities. In other words, that a public authority knows what information it holds, and how to find it. Section 46 of the FOIA concerns itself with the provision of a Code of Practice in relation to the management of records.
36. The Records Management Code of Practice provides guidance to all relevant authorities as to the practice which it would, in the opinion of the Secretary of State, be desirable for them to follow in connection with the keeping, management and destruction of their records. It also describes the procedure to be followed for timely and effective review and transfer of public records.
37. The Records Management Code of Practice provides that authorities should have appropriate governance measures in place to ensure they manage information in accordance with the Code.
38. The complainant has expressed concern regarding the adequacy and quality of the Council's records management, retention and disposal policy and the training and support offered to it staff in relation to it.
39. The Commissioner would like to remind the Council of the importance and benefit of having adequate records management, retention and disposal policies with sufficient senior oversight, and the necessity of making sure staff are aware of the policies and what is required to apply and implement them.

Right of appeal

40. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.

42. 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

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