

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2024

Public Authority: Royal Borough of Kingston upon Thames
Address: Guildhall 2
High Street
Kingston upon Thames
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kingston upon Thames (the Council), in relation to a Councillor's email to other Councillors regarding a ceasefire statement. The Council advised that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold any information at the time of the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 19 November 2023, the complainant wrote to the Council in the following terms:

“Please can you provide a copy of all information and correspondence held in relation to the councillors for a ceasefire statement as being organised by councillor James Giles.”

5. The Council responded on 1 December 2023 and stated:

“There is no information or correspondence held by the Council.”

6. The complainant requested an internal review on 1 December 2023 and stated the following argument to support their request:

“Please can I request an internal review as it is public knowledge that correspondence and information relating to the below is held by the council.”

7. The Council responded on 14 December 2023 and upheld its original response. It further explained that the Councillor was not acting in an official capacity and there was no input or involvement from the Council.

Reasons for decision

8. This reasoning covers whether the Council is correct when it says that it did not hold any information at the time of the request.

The complainant's position

9. The complainant considers the Council should hold information within the scope of their request.
10. The complainant argued that the Council released a statement before they had submitted their request saying that it was currently looking into the details of the matter and were unable to comment at that stage. They went on to say that the Council claimed the Councillor was acting independently but the letter was signed off with the Councillor's official Council signature.

The Council's position

11. In its submissions to the Commissioner, the Council maintained its position that it did not hold any information at the time of the request. It included a timeline of events from when the Councillor's communication

was sent and the receipt of the complainant's request including the Council's press release.

12. The Council reiterated that: "'Councillors for a Ceasefire' was a private, Councillor led initiative. The Councillor was not acting in an official Council capacity and therefore any information created by him would not be subject to FOI. There was no input or involvement from the Council in the 'Councillors for a Ceasefire' mass email."

The Commissioner's position

13. The Commissioner notes that the complainant considers the Council should hold information within the scope of the request as they believe the information was communicated using an official Council email address.
14. The Commissioner is satisfied that the Council has adequately explained why it did not hold any information. The Council gave a timeline of events to help clarify its response as follows:

Councillor's email sent at 11:32 Sunday 19 November.

Request submitted at 22:21 on Sunday 19 November.

Press Statement at 13:27 on Monday 20 November.

Request logged and acknowledged 14:50 on Monday 20 November.

15. It is clear to the Commissioner that, at the time of the request, the Council would not hold any information as an investigation had not started.
16. He also considers that when a Councillor is acting in a separate capacity away from their normal day to day Council business, this would be considered as independent from the Council's requirement to hold information for the purposes of FOIA.
17. The Commissioner is not required to prove beyond doubt that the Council do or do not hold information but can only make a decision based on the civil standard of the "balance of probabilities" that information within the scope of the request is more likely than not held.
18. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council did not hold any information at the time of the request.

Right of appeal

19. 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

20. 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.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF