

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

Public Authority: The University Council
Address: University of Southampton
University Road
Southampton
SO17 1BJ

Decision (including any steps ordered)

1. The complainant has requested information from the University of Southampton (the "University") in relation to the disposal by Winchester City Council to the University of land at River Park. The University confirmed that it held some information and provided this but said it does not hold information as to who initiated contact regarding the disposal or whether the University was notified of the pre-application protocol letter under section 1(1)(a) FOIA.
2. The Commissioner's decision is that the University does not hold information as to who initiated contact regarding the disposal or whether the University was notified of the pre-application protocol letter under section 1(1)(a) FOIA.
3. The Commissioner does not require the University to take any remedial steps.

Request and response

4. On 16 February 2022 the complainant wrote to the University and requested information in the following terms:

"I should like to know when contact was initiated, and by whom (or at least which party) with Winchester City Council over the disposal by them to the University of land at River Park. What correspondence has there been, and was the University informed about the Pre-Application Protocol letter sent to WCC in November 2021 with its suggestion of Judicial Review?"

5. On 21 March 2022 the University responded:

"In accordance with Section 1(1)(a) of the Act, we confirm that the University holds some of the information of the description specified in your request.

The University does not hold information about who made the first approach in connection with the River Park site. Our Council minutes of the 24th of November 2021, record that head of terms of lease were agreed by Winchester City Council Cabinet on the 23rd of November 2021 so there is correspondence between the parties surrounding their commercial negotiations over the heads of terms.

The University is unable to confirm or deny whether it was informed about the pre-application protocol letter sent to Winchester City Council on the 15th of December 2021, as key staff members involved in discussions at the time are not currently employed by the University."

6. On 22 March 2022 the complainant requested an internal review:

"A review of my FOIR G00856 to say why the University apparently does not keep records of discussions concerning land transactions that may be in seven figures. In addition, how it was able to let the key staff members involved in the discussions leave their employment without apparently leaving any hand-over notes, meaning that you are unable to confirm or deny whether the University was informed about the pre-application protocol letter sent to Winchester City Council on December 15th 2021. WCC should surely have informed the University, and it stretches credulity to be told that such a letter was not sufficiently important to be recorded, and for the reason given."

7. On 10 June 2022 the University provided the internal review:

"In response to your queries set out above, our original response to your query related to i) the River Park site and who made the first approach; and ii) whether the University was informed about the pre-application protocol letter sent to Winchester City Council on 15th December 2021.

The response to your original questions was that the University does not hold information about who made the first approach in connection with the River Park site; nor can it confirm or deny whether it was informed about the pre-application protocol letter. I have reviewed the information that we have in this matter and confirm that we do not hold a definitive record of who made the first approach, nor have we been able to establish whether we were informed about the pre-application protocol letter.

I am unable to provide an explanation as to why there is no record the information. I can only confirm that it is not there and the individuals who were responsible for this project at the relevant time are no longer with the University. Their e-mail accounts were deleted in line with our Data Protection procedures and I can only speculate that they did not deem this information to be of sufficient importance to ensure that it was retained, if indeed it ever existed in their records."

Scope of the case

8. The complainant contacted the Commissioner to complain about the way the request for information had been handled.
9. The Commissioner's investigation has focussed on whether the University holds information as to who initiated contact regarding the disposal or whether the University was notified of the pre-application protocol letter under section 1(1)(a) FOIA.

Reasons for decision

Section 1

10. Section 1 (1) FOIA provides 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. The Commissioner has sought to determine whether, on the balance of probabilities, the University holds any information as to who initiated contact regarding the disposal or whether the University was notified of the pre-application protocol letter.
12. In this case the University has been clear that it has searched its records and is not able to locate recorded information which definitively confirms who made the first approach.
13. As to whether the University was informed about the pre-application protocol letter, it has said that the individuals responsible for the project

had since left the University and had not left a record of this. It confirmed that these individual's email accounts had been deleted and so the University does not know whether any information evidencing such a notification would have been contained within those accounts.

14. In this case the University has explained that, "Their e-mail accounts were deleted in line with our Data Protection procedures and I can only speculate that they did not deem this information to be of sufficient importance to ensure that it was retained, if indeed it ever existed in their records."
15. In this case the Commissioner accepts that searches have been conducted by the University regarding who made the first approach and no information has been located definitively confirming this. He can only therefore conclude that on the balance of probabilities the University was correct to confirm that it does not hold this information under section 1(1)(a) FOIA.
16. In relation to whether the University was notified of the pre-application protocol letter, as the University has searched its retained records, the relevant individual's email accounts were deleted in accordance University procedures and it is not clear whether any information would have been held in those accounts anyway, on the balance of probabilities the University was correct to confirm that it does not hold this information under section 1(1)(a) FOIA.
17. The Commissioner however notes that in the internal review request, the complainant has questioned, "...why the University apparently does not keep records of discussions concerning land transactions that may be in seven figures." In this case the University has not denied holding information regarding this, indeed it confirmed in its response that, "Our Council minutes of the 24th of November 2021, record that head of terms of lease were agreed by Winchester City Council Cabinet on the 23rd of November 2021 so there is correspondence between the parties surrounding their commercial negotiations over the heads of terms."
18. However whilst the request asks, "What correspondence has there been", it does not ask for copies of this correspondence. The University has explained what correspondence there has been in response to this request and it is open to the complainant to make a FOIA request for this information.

Right of appeal

19. 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

20. 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.
21. 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.....

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF