

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

### **Decision notice**

**Date:** 13 October 2014

**Public Authority:** Kent County Council  
**Address:** County Hall  
Maidstone  
Kent  
ME14 1XQ

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

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1. The complainant has requested information on the lessons learned from a complaint investigation. Kent County Council initially provided some information and, during the Commissioner's investigation, it conducted further searches and provided additional information within the scope of the request. The Commissioner's decision is that that, on the balance of probabilities, Kent County Council does not hold any further information. He does not require Kent County Council to take any steps to ensure compliance with the legislation.

#### **Background**

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2. Kent County Council ('the council') provided background information in order to put this matter into context. It said that it had corresponded extensively with the complainant over nearly two years, investigating and responding to his various complaints and questions in relation to a particular school. It said that as a result of that extensive correspondence, the council has provided the complainant with a significant amount of documentation both in response to his specific information requests and generally. It further explained that the complainant is a former senior manager at the council and was also a governor of the school and that he and the council are in disagreement about the actions that the council took, following the misuse of school money to fund a 'leaving do' for the head teacher, which resulted in the resignation of the governing body of the school. The council provided

the Commissioner with various bundles of documentation relevant to the issue to enable the Commissioner to understand the level of transparency it has provided to the complainant.

## **Request and response**

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3. On 17 March 2014, the complainant wrote to the council and requested information in the following terms:

"I am making a request under FOI for the information the council holds on the lessons learned from the complaints investigation you owned which you sent to the complainants on 19th April 2013. You had supplemented it with the learning from the DFE letter to me of 23rd October, which was copied to KCC. You referred to this in your email to me on 14th November, in which you state that "... these are in the process of being, or have been, implemented by the ELS Directorate".

4. The council responded on 17 April 2014. It provided the seven learning points identified in the council report and the four issues identified by the DFE. It also provided a briefing note on the learning notes, the 'Governor's Guidance notes on the Management of School Finances' and the 'School Finance: Policy for issuing a notice of concern and suspending the right for a governing body to have a delegated budget'.
5. The complainant requested an internal review on 7 May 2014 as he believes that further information within the scope of the request must be held.
6. The council provided its internal review response on 6 June 2014. It stated that it does not hold any further information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 13 June 2014 to complain about the way his request for information had been handled. He believes that further information must be held and also complained that the council did not identify which exemptions it had applied and the use of the term 'reliefs' in the council's internal review response.
8. During the Commissioner's investigation, further information within the scope of the request was found. This further information constitutes 12 emails, 1 from July 2013 and 11 from November 2013. The council has confirmed to the Commissioner that this information will be provided to

the complainant. Therefore, these emails are not within the scope of this decision.

9. The Commissioner has considered whether the council holds any information within the scope of the requests.
10. As the council is not applying any exemptions or 'reliefs', the Commissioner has not considered the complaint regarding this.

### **Reasons for decision**

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11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
13. The complainant said that this case arises from complaints to the council regarding the conduct of senior council officers in using statutory powers of intervention, to force the governors of the school to resign, which was then immediately leaked to the press, in order to give a sitting councillor political advantage. He said that the Chief Officer failed to register the complaints but following the intervention of a local MP, the Leader of the Council agreed that the council should investigate. The complainant said that the investigation did not follow good practice but concluded that the officers followed due process. He said that the council's Head of Paid Service then wrote to the complainants to inform them that, if not satisfied, they could take the matter up with the Local Government Ombudsman ('LGO'), which they did, only to be informed, in June 2013, that the LGO had no power to investigate complaints of maladministration by council officers from school governors. He said that the council ignored requests that, in the circumstances, the council set an alternative independent review of the complaints and, as there is no independent review body with the power to investigate complaints of

maladministration, it has been left to the governors to access information held by the council through FOI. The complainant said that this has established no less than sixteen instances of maladministration by the officers. He said that the council's complaints investigation found that due process was followed, in the face of grossly unprofessional and inadequate records which the investigators had chosen to ignore. He explained that the investigation report produced a small number of "lessons learnt" and the complainants asked to be kept informed of the progress made, but this was ignored therefore the complainant made the request for the information the council hold on the progress made on implementing the lessons learnt. He believes that more information must be held than that provided as he had been informed by the council's Chairman of Audit and Governance in November 2013 that he had received an assurance that officers were working on the lessons learnt, and that they should be given time. The complainant believes that this assurance must have been given in writing, and that there must have been instructions from the Head of Paid Service to senior officers in writing, when he allocated the tasks to be undertaken- if not in an action plan, then in a way which could be monitored and scrutinised.

14. The complainant alleges that both the most senior politicians and statutory officers have been determined to cover up colluding in orchestrating the supposed resignation of school governors and they have been helped by their knowledge that the LGO could not investigate a complaint of maladministration. He said that the complaints investigation report was rigged in order to produce the conclusion that both the political and managerial leadership wanted, that due process had been followed by officers and members, but there were a few lessons learned. He said that they were only able to reach this conclusion by concealing the evidence of appalling record keeping, which he believes is because the officers knew they were acting wrongly. He said that the council refused to give the complainants any information on the lessons learned because it wished to sweep the matter under the carpet and prevent any independent scrutiny. He does not believe that the information provided can be the sum total of the activity if the council took the incident very seriously. He also said that, because the most senior officers and members have been so determined to cover it up, it may be that there is nothing in writing but that is not consistent with the statements they have made.
15. The Commissioner enquired as to whether information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but

deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that the complainant believes, as stated in his internal review request, that there must be emails from both April/May 2013 and October/November 2013 evidencing that the lessons learnt have been taken seriously and that work was underway on the lessons learnt and that he believes that the assurance, from the Head of Paid Service to the Chairman of Governance and Audit, that officers were working on the lessons learnt must have been given in writing, as must have been instructions from the Head of Paid Service to senior officers, when he allocated the tasks to be undertaken.

16. The council explained that it carried out a thorough and proportionate search based upon the request it received and said that given the history and weight of correspondence, it believed that the complainant was seeking a substantive update. It said that as an initial search did not reveal anything substantive, it arranged for the Cabinet Minister for Education, as the person who would hold senior officers in the Education Directorate responsible for replying to complaints and implementing any changes to processes, procedures or policy, to send a substantive reply to the information request.
17. The council also explained that it believed that the complainant was interested in the resolution of the matter, as opposed to the management of it, and that it is therefore difficult to recognise and reconcile the original request with the way in which it has been asserted to the Commissioner – i.e. that the assurance from the Head of Paid Service to the Chairman of Audit and Governance, that officers were working on the lessons learnt, must have been given in writing, and that there must have been instructions from the Head of Paid Service to senior officers in writing, when he allocated the tasks to be undertaken – if not in an action plan, then in a way which could be monitored and scrutinised. The council maintains that it has responded fully and reasonably to the actual request. However, given the Commissioner's clarification of what the complainant expected to be held, the council has carried out a further search for the type of correspondence referred to mindful of the guidance provided by the Commissioner in his letter of enquiry<sup>1</sup>.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Free\\_dom\\_of\\_Information/Practical\\_application/determining\\_whether\\_information\\_is\\_held\\_foi\\_eir.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Free_dom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx)

18. The council said that extensive searches of both electronic and paper folders were carried out on the email and filing systems of the key officials involved in the case which covered all equipment held and operated by those officials in the course of their work and explained that council policies prohibit work-related materials being used or held on personal computers. It said that search parameters were expressed very widely using different descriptors and such as '[complainant's first name]', '[complainant's surname]', '[name of school]', 'lessons learnt' and that searches were also carried out in the months where information was likely to have been held. It said that any relevant information would likely be electronic, although some may have been held in hard copy.
  19. The council explained that a search for the type of information requested is not straightforward as senior officers do not currently have the benefit of a document management system to retain and catalogue historic correspondence. It said that it is important to note that the type of information requested by the complainant, in the interpretation provided by the Commissioner, is transactional and routine. It said that such information was simply procedural and not viewed as important in any way and it is neither practical nor proportionate to expect that council officers would store methodically or retain information of that type. It said that most Directors and Corporate Directors receive between 30,000 and 40,000 emails per annum of which approximately two thirds are deleted almost immediately and that officers have a mailbox that is limited in size and the majority of officers have their mailboxes 'cleaned' automatically which removes correspondence that is more than three months old and deletes the content of the recycle bin at the end of the day.
  20. In relation to the Commissioner's enquiries regarding whether information had ever been held but deleted, the council said that information that would have been relevant to the interpretation of that request provided by the Commissioner would have been held but would have been deleted. It said that such emails would have been subsequently intentionally deleted as being no longer required or relevant in accordance with good records management practice long before the time of the request. It said it is not possible to define precisely whether or when such information was held or destroyed since no records exist; however, it is likely that such deletion took place in 2013 once the investigation and all outstanding matters were concluded and the case closed from the council's perspective. It said that some
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emails would have been deleted upon receipt if they were not viewed as important or requiring additional action and that others would have been deleted when auto-archiving rules were applied. It also said that the council's Record Retention Schedule does not have a specific retention period recorded for this type of information and that the retention period would be determined by the individual based on business need and deleted when no longer required. In relation to whether copies of information may have been made and held in other locations, the council said that on intentional deletion, emails are automatically sent into the users 'deleted emails' folder from where they are deleted at the end of the day and that once deleted from the mailbox, emails are retained as part of the council's system backup and recovery process for a period of 3 months, after which time they are permanently deleted.

21. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council said that there are no statutory or business purposes for which the information should be held or retained. It said that, as has previously been made clear to the complainant on several occasions, a number of informal meetings and discussions would have taken place to discuss the subject of the request but these are not meetings that would generate documents notwithstanding the complainant's suggestion that all such discussions should have generated a written record.
22. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He acknowledges the complainant's view that the council has covered up colluding in orchestrating the resignation of school governors, but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
23. Given the background and history of this case, the Commissioner appreciates that the complainant may remain sceptical that further information does not exist. However, in the circumstances, he does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The council has conducted further detailed searches, provided detailed submissions in relation to the deletion of emails and has clearly stated that it does not have any statutory or business requirements to hold the information. The Commissioner appreciates the complainant's view that information stemming from the lessons learnt should be held but acknowledges that there is often a difference between what a complainant believes should be held with what is actually held. He is therefore satisfied that on the balance of probabilities, further information is not held by the council. Accordingly,

he does not consider that there is any evidence of a breach of section 1 of the FOIA.

## **Other matters**

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24. The section 46 Code of Practice sets out the practices which public authorities should follow in relation to the creation, keeping, management and destruction of their records. The Commissioner notes that the complainant believes that the council may not be making appropriate records. He draws the council's attention to the section 46 Code of Practice and expects that its future practice will conform to its recommendations. The section 46 Code of Practice is published online at the following address:

<http://www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf>

## Right of appeal

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25. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

26. 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.
27. 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**  
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**SK9 5AF**