

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2020

Public Authority: Milton Keynes Council
Address: 1 Saxon Gate East
Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information with regards to missing emails and attempts to recover them. Milton Keynes Council (the council) refused the request under section 14(2) of the FOIA – repeat request.
2. The Commissioner's decision is that section 14(2) of the FOIA is not engaged.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request without relying on section 14(2) of the FOIA
4. The council 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.

Request and response

5. On 24 November 2019 the complainant made the following request to the council:

"Please send me the following information in relation to the deletion of [name redacted] emails in or around December 2018 and the subsequent failed recover of them:

- 1. When did the Council learn that [name redacted] had deleted her emails and who discovered this?*
- 2. Why did the Council attempt to recover [name redacted] emails after she left the authority?*
- 3. When did the Council attempt to recover the emails and why did this recovery fail?*
- 4. Copies of all emails between Officers in relation to the deleted emails and the attempts to recover them*
- 5. Details of any referrals to auditors/the Audit Committee in relation to the failed recover of the emails. If this did not happen, please explain why*
- 6. Details of any steps taken alter the failed recovery to ensure that emails are retained in accordance with the Council's retention policy*

I would like the above information to be provided to me as electronic copies."

6. The council responded on 27 November 2019 refusing the request under section 14(2) of the FOIA as it considered the request to be substantially similar to a previous request.
7. The complainant requested an internal review on the same day. The council provided its internal review on 3 December 2019 upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 12 December 2019 to complain about the refusal of her request.
9. The scope of this case and the following analysis is to determine whether the council can rely on section 14(2) of the FOIA to refuse the request.

Reasons for decision

Section 14(2) of the FOIA – repeat requests

10. Section 14(2) of the FOIA states that:

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

11. The Commissioner has guidance¹ on repeat requests. Section 14(2) of the FOIA allows a public authority to refuse a request if it is satisfied that the requests originate from the same requestor and the later request repeats the earlier. The next step is then to determine whether the requests are identical or substantially similar.
12. A request will be identical if both its wording and its scope precisely matches that of a previous request.
13. If the wording is identical but the scope of the request is different (for example a recurring request asking for “any new or amended information” on a particular subject, or for “last month’s figures”) the request will not be identical.
14. A request will be substantially similar if it meets either of the following criteria:

¹ <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

- The wording is different but the scope of the request (the criteria, limits or parameters which define the information being sought) is the same for a previous request.
 - The scope of the request does not differ significantly from that of the previous request (regardless of how the request is phrased).
15. The council has stated that this request has been refused because it is substantially similar to a previous request made by the complainant to the council on 13 February 2019. This request was also brought to the Commissioner and a decision notice was issued under reference FER0841960².
16. This previous request was:

"Please provide me the following information in relation to planning application 18/02341/FUL

- 1. The pre-application advice provided by [redacted] and [redacted] with the applicant and their agents.*
- 2. The covering letter that was submitted with the planning application.*
- 3. All correspondence between the Council's officers and the applicant and their agents in relation to this application."*

The same or substantially similar?

17. The Commissioner has compared the two requests to see whether they are the same or substantially similar in wording or scope.
18. Looking at these requests the Commissioner does not hold the same view as the council that the two requests are the same or substantially similar.
19. From reading the two requests it can be quickly determined that they are not asking for the same information. The previous request asks for information held in relation to a planning application, and this request is

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2617395/fs50841960.pdf>

making enquiries specifically about emails that were found to be deleted. These are therefore neither identical or substantially similar.

20. Even though the Commissioner does not view the request as a repeat request, she has gone on to cover the reasoning advanced by the council.

The council's reasoning

21. The council argued that parts of the request were covered in the council's response to the Commissioner with regards to the previous request, that the complainant should be able to surmise the information now requested from its response to the previous request, and that there is an ongoing external investigation of which the complainant is aware and the outcome of which will be made public once concluded.
22. All of these arguments presented to the Commissioner by the council are irrelevant. What was covered in an investigation letter from the council to the Commissioner, questions the Commissioner asked in her previous investigation, and that there is currently an external investigation going on do not support this request as being identical or substantially similar to the complainant's previous request.
23. Section 14(2) of the FOIA is about looking at the wording and scope of the request compared to a previous request. As covered from paragraph 19 above, neither wording nor scope of the two requests are the same or substantially similar.
24. The council also told the Commissioner that the complainant made another request, on 25 November 2019, in relation to the ongoing audit specifying what information she required. The council says it responded to this part of the request on 20 December 2019 which would cover some of the information being requested in this request.
25. The Commissioner appreciates that the response to the 25 November 2019 request may cover the information to part of the request being considered in this case. However, the responded to 25 November 2019 request was made a day after this request.
26. This refused request can not be called a "repeat request" when it was made before the 25 November 2019 request – essentially calling the first request a repeat of the second request – no matter how similar they are.

Conclusion

27. On review of the above, the Commissioner has no difficulty in concluding that no part of the complainant's request is a repeat request and the arguments and reasoning provided by the council simply do not fit the parameters of section 14(2) of the FOIA.
28. The Commissioner therefore finds that section 14(2) of the FOIA is not engaged. The Commissioner requires the council to carry out the steps outlined in paragraph 3 above.

Other matters

29. The Commissioner has some concern over the council's interpretation of section 14(2) of the FOIA in this case. The arguments given simply do not fit the parameters of the exemption and the two requests are not at all the same or substantially similar.
30. The Commissioner would recommend that the council reviews her guidance³ on section 14(2) – repeat requests – in order to better understand what constitutes a repeat request under the FOIA.

<https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>³

Right of appeal

31. 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@justice.gov.uk

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

32. 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.
33. 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

Ben Tomes
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