

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2019

Public Authority: Cardiff Council

Address: foi@cardiff.gov.uk

Decision (including any steps ordered)

1. The complainant requested information held between Cardiff Council ('the Council') and a named Councillor about a specific issue. The Council initially stated that it did not hold the information requested, however, during the course of the Commissioner's investigation the Council disclosed some information. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any relevant information falling within the scope of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 14 May 2018 the complainant wrote to the Council and requested information in the following terms:

*"Could we please see all information held between Cardiff Council and Councillor [name redacted] covering the subject of '**Cardiff Council irregularities**' between the following dates:*

19/03/18-14/05/18

And where the following is mentioned:

'Premier Cardiff Council owned real estate is being commercially utilised, yet the council make nothing tangible in return,

There is currently no financial benefit to the council that is measurable, that has been formally audited and is proportionate to the revenues being generated'.....

.....This would include (and is not limited to) all correspondences, emails and the likes and redacted where necessary".

3. The Council responded on 12 June 2018 and stated that following a search of its records no information relevant to the request was identified.
4. On 14 June 2018 the complainant requested an internal review of the Council's handling of the request.
5. The Council wrote to the complainant on 14 June 2018 asking him to clarify which aspects of its response he was dissatisfied with.
6. The complainant responded on 14 June 2018. He referred to previous FOIA requests he had made to the Council, and associated complaints to the Commissioner. He stated that due to the Council's handling of previous requests he had *"lost confidence in the councils [sic] ability to provide the requested information as per associated guidelines"*.
7. The Council provided the outcome of its internal review on 25 June 2018 and upheld its position that it did not hold any information relevant to the request.

Scope of the case

8. The complainant contacted the Commissioner on 26 June 2018 to complain about the way his request for information had been handled.
9. In his complaint to the Commissioner, the complainant advised that it had recently been brought to his attention that an email was sent to the councillor named in the request ('Councillor A') on 30 March 2018 which contained the information quoted in bold type in his request (as referenced in paragraph 2 above). He therefore considered that the searches that the Council originally conducted in respect of his request were inadequate as they did not identify the email in question.
10. The scope of the Commissioner's investigation into this complaint is to determine whether, on the balance of probabilities, the Council holds any recorded information relevant to the request of 14 May 2018.

Reasons for decision

Interpretation of request

11. During the course of the Commissioner's investigation, the Council located a copy of an email which was sent by a private individual to Councillor A on 30 March 2018 (as referred to by the complainant in paragraph 8 above). The Council explained that it did not disclose a copy of this email earlier because it did not consider it to fall within the scope of the request. Although the email contains references quoted in the request – "*Cardiff Council irregularities*" and the two quotes referred to in bold type, the email was sent by a private individual to Councillor A and did not therefore constitute information held "*between Cardiff Council and Councillor [Cllr A name redacted]*". Although it did not consider the email in question to fall within the scope of the request for this reason, during the course of the Commissioner's investigation, the Council disclosed a copy of the email in question, subject to the name and email address of the sender being redacted.
12. A decision of the Commissioner on whether the legislation has been applied correctly must initially establish what information should be considered as falling within scope based on the specific terms of a request.
13. In the overview to her guidance 'Interpreting and clarifying requests'¹, the Commissioner says that public authorities should interpret information requests objectively. They must, she explains, avoid reading into the request any meanings that are not clear from the wording. The Commissioner continues by stating that the authority must answer based on what the requester has actually asked for, and not on what it thinks they would like, should have asked for or would be of most use to them.
14. Based on the wording of the request, the Commissioner accepts that the email sent to Councillor A on 30 March 2018 does not fall within the scope of the request. She accepts the Council's position that it fails at the first 'criteria' stated in the request as the email was sent by a private individual and does not constitute information between the Council and Councillor A.

¹ <https://ico.org.uk/media/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

Section 1 – general right of access

15. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
16. 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 arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She 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; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
17. In terms of the searches conducted in order to identify information relevant to the request the Council advised the Commissioner that its Members Services team undertook a search of Councillor A's correspondence files, both electronic and paper files. The Council explained that:

"Members correspondence files hard copy and electronic are held in Members Services for Ward correspondence or letters addressed to Councillor that come in via the post. These are normally scanned and set [sic] to the Councillor and hard copy put on the Councillor File.

Search of Cllr [Cllr A name redacted] unique electronic file for Correspondence for the period requested matched with the requested information

Manual search of the hard copy file of any incoming mail that would have been scanned at sent to Cllr [Cllr A name redacted] by email if it had come in to Members Services".
18. During the course of the Commissioner's investigation, the Council consulted with Councillor A who confirmed that he had received an email from an individual dated 30 March 2018 which was relevant to the request. He also confirmed that he had not forwarded the email in question on to anyone within Cardiff Council.

19. The Commissioner has considered the Council's representations with reference to the specific wording of the request. Based on the wording of the request, in order for any information held by the Council to fall within the scope, information would have to meet the following criteria:

- (i) Constitute information passing between the Council itself and Councillor A, **and**
- (ii) Refer to '*Cardiff Council irregularities*', **and**
- (iii) Have been received/created/sent between 19 March 2018 to 14 May 2018, **and**
- (iv) Contain the following statements:

'Premier Cardiff Council owned real estate is being commercially utilised, yet the council make nothing tangible in return,

There is currently no financial benefit to the council that is measurable, that has been formally audited and is proportionate to the revenues being generated'

20. The Commissioner considers that the scope of the request is very specific and narrow. In order to meet all of the criteria listed, any information that the Council held relevant to the request would likely include the actual email dated 30 March 2018 from a private individual to Councillor A ie if Councillor A had actually forwarded the email in question to someone in the Council. Based on the searches undertaken by the Council, and the fact that Councillor A confirmed that he did not forward the email on to anyone, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any recorded information relating to the request of 14 May 2018.

Right of appeal

21. 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

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

22. 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.
23. 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
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