

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 May 2017

**Public Authority:** Northamptonshire County Council

**Address:** County Hall  
Northampton  
NN1 1ED

#### Decision (including any steps ordered)

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1. The complainant has requested information with regards to a complaint he made about Northamptonshire County Council (the council) relating to a family member. The council responded that the information requested was not held.
  2. The Commissioner's decision is that the information was not held for part 4 of the request and that for part 3 of the request, the information was not held at the time the request was made. However during the Commissioner's investigations, she found that information at part 3 of the request became available after the request was made, but prior to the internal review being carried out by the council. This information being the invoice from the investigator showing how much he charged.
  3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
    - Either provide the complaint with the information requested at part 3 of his request or issue a valid refusal notice in accordance with the FOIA.
  4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.
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## Request and response

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5. On 10 August 2016, the complainant wrote to the council, within this correspondence, at parts 3 and 4, he requested the following information:

*"3. We also wish to see a copy of the [name redacted] investigation report into our complaint reference [reference redacted], including any background notes/ information supplied to him to assist his investigation, and also any requests from him for any information to assist the compilation of his report.*

*4. Please also advise of [name redacted] charge to the council for conducting his investigation."*

6. The council acknowledged the request on the 12 August 2016 and responded on the 5 September 2016 advising that no investigation was conducted and therefore the information not held. It did however provide the complainant with its hourly rates for independent investigators to show how much it charges for such things.
7. The complainant contacted the Commissioner on 15 September 2016 to complain about the council's response. The Commissioner advised the complainant that he would need to request the council to firstly carry out an internal review before his complaint could be considered further.
8. The complainant requested an internal review which the council carried out on the 4 November 2016 upholding its original response.

## Scope of the case

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9. The complainant is still not satisfied with the council's response that the requested information is not held.
10. The Commissioner considers the scope of the case is to determine whether the council holds information falling within the scope of the complainant's request.
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## Reasons for decision

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### Section 1 of the FOIA – Information held/ not held

11. 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.
12. 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 must decide whether, on the civil standard of balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
13. By way of background to this case to add some context, the council has told the Commissioner that the complainant made a complaint as he considered that the council had acted unprofessionally in relation to a family member. He has requested a copy of the investigation report and cost of the investigator, which the council stated it does not hold the information for as only initial enquiries took place and no report was created and at the time of the request, there was no charge received from the investigator.
14. The Commissioner has asked the council to provide explanations to support its stance on the information not being held.
15. The council has told the Commissioner that searches were carried out by its complaints team and that any information would be held in electronic format in the council's relevant information management system called Respond. Relevant searches would be in its Respond system, in order to retrieve information relevant to the complaint which the complainant had made and any resulting investigation.
16. The council has advised the Commissioner that the complainant would have received an acknowledgement and a reference number when the complaint was accepted to enable the complaints team to store the relevant information and correspondence to the case. This ensures that the system can be searched accordingly to identify applicable information about the complaint and allow it to manage the complaint process.
17. The council has further explained to the Commissioner that the reason why there is no investigation report is because the third party involved in this complaint is the complainant's family member and she had

withdrawn her authority of consent for her family member to have access to any of her personal information or to advocate for her which would have been crucial for the investigator to look further into the complaint brought by the complainant. Only this family member, or whoever she has given consent to could authorise this type of complaint to be investigated.

18. Whilst the council admits that an investigator was appointed and visited the complainant in May 2016, also corresponding with him via email, it explains that this would have been done to make a preliminary scope of the case, usually through a statement of complaint. This would be to agree and formulate an understanding of what the complainant expects and what the investigator could reasonably deliver. The next stage would have then been for the investigator to meet with key personnel involved in the daughters care and service position.
19. However, these initial enquiries revealed that the complainant's authority of consent was withdrawn by the family member in early 2016, prior to the complaint about the council being made. So with no consent from the family member for her family to be involved with her finances and welfare, the investigator would have been left with no option but to inform the complaints team of that fact and cease any investigation.
20. The council advised the Commissioner that for the investigation to be carried out the investigator would have required the appropriate consent, which was never given and this is why no investigation report was produced in this case.
21. The council has told the Commissioner that one thing that has come about, following this complaint to the Commissioner, is that the council has asked its complaints team to check and assess from the outset whether any person complaining to them has the necessary authority of consent to allow its officers to be able to access the required information in order to investigate the complaint. This will hopefully avoid the same situation happening again, where an investigator is appointed but the case then having to be dropped because the relevant authority is not in place.
22. On review of the above, the Commissioner can see why the complainant would have expected there to be at least some sort of a report made by the investigator, especially after he had visited him and had email correspondence at the early stages of the complaint.
23. The council's explanations to the Commissioner, that the complainant did not have the required authority to authorise the investigation to be able to take place, and that the initial enquiries only happened due to the complaints team not initially checking this, which is why a case was

set up but no investigation report created and no subsequent notes provided to the investigator seems plausible.

24. The council has also provided the Commissioner with a letter dated 4 August 2016 informing the complainant that the investigation would not be going ahead and the reasons why.
25. On this basis the Commissioner's decision, based on the balance of probabilities, is that the information is not held for part 3 of the complainant's request.
26. With regards to part 4 of the request, the council provided the hourly rate for investigators in its initial response. It has explained to the Commissioner that it was unable to state, at the time of the request, how much this investigator charged for the initial work carried out as it had not received an invoice from him at that stage. But the council has told the Commissioner that an invoice has since been received from the investigator, in October 2016.
27. Although the Commissioner is satisfied that the invoice from the investigator was not held at the time the request was made, it did become available prior to the internal review being carried out on 4 November 2016, therefore the Commissioner would have expected the council, as part of its review, to have considered whether the invoice could be released or not.
28. Therefore the council needs to carry out the steps at paragraph 3 of this decision notice.

## **Other matters**

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### **Section 45 – Code of Practice – Request handling**

29. Although the Commissioner found that the council did not hold the investigators costs at the time the request was made, on reviewing the council's response to the Commissioner, the council did receive the invoice for these costs a month later and prior to carrying out an internal review.

30. Section 45 Code of Practice<sup>1</sup> states at paragraphs 85 and 86:

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>

*"85. If an internal review results in a public authority upholding the original decision (that, as at the date of the request, the information was exempt from disclosure) it may be appropriate to release further information if circumstances have changed and the original concerns about disclosure no longer apply.*

*86. There is no obligation on a public authority to do so but it may resolve matters for the applicant and reduce the likelihood of them making a complaint if you do. "*

31. The Commissioner sees that this would also relate to information held/not held and it therefore may have been beneficial for the council to have at least considered providing this information to the complainant, barring any exemptions, at the time of carrying out its internal review, as this may have satisfied this part of the complainant's request.

## Right of appeal

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32. 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: 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)

33. 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.
34. 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**