

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 October 2017

Public Authority: Nottingham City Council
Address: Loxley House
Station Street
Nottingham
NG2 3NG

Decision (including any steps ordered)

1. The complainant requested information relating to IT audits carried out. Nottingham City Council (the council) provided some information and relied on section 12 of the FOIA to refuse the remaining. After some clarification of the information being sought, the council amended its response, no longer relying on section 12 of the FOIA but instead informing the complainant that the remaining requested information is not held.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further information other than what has already been provided.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 August 2016, the complainant made the following two requests for information:
 1. "Details of IT audits carried out from April 2009 to August 2010. Please provide details of the IT Audit Report, Author, Date of Report."
 2. "Cost of IT Audit services since September 2010 and providers of those services"
5. The council responded on the 19 September 2016. For request 1, the council stated that internal audits of its systems are provided by its in-house team. Contractors are employed to support the service as and

when necessary but no contractor or firm was provided to solely provide IT internal audits. The council explained that it is not possible to isolate the cost of the IT audit for the period requested.

6. For request 2, the council advised that the audit reports are not held because of its local retention period and therefore the information has not been retained.

7. The complainant requested an internal review on the 21 September 2016 stating:

"I have a copy of the Corporate Records management policy and it clearly states that Audit investigations records have to be retained for 7 years and hence I am unsure why this information is deliberately being withheld."

"In addition, I am aware that all Audits are broken down into tasks and hence I am unsure why the IT Audit element cannot be extracted from the tasks to be performed in individual audits to provide the information requested."

8. The council provided its internal review on 2 December 2016. After taking a broader view to the term of IT Audits, the council provided the complainant with some information to request 1. For request 2, the council stated that although the information is not held, it could combine other data to provide information.

9. The council advised that it could only do this from 2012 onwards as it no longer holds information prior to 2012 due to its older system being replaced and information not being retained. It further explained that the information it could produce would not be accurate.

10. The council determined that to provide this information would exceed the appropriate cost limits and amended its response by applying section 12(1) of the FOIA to refuse request 2.

11. The council also provided some advice and assistance as to what it could provide the complainant using relevant information contained in invoices stored in its current system for external audit costs. For internal audits, it would be able to provide the list of audits of the IT department - based on the 'narrow' interpretation of an 'IT Audit' - giving a rough indication of the hours worked on the audits, but it would be unable to provide the associated costs to hours worked.

12. Following the council's internal review response, the complainant contacted the council on 6 December 2016. He advised the council that all information would have been recorded on its Galileo system since 2009. By extracting all the report titles he stated that it would be easy to identify IT audits, i.e. application for infrastructure.

13. The complainant further advised that the 'total time spent on the audit' is easily obtainable from Galileo and also it is easy to identify the cost.
14. The complainant also questioned the council's retention periods and how records have been lost from the periods of 2009 to 2012.
15. Additionally, he stated that the council has previously provided details of audit reports for 2009 and asked the council to provide the details of IT Audit work carried out during the period in question.
16. On 21 December 2016 the council responded to the complainant and based on his last correspondence narrowed the request to include the cost of specific IT Audits. It reiterated that it does not have access to time recording data prior to 2012 so is unable to highlight all time spent on IT Audits since 2010. The council provided him with the cost figure since 2012 and advised that since 2010 it has used its in-house staff as well as a named company to provide the IT service or IT Audits.
17. The council also explained that in its internal review response it listed all IT Audits the council is aware of for this period and it has not located any others. The council added that to provide any further details of the scope of the audits (what they covered etc) would require examination of the working papers, but as previously explained, this information no longer exists.
18. On the 22 December 2016 the complainant wrote to the council stating he was confused by the council's 21 December 2016 response because it did not provide full details that he had requested in the original request and he also requested details of IT Audit work carried out between August 2009 and 31 August 2010.
19. The council responded referring the complainant to page two of its internal review and the response provided to records of IT Audits carried out between April 2009 and August 2010. The council stated it is therefore unsure as to what information he is seeking exactly and how best to follow up the query with Internal Audit.
20. The council advised the complainant that it may need further information to be able to fully explore any concerns he has about not being provided with information he considers it holds.

Scope of the case

21. The complainant contacted the Commissioner on 22 December 2017 to complain about the way his request for information had been handled.
22. The Commissioner asked the complainant to set out exactly what information he considers he has not received in relation to his request.
23. The complainant has told the Commissioner that the council has not provided him with details of audit work carried out since July 2009 to August 2010.
24. As the council has advised the complainant that it no longer holds this particular information, in its internal review and on 21 December 2016, the Commissioner is satisfied that this is a 'held/ not held' dispute rather than a section 12 case, and confirmed this with the council and complainant.
25. The Commissioners investigation will therefore focus on whether or not the council holds details of audit work carried out from July 2009 to August 2010.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

26. 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.
27. 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).
28. The complainant has provided arguments as to why he considers the information is held. It is relevant to note that the complainant worked for the council up until the end of August 2010.
29. The Commissioner therefore asked the council what searches it has carried out to determine that it does not hold details of audit work carried out from July 2009 to August 2010. She also asked the council

to respond to her with regards to the specific points raised by the complainant. The council's responses to her enquiries are as below.

30. The council has told the Commissioner that its Internal Shared Drive was searched because working papers and reports are initially saved to folders in this location. This would have also been the case in 2009/10.
31. The council has advised the Commissioner that the only other location where working papers and reports would have been saved is its Galileo system which is used by its auditors. The council explained that in 2009/10, the Galileo system ran on a Lotus Notes platform, but because the supplier was eventually unable to support this version of the software, the council migrated to a Windows (.NET) version of the software in 2012.
32. The council has told the Commissioner that this migration did not bring across the contents of the earlier version (Audits, reports etc). The council did however archive the earlier Lotus Notes version of the system which was stored on a laptop and used by an audit manager in Internal Audit. This was for reference purposes only.
33. This laptop was eventually disposed of when the council received new replacement laptops and the council had decided that there was no longer any need to refer to the old audits and working papers.
34. The council told the Commissioner that the laptop that the information would have been held on was scrapped sometime in 2015.
35. The council advised the Commissioner that the information would most likely be held electronically and that no other departments were searched because the information would most likely be held by internal audit.
36. The Council has told the Commissioner that it used the search terms 'IT Audits, IT and 2009/10'.
37. Following the council's initial response to the Commissioner's enquiries, complaint queried the lack of records in relation to the laptops destruction and the fact that the council had not contacted its IT department for information relevant to the request. The Commissioner contacted the council further on these points raised by the complainant.
38. In response, the council advised that it contacted its IT department who advised that the laptop showed in its records of being destroyed on 19 February 2015 and had a certificate of destruction number.
39. With regards to any other information held by IT, the council has confirmed, that after searches carried out in that department, no information was located with regards to audit reports for the required

period. The council further explained that over time, its IT department has gone through significant change and so any reports that may have been issued to them in 2009/ 10 would no longer have any relevance and therefore would not have been retained.

40. The council has told the Commissioner that its internal retention policy requires it to retain records for three years. The complainant however, has told the Commissioner that he is aware that it should be seven years.
41. The council's response to the Commissioner on this is that it thinks the retention period for audit records may have been seven years at the time the complainant worked for the council. However the council's current version of the retention policy is three years and provided an extract of this policy to the Commissioner to show this.
42. The complainant has told the Commissioner that all IT reports are passed to the IT department and circulated via email to agree recommendations. Also, he has stated that copies are taken, as required by external auditors, and are required for the audit scrutiny committee who can request information dating back several years.
43. The council has told the Commissioner that its IT department have confirmed no information is held for the period 2009 to August 2010 – as explained in its reasons above – and that the council is not aware of any copies being placed with any external auditors.
44. The council has stated to the Commissioner that the only external body that may have required this level of audit information in the past is the Audit Commissioner, but it ceased to exist on the 31 March 2015.
45. The complainant has advised the Commissioner that he is aware that hard copies of the reports are made and stored as part of the council's backup and recovery plan in case there is a system malfunction as it would be impossible to function without previous audit reports that contain recommendation/ implementation plans.
46. The council has refuted this to the Commissioner explaining that internal audit do not retain hard copies of audits as it is not common practice within the council. Retaining hard copies of these documents is not part of any backup and recovery plan.
47. The complainant has also questioned why he has been provided with IT Audit reports up to July 2009 but the council is unable to provide details of IT audit work carried out during 2009/10.
48. The council has told Commissioner that the details provided to the complainant were all the relevant details of 'IT Audits' held in the period; there was no intention to only provide details leading up to a specific time period only.

49. The complainant has lastly stated to the Commissioner that this information is critical to internal and external investigations, especially the [reference number redacted] and [reference number redacted] investigations, hence subject to legal scrutiny.
50. The complainant therefore considers that the retention/ disclosure of this information is fundamental in the support of evidence given by its officers as part of these investigations and it is a legal requirement for the council to retain records that are subject to legal dispute.
51. The Commissioner raised this with the council and asked it to shed some light on the two mentioned investigations. The council has come back to the Commissioner on this stating that these investigations are in relation to two particular matters raised by the complainant against the council outside of information access.
52. *[Paragraph redacted for publically available decision notice as it contains personal data]*
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56. The complainant has told the Commissioner that he is of the view that there is a requirement to keep adequate records in support of evidence given. He therefore cannot understand why the council would destroy the laptop in July 2015 as he sees that this would have contained all the data utilised in order to give the evidence in the inquiry that took place in 2014. Then if the three year retention period was taken in to account, the information should have been retained until 2017, three years after the inquiry.
57. The council has maintained that this information is not held and the only place it would have been located is on the destroyed laptop.
58. The complainant has raised some plausible reasons as to why the information for the required time period would or should be held by the council. However the council has provided counter arguments as to why it is not held. It migrated to a new system in 2012; the older audits were held for a period of time on a laptop but destroyed in February 2015 when the information was deemed by it to be no longer required.
59. The council also holds a differing view to the complainant on the retention periods for the information that has been requested and also

whether the information should be held for the purposes of the complainant's grievance.

60. As the council holds the view that its retention period is three years and that it was not required to hold the requested audits for any grievance or investigations or even as back up, this all leads to validate that the council did destroy any potentially relevant information in 2015 when the laptop, which stored the older audit information, was destroyed.
61. Regardless as to whether the information should be held, which is outside of the Commissioner's remit to determine, the council's reasoning's as to why it is not held appear credible to the Commissioner in this case.
62. The Commissioner understands why the complainant is of the view the information should be held by the council, but without any physical evidence to show that it is, she can only find that, on the balance of probabilities, the information is not held.

Right of appeal

63. 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

64. 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.
65. 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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