

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

### **Decision notice**

**Date:** 23 June 2014

**Public Authority:** Norwich City Council  
**Address:** City Hall  
St. Peters Street  
Norwich  
Norfolk  
NR2 1NH

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

---

1. The complainant has requested various information relating to both how the council deals with requests under the FOIA and parking penalties. The Commissioner's decision is that, on the balance of probabilities, Norwich City Council does not hold the requested information. He has also decided that Norwich City Council breached the statutory time for compliance at section 10(1) of the FOIA. He does not require the council to take any steps to ensure compliance with the legislation.

#### **Request and response**

---

2. On 26 August 2013, the complainant wrote to Norwich City Council ('the council') and requested information in the following terms:
  - "1. All correspondence between Norwich City Council and the Information Commissioner's office between 1 April 2013 and the date of this email.
  2. Information about how the council managed FOI requests before implementing the Civica system and the officer who was or is responsible for this.
  3. The name and contact details of the elected portfolio holder for governance including FOI.
  4. Copies of the monthly Civica reports for the operation of FOI requests system.

5. If not covered by the above, average response times to FOI requests to the council for the last 12 months.
  6. A copy of the full file (i.e pictures of the car, report completed by CEO, any associated emails etc etc etc) for PCN: NR73080522
  7. Copies of the current handbook or similar provided for Civil Enforcement Officers (CEO).
  8. Copies of all emails sent to and from the council email account of CEO417 since 1 April 2013 to the date of this email.
  9. The number of PCN's issued by each CEO in the employ of the council against the number contested and of those the number removed on upheld. ( or similar information that will allow me to establish which CEO is issuing the highest number of tickets incorrectly).
  10. The number of unpaid PCN's the Council have passed to legal and have resulted in a Court Direction in the last 12 months.
  11. The total income from PCN's for as far back as you hold the data - i.e how much you gross profit is per year.
  12. The budget of the parking team over for as far back as you hold this information - i.e how much are you spending each year on the parking team - to include salaries, on costs vehicles, infrastructure etc etc.
  13. All information provided to CEO regarding the use of discretion when issuing PCN's.
  14. Details of the measures the Council are taking as a result of concerns around the handling of FOI requests."
3. The council responded on 4 October 2013. It provided some of the information requested, provided narrative responses to some of the questions, stated that some of the information is not held, provided links to the website and stated that some of the information is personal information which cannot be disclosed.
  4. The complainant requested an internal review on the 4 October 2013.
  5. The council provided a further response on 24 October 2013 which the complainant expressed dissatisfaction with on the same day.
  6. On 12 November 2013, the council sought clarification as to which parts of the request the complainant wished to be reviewed, and why. The

complainant responded to this on 14 November 2013 and provided further clarification on 15 November 2013.

7. Following correspondence from the Information Commissioner, the council provided its internal review response on 9 January 2014. The internal review covered points 1 and 8 of the original request and applied the exemptions at section 40(2) and section 21 of the FOIA.
8. The Commissioner is aware that there has been numerous exchanges of correspondence between the council and the complainant regarding this, and related requests. However, for clarity, only correspondence which is most relevant to this particular complaint is detailed above.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 30 September 2013 to complain that his request for information had not been responded to. After having received the responses detailed above, he then made a complaint regarding the application of section 40(2) and the time taken to respond.
10. The council had applied section 40(2) to points 1 and 8 of the request. However, during the course of the Commissioner's investigation the council confirmed that it would provide the complainant with the information requested at point 1 of the request. Point 1 of the request has therefore not been considered as part of this decision notice.
11. The council also changed its position regarding point 8 of the request during the course of the Commissioner's investigation. It said that there are no emails for the period of time stipulated in the request. The Commissioner has therefore considered whether the council holds the information requested at point 8 of the request.
12. The Commissioner has also considered whether the council has breached the statutory time for compliance at section 10(1) of the FOIA.

### **Reasons for decision**

---

#### **Section 1 – General right of access to information held by public authorities**

13. 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.

14. In cases where a dispute arises over the extent of the recorded information that is held by a public authority, 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.
15. The council's response to the Commissioner's initial enquiries regarding point 8 of the request ('Copies of all emails sent to and from the council email account of CEO417 since 1 April 2013 to the date of this email') was as follows:

"[Complainant] was informed that CEO 417 had no further input to the PCN once issued, there were no emails concerning PCN in his mail box.

There is no information held in a parking attendant's mailbox which relates to the operation of parking services and the issue of penalty charge notices. Any information about PCNs is held within the specific software used within the parking service. Email is not used to detail working arrangements and matters for parking attendants. An officer's mailbox would contain personal information about the individual and their employment arrangements with the council. It is an employee's responsibility to carry out the housekeeping of their email to ensure that it is deleted as soon as it no longer required. Emails held during the period of this request would no longer be held as they will have been routinely deleted as part of this housekeeping process.

An employee of the council would expect to be able to send and receive emails which relate to their employment and personal circumstances, in confidence, without that information being released to the general public. It is the personal information of that particular officer. The council would be in breach of the first and second data protection principles in releasing the requested information."

16. As this response neither clearly stated that the information was not held nor provided an adequate explanation as to why the personal data exemption at section 40(2) applied, the Commissioner telephoned the council to request further details. During that call, the council reiterated that it has a separate software system for all work relating to the issuing of parking tickets and suggested that emails in the account are not held for the purposes of the FOIA. In response to the Commissioner enquiring whether a search had been carried out of the email account at

the time of the request, the council said that the manager of CEO 417 had looked at the email account at the time and decided that no information within the scope of the request was held.

17. The Commissioner then sent a written enquiry asking whether the 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, whether copies of information may have been made and held in other locations, what the council's formal records management policy says about the retention and deletion of records of this type, and whether there was any legal requirement or business need for the council to hold the information. The council's first response to these enquiries did not focus on the emails requested but referred to PCNs and the council's Parking System. However it did state the following;

"...the parking manager [name redacted] has inspected the email account of CEO417 and can confirm that he has only personal emails and there are no emails for that period of time."

18. After another phone call from the Commissioner, the council sent a revised response to the enquiries detailed in the paragraph above, focusing specifically on the emails requested. The council explained that as the request was refused on the basis that any information within the scope of it would require the disclosure of personal data, a search of the mailbox was not carried out. It said that recorded information relevant to the scope of the request would have been held but had since been routinely deleted as part of an officer's housekeeping of their mail box. It said that it is the responsibility of each officer to carry out regular housekeeping of their mail box to ensure information is not held any longer than necessary and to ensure they are able to send and receive emails and that each person has a limited size mailbox which requires regular housekeeping. It said that the deletion of individual emails is not recorded, deleted emails would not be held in another location, and confirmed that the council does not have a formal policy concerning managing emails. The council also said that there is no business or statutory requirement for which the requested information should be held as information relating to parking enforcement and the processing of parking tickets is not held in an individual officer's personal email account.
19. The complainant has said that if the emails have actually been deleted by the officer then he believes they will still be retained as part of the council's routine backup regime. He suggested that the Commissioner ask the council for copies of the backups and a copy of its ICT back up retention policy.

20. The Commissioner's guidance on 'Determining whether information is held'<sup>1</sup> states that;

"...as a general rule, the Commissioner considers that information contained on a backup is not held. This is because, generally, the public authority will have no intention of accessing the information on the backup."

He has therefore not requested copies of the backups or its backup policy as he considers that information held in backups is not held for the purpose of the FOIA.

21. The complainant also disputed that the officers email address would not be used for work purposes. He said that local government is not in the practice of giving people email addresses and access at work so they can use it solely for personal reasons. The Commissioner understands that the officers email account is not used for matters relating to the issuing of parking tickets but is used for employment arrangements with the council. He therefore considers that information within the email account could be held for the purposes of the FOIA but in this particular case the council's position is that there is no information held within the scope of the request.
22. The Commissioner considered whether the council had any reason or motive to conceal the requested information. The complainant has not provided the Commissioner with any reasons as to why the council would want to conceal the requested emails and the Commissioner has not identified any reason or motive to conceal the requested information.
23. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. Despite the inconsistencies with the council's initial response to the complainant and its final response to the Commissioner, the Commissioner has no reason to doubt that the emails held within the timescales stipulated in the requested were routinely deleted. He is therefore satisfied that on the balance of probabilities, the 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.

---

1

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

## **Section 10 – Time for compliance**

24. Section 10(1) states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

25. The council received the request on the 26 August 2013 and responded on 4 October 2013 which is after the twentieth working day following the date of receipt. Therefore, the council did not respond to the request within the statutory time limit in breach of section 10(1).

## **Other matters**

---

### **Internal Review**

26. As he has made clear in ‘The Guide to Freedom of Information’<sup>2</sup>, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner’s view of a reasonable time for completing an internal review is 20 working days from the date of the request for review, or 40 working days in exceptional cases. In this case the Commissioner notes that complainant first requested an internal review on 4 October 2013 but the council did not provide an internal review response until 9 January 2014, some four months later and after the intervention of the Information Commissioner. The council should ensure that internal reviews are carried out promptly in future.

### **Non-compliance with the FOIA**

27. In his initial complaint, the complainant drew the Commissioner’s attention to an earlier decision notice (reference FS50389974), specifically paragraph 9;

“The Commissioner notes with concern that correspondence from both the complainant and his office failed to elicit any response from the Council to the complainant’s request. The Council should ensure that it has

---

2

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/guide\\_to\\_freedom\\_of\\_information.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/guide_to_freedom_of_information.pdf) page 52



appropriate procedures in place to ensure that this failure is not repeated.”

and suggested that the council has failed to ensure it has appropriate procedures in place to ensure requests are responded to. He also referred to decision notices FS50486528 and FS50492681 which also record that the council has failed to comply with the FOIA by not responding to information requests.

28. During the investigation, the complainant also stated the following;

“I note from your website a large number of upheld complaints against the council. This coupled with the massive failure rate in its adherence to the FOIA ( failure in at least a third of cases by the council's own selective admission) should surely warrant some further investigation or at least inclusion of the council on the monitoring list?”.

29. The Commissioner informed the complainant that when considering complaints about delayed or failed responses to information requests the priority is to ensure requesters receive a response as quickly as possible (where one has not been provided) and to monitor any persistent trends which might indicate that a public authority is routinely failing to respond within the statutory 20 working days permitted under section 10 of the FOIA. The delay in providing both the initial response and internal review in this case has been logged and will be used to monitor any persistent trends which might indicate that the council is currently failing to respond within the statutory 20 working days permitted under section 10 of the Freedom of Information Act. The Commissioner monitors complaints where a serious contravention of section 10 is recorded and where persistent contraventions occur he will consider placing a public authority on his monitoring programme ([http://www.ico.gov.uk/what we cover/promoting openness/monitoring compliance.aspx](http://www.ico.gov.uk/what_we_cover/promoting_openness/monitoring_compliance.aspx) ).

## **Section 77 of the FOIA**

30. The complainant asked the Commissioner to consider the offence of deliberately destroying data. He said that as the council exempted the emails on the basis that removing the personal information would render them meaningless, this means that someone must have assessed the emails at that point or shortly before. He said that knowing that he was challenging the non-release and deleting those same emails during the process can only be a deliberate attempt to prevent their release and not 'routine housekeeping'. He said this clearly demonstrates that the council deleted the emails after it knew that they had been requested



and that the refusal was being challenged and that a full investigation should be undertaken.

31. The Commissioner informed the complainant that he is unable to consider the offence for deliberately deleting data in this case as there is insufficient evidence for this and, even if there was sufficient evidence, the time limit for initiating a prosecution has expired.

**Council's response to the request and the Commissioners enquiries**

32. The Commissioner notes that the council initially appeared to apply the exemption for personal data to the requested information without adequately identifying what information within the scope of the request was actually held. The council then retracted reliance on the personal data exception and instead said that no information was held. This could be an indication that the council did not apply a presumption of disclosure when considering the request and did not give the request proper or full consideration until the end of the Commissioner's investigation.
33. The Commissioner is concerned about the delay's in this case; both in relation to responding the request and responding to the Commissioner's enquiries.

## Right of appeal

---

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

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

35. 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.
36. 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**