

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 18 February 2013

Public Authority: North Somerset Council
Address: Town Hall
Walliscote Grove Road
Weston-Super-Mare
BS23 1UJ

Decision (including any steps ordered)

1. The complainant requested all records held by North Somerset Council in relation to information security incidents. The Council initially provided an edited version of the information it held, but provided all the requested information following an internal review. The Commissioner finds that the Council ought to have provided the complainant with the requested information in its original response to his request. However as the Council has now disclosed the information the Commissioner requires no steps to be taken.

Request and response

2. On 20 February 2012, the complainant requested the following information from the Council:
"Please supply, under the Freedom of Information Act, all records you have of information security or data protection breaches, records of possible or near-breaches and records of noted incidents that relate to any information security and data protection related issues in North Somerset District Council, since 1/1/2011. Please take a very broad definition of such records. Please include the information you hold on the breach in full, excluding names or other personal information. A spreadsheet is preferred."
3. The Council responded on 23 April 2012. The Council apologised for the delay and provided information to the complainant in response to his request, stating that it was providing the requested information.

4. The complainant wrote to the Council on 26 April 2012 to advise that he had tried to compare the information provided with similar information provided by the Council to a third party, "Big Brother Watch", which had been published by Big Brother Watch in November 2011. The complainant reminded the Council that he had asked for the records in full rather than a summary and asked the Council to provide the information he had requested. The complainant also made a request for the information provided to Big Brother Watch by the Council.
5. On 3 May 2012 the Council provided the complainant with the information it had previously disclosed to Big Brother Watch.
6. Following an exchange of emails regarding clarification, the Council acknowledged on 18 May 2012 that the complainant's request of 20 February 2012 was for a copy of its central master record of all incidents.
7. On 19 June 2012 the Council advised the complainant that it had decided to treat his email of 26 April 2012 as a request for an internal review. The Council had now completed the review and provided the complainant with a copy of its central record as requested. The Council advised that the names and job titles of Council employees had been withheld under section 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 30 June 2012 to complain about the way his request for information had been handled. Specifically the complainant alleged that the Council deliberately altered the information provided to him and failed to provide him with the information he was entitled to receive in response to his request. The complainant did not suggest the Council held any further information which had not been disclosed to him. Nor did the complainant raise any issue about the information withheld under section 40(2).
9. The complainant also raised other issues about the Council which do not fall within the scope of a section 50 complaint. These issues are dealt with in Other Matters as they are not requirements of Part I of the FOIA.
10. The focus of the Commissioner's investigation was to consider whether the Council complied with section 1 of the FOI, the duty to confirm or deny that information is held, and to communicate information to the applicant within the time for compliance.
11. During the course of the Commissioner's investigation the complainant made two further requests to the Council. The first request, submitted

on 10 October 2012, was for information held by the Council relating to the handling of his original request. The second request, submitted on 26 November 2012, was for information held by the Council relating to the Commissioner's investigation.

Reasons for decision

Section 1: duty to respond to information requests

Section 10(1): time for compliance

Section 17(1): refusal notice

12. Section 1(1)(a) of the FOIA requires that a public authority confirm or deny to the complainant that the requested information is held, unless an exemption from this duty applies. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
13. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than twenty working days after the date of receipt of the request.
14. Section 17(1) requires that a public authority wishing to rely on an exemption must issue a refusal notice within the time for compliance.
15. The complainant maintained that he had made a clear request for the information he wished to receive. Therefore the complainant was of the view that the Council had acted deliberately in not providing the requested information until he requested an internal review.
16. On 17 September 2012 the Commissioner asked the Council to explain how it had handled the complainant's request. The Commissioner noted that the complainant's request clearly stated that he wanted all records, rather than a summary of information, and had asked that the Council adopt a broad interpretation. The Commissioner asked the Council to explain why it did not provide all of the requested information until after the internal review was conducted. The Commissioner further asked the Council to provide any records it held which would demonstrate the internal decision making process, including internal emails and correspondence.
17. The Council responded to the Commissioner on 4 October 2012. The Council advised the Commissioner that there had been some "internal discussion" about the extent of the complainant's response. Despite the Commissioner having explicitly requested copies of internal

correspondence, the Council did not provide the Commissioner with any records of these discussions. The Commissioner is disappointed that the Council did not properly respond to his enquiries, as this delayed the conclusion of the investigation.

18. On 25 November 2012 the complainant provided the Commissioner with three pieces of information which he had received in response to his request of 10 October 2012 (see paragraph 11 above). These are internal emails between the Council's head of legal services and the head of audit, discussing how to respond to the complainant's original request.
19. On 14 December 2012 the Commissioner asked the Council to explain why it had not provided him with the internal correspondence as he had originally requested. The Commissioner referred to the complainant's further requests of 10 October 2012 and 26 November 2012 and asked that the Council provide him with copies of its responses.
20. The Council responded to the Council on 20 December 2012, providing a large amount of information. This included the emails obtained by the complainant (see paragraph 16 above) and other internal correspondence which demonstrated how the Council responded, not only to the complainant's request, but also to the Commissioner's enquiries.
21. The Commissioner finds that the complainant's request was unambiguous, and the Council has failed to provide a satisfactory explanation as to why it did not follow the wording of the request. This is discussed further at Other Matters below.
22. In terms of compliance with Part 1 of the FOIA, the Commissioner finds that the Council ought to have provided the complainant with the requested information within the time for compliance, ie no later than twenty working days following receipt of the request. The Council did provide some of the requested information on 23 April 2012, but this in itself was more than 40 working days after the date of receipt. In any event the Council did not provide of the requested information to the complainant until 19 June 2012. Therefore the Commissioner finds that the Council failed to comply with section 1(1)(b) and section 10(1) of the FOIA.
23. As the refusal notice issued by the Council on 19 June 2012 was outside the time for compliance, the Commissioner finds that the Council also failed to comply with section 17(1).

Other matters

24. The complainant expressed his view that there were grounds for the Commissioner to conduct an investigation under section 77 of the FOIA. The complainant alleged that the Council had effectively concealed the requested information, or at least altered the information provided to him, until after the internal review was conducted. The complainant pointed out that this discrepancy only became apparent because he compared the information provided to him by the Council with information published by Big Brother Watch. Had the complainant not been able to make this comparison he would have been unaware that his request had not been fully answered.
25. Having carefully considered the correspondence provided by the Council the Commissioner finds that Council officials did discuss the interpretation of the complainant's request of 20 February 2012. Officials expressed differing views as to how the request should be interpreted, and one pointed out that the request was for "all the records you hold". However there is no clear explanation as to why the Council decided to provide a summary, rather than following the wording of the request. The Commissioner also accepts the complainant's concern that he was not explicitly advised that the Council had chosen not to provide all the requested information.
26. In any event, if the Council had any queries about the correct interpretation of the request, it ought to have contacted the complainant to clarify what information he wanted. The Commissioner notes that the Council did in fact seek clarification from the complainant following his email of 26 April 2012.
27. The Commissioner has carefully considered the information provided by the Council and information provided by the complainant. In addition the Commissioner notes that the Council did disclose all the requested information to the complainant following the internal review, and did so before the Commissioner's investigation. For these reasons the Commissioner concludes that there is insufficient evidence to pursue a criminal investigation.
28. However the Commissioner remains of the view that the Council has failed to provide an adequate explanation as to why it acted in the way it did. The Commissioner acknowledges that the complainant felt misled by the Council's initial response.
29. The Commissioner also wishes to note that his investigation was not facilitated by the Council's failure to provide the information requested on 17 September 2012. Correspondence subsequently provided

indicated that the Council had treated the Commissioner's enquiry in a similar manner to the complainant's request. The Commissioner clearly and specifically asked the Council to provide records of its internal decision making, yet the Council took the conscious decision to provide a summary. The Commissioner is of the view that this is unacceptable, and would expect that the Council will engage more effectively with him if further complaints are received.

Right of appeal

30. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Alexander Ganotis
Group Manager – Complaints Resolution
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