

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 July 2024

Public Authority: North Yorkshire Council
Address: County Hall
Racecourse Lane
Northallerton
North Yorkshire
DL7 8AL

Decision (including any steps ordered)

1. The complainant requested information about membership of the Royal Town Planning Institute (RTPI) for specific Council staff. North Yorkshire Council (the Council) confirmed that it did not hold the requested information.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 7 November 2023, the complainant wrote to the Council and requested information in the following terms:

"Of the seven districts of North Yorkshire's Council (Craven, Hambleton, Harrogate, Richmondshire, Ryedale, Scarborough and Selby) which area's Planning and / or Development Managers are members of the RTPI?"

5. The Council responded on 27 November 2023, citing section 40(2) (personal data) to withhold the requested information.
6. Following an internal review the Council wrote to the complainant on 22 February 2024, upholding its original response.

Scope of the case

7. The complainant contacted the Commissioner on 26 February 2024 to complain about the application of section 40(2) (personal data) to their request.
8. During the course of the Commissioner's investigation, the Council revised its response, confirming that it did not hold the requested information.
9. Therefore the scope of the following analysis is to determine whether, on the balance of probabilities, the Council holds information falling within the scope of the request.

Reasons for decision

Section 1(1) – general right of access to information

10. Section 1(1) of FOIA states that: "Any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The Position of the Council

13. The Council stated that, following the receipt of correspondence from the Commissioner, it had re-contacted its planning and HR departments about the request.
14. It confirmed that:
 - 11 staff members fell under the job titles of Planning Manager and Development Manager within the areas mentioned in the request;
 - RTPI Membership is not a requirement for these roles, and so the Council does not record membership; and
 - One role has membership of RTPI as a requirement, that of Assistant Director of Planning. This role however is outside of the scope of the request as it is not one of the job titles mentioned.
15. The Council confirmed that it had spoken to those staff members holding the roles falling within the scope of the request, asking if they had provided any information relating to RTPI membership to the Council. The various staff members confirmed that they had not shared this information with the Council.
16. It also confirmed that HR had carried out a search of its systems but did not locate any information falling within the scope of the request.

Commissioner's decision

17. The Council does not record membership of RTPI as it is not a requirement for the roles falling within the scope of the request. Meaning that the only way for it to hold this information would be for individual staff to have disclosed membership information to the Council.
18. The Commissioner is of the view that the conversations held with those staff holding roles falling within the scope of the request, would have identified if any had disclosed RTPI membership details to the Council voluntarily, and they did not.
19. As searches of the HR systems also did not locate any information, the Commissioner considers that the direct enquiries to members of staff undertaken by the Council about the requested information were reasonable, and would have been likely to return any relevant information were it held.
20. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council does not hold any information falling within the scope of the request.

Other matters

21. As covered under the "Scope of the case" heading above, it was only after the intervention of the Commissioner that the Council confirmed that the requested information was not held.
22. The Council should ensure in future that its first step upon receiving an information request is to identify any relevant information held. Only then should it consider to what extent this information may be covered by any exemptions.
23. A failure to obtain or consider the actual information requested could, as occurred in this case, result in an incorrect or inaccurate response being issued.
24. The Council should review its obligations under the FOIA to ensure that any future requests are handled in accordance with the provisions of the FOIA.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Ben Tomes
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