

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2014

Public Authority: North East Lincolnshire Council
Address: Civic Offices
Knoll Street
Cleethorpes
DN35 8LN

Decision (including any steps ordered)

1. The complainant has requested a copy of a Memorandum of Partnership Understanding (MPU) and to know the role of the executive officer. North East Lincolnshire Council confirmed the role of the officer but stated it did not hold an MPU. The complainant considered that an MPU must be held by the council.
2. The Commissioner's decision is that the council does not hold an MPU in this case.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 4 December 2013, the complainant wrote to the council and requested information in the following terms:

"As NELC has a partnership with Balfour Beatty Workplace I believe the NELC constitution requires that a memorandum of partnership understanding is formulated and kept up to date. Could I please have sight of this document? A template of the document I wish to see is provided within your constitution on pages 379, 380 and 381.

Could I also ask what role your executive officer [name redacted] had in the negotiations that entered NELC into this partnership?"

5. The council acknowledged receipt of the request on the 5 December 2013 and provided its response on the 2 January 2014. It advised the complainant the following:
 - It holds a Partnership Agreement with Balfour Beatty, rather than a Memorandum of Partnership Understanding (MPU).
 - It also advised that the Executive Director of Regeneration was briefed on negotiations, and provided strategic direction.
6. The complainant requested an internal review on 4 January 2014, repeating his request for a copy of the MPU. He advised the council that he cannot find anything in the council constitution that makes reference to a Partnership Agreement being an acceptable substitute for the MPU.
7. The complainant asked if the Partnership Agreement is just another name for the MPU, and if so, could the council provide him a copy.
8. On the 6 January 2014 the council recorded the 4 January 2014 response as a new request. The complainant disputed that this was a new information request. On the same day, the council advised that it would conduct an internal review instead of treating it as a new request.
9. On 21 January 2014, the complainant suggested to the council, as part of its internal review, to refer to Appendix 2 (section 4) of the agenda item 6 relating to partnerships which was represented to the council's audit committee in October 2013. From reading the report, the complainant considered that it appeared members are being told that a memorandum of partnership already exists.
10. The council provided its internal review response on the 18 February 2014. It maintained its original response to the request.

Scope of the case

11. The complainant contacted the Commissioner as he considers that the MPU must exist.
12. The Commissioner considers the scope of the case is to determine if the council holds an MPU.

Reasons for decision

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by

the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

14. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. In this case, to determine if the council holds an MPU he has asked the council to explain the searches it carried out for this information, how the information would be held, and also asked if an MPU and a Partnership Agreement are the same document.
16. The council advised the Commissioner that it did not carry out any searches for the MPU as it was confirmed by the Operation Contract Management and Compliance Specialist that this document does not exist as the council has a Partnership Agreement in place.
17. The council explained to the Commissioner that as the contract manager has managed operational delivery since the outset of the partnership, and was involved with the tendering, negotiation and mobilisation of the partnership agreements that they would have been the most likely to know if the MPU was held.
18. The council confirmed to the Commissioner that if an MPU were held, it would be held in electronic form and physical copies would have been created for signature.
19. The council has confirmed to the Commissioner that an MPU has never been created or held in relation to the Regeneration Partnership, it was a Partnership Agreement for the Regeneration Partnership that was created and is still held by the council.
20. The council has told the Commissioner that an MPU is not another name for the MPU. It explained that a Partnership Agreement does not replace an MPU, it is a different document.
21. The council has stated to the Commissioner that an MPU was not required as the council entered into a contractual relationship with the Partner, which is set out in the Partnership Agreement.
22. The council has also told the Commissioner that it is legally entitled to document contractual, which includes its partnering, arrangements in whatever way it deems appropriate to suit the circumstance of each

case. In some instances, that would result in a formal contract between parties, especially if commercial terms are involved. But in other cases an MPU would be sufficient. In this case and MPU was not used, a Partnership Agreement was.

23. Regarding paragraph 9 above, about appendix 2 point 4 of the Partnership Report, the Commissioner asked why the MPU was talked about if it is not held by the council. The council has advised the Commissioner that the report refers to a number of Partnerships and not specifically the Regeneration Partnership, and so a generic term has been used. Had the report been specifically relating to the Regeneration Partnership then the reference would have been to the Partnership Agreement.
24. Having considered the council's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold an MPU.
25. The Commissioner understands the reasons why the complainant considers one should be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, he cannot require a public authority to create the information under the FOIA.
26. As the Commissioner's decision is that the information is not held, the Commissioner does not require the council to take any steps.

Right of appeal

27. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF