

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 31 July 2014

Public Authority: Sandwell Metropolitan Borough Council

Address: Sandwell Council House
Oldbury
Sandwell
West Midlands
B69 3DE

Decision (including any steps ordered)

1. The complainant has requested from Sandwell Metropolitan Borough Council ('the council') dataset budget information for all schools. The council initially refused the request citing the exemption for information accessible to the applicant by other means at section 21 of the FOIA. On internal review, the council revised its response to state that the information is not held for the purposes of the FOIA. The Commissioner's decision is that the council has not provided sufficient reasons for stating that the information is not held for the purposes of the FOIA.
2. The Commissioner requires the council to take the following step to ensure compliance with the legislation:
 - Issue a fresh response to the complainant without stating that the information is not held for the purposes of the FOIA, taking into consideration section 11 of the FOIA, as amended by section 102 of the Protection of Freedoms Act 2012, as the information has been requested in a specific format.
3. The public authority must take this step 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

4. On 8 October 2013 the complainant made the following request for information under the FOIA:

"I require a copy of the 2013/14 dataset budget information for schools budgets for all schools. It is the background information that populates the Local Authority funding formula. It does not include any personal data but simply total numbers in categories such as deprivation indicators.

The information was requested in an excel format.

5. The council responded on 5 November 2013 citing the exemption at section 21 of the FOIA and providing a link to the Department for Education's website. It also stated that the link contains high level figures and that the council is not allowed to disclose more precise figures as the data belongs to each school individually. It suggested that the complainant may wish to approach each school individually.
6. The complainant requested an internal review on 22 November 2013. He said that the link does not connect to the requested dataset information; he already has the information provided at the link which is what prompted the request for the dataset underpinning it. He also said that the dataset information is provided to Sandwell Education Department directly by the Government in a single Excel spreadsheet and 'it would be hard to view the suggestion that over a hundred different schools should be contacted individually as anything other than obstructive.' He also made the following points:
- "The information has been available in various forms every year since the late 1980s when schools first took control of delegated budgets
 - I was invited to Providence Place on 7th August 2012 for a meeting with [name redacted] where I was shown the 2012/13 information in detail
 - The full dataset was supplied to me on an Excel spreadsheet after this visit
 - The equivalent information for 2011/12 is readily available to the general public on Sandwell's own website. This includes details such

as the number of children in care (Looked After Children) in each school. The link is
http://www.sandwell.gov.uk/downloads/file/2928/section_251_budget_statement_2011-12_appendices

- No information in the dataset identifies any individual pupils
 - Birmingham and Walsall Councils both make their information readily available to the general public. I enclose a sample of the Birmingham and Walsall dataset information for you.”
7. The council provided an internal review response on 20 December 2013 in which it stated that it acts as a repository for the information but does not hold it for the purposes of the FOIA. It provided the following explanation for this:

“Whilst the information might have been published in earlier years, you will be aware that the situation has changed in 2013. Before then, a local formula was used to allocate resources to schools and the information not sent to the Department for Education. However, now allocations have to meet the Department’s guidelines; schools send it to the Council, who forwards the information onto the Department, where it is processed and then made accessible by the Council via a secure website where the spreadsheet is password protected. Therefore, the Council merely acts as a middleman between schools and the Department for Education. The Council passes the data onto the Department for Education, who then determines the money to be allocated to schools and advise the Council to provide the adequate funds, on behalf of central government who passes funds onto the Council. As a result, the Council acts a repository for the information, but does not hold it for the purposes of the Freedom of Information Act 2000.”

Scope of the case

8. The complainant contacted the Commissioner on 17 January 2014 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the information is held by the council for the purposes of the FOIA.

Reasons for decision

Section 1(1) and 3(2)

10. Section 1(1) of the Act 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. Section 3(2) states that –

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

12. The Commissioner's guidance, 'Information held by a public authority for the purposes of the Freedom of Information Act'¹, states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.

13. The Commissioner informed the council that from reading the correspondence provided and considering relevant guidance, it appears that the requested information is held by the council for the purposes of the FOIA because it seems that the information would be held to some extent for its own purposes; those purposes being the council's function of providing the data from the schools to the Department of Education, and its function of providing the allocated funding to individual schools.

14. Therefore the Commissioner asked the council reconsider the request. He informed the council that if it was not prepared to disclose the requested information, it would need to provide a detailed explanation as to on what basis the council has concluded that, although it physically holds the information of the nature requested, it does not hold this information for the purposes of the FOIA.

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[http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

15. The Commissioner also stated that it appears that there may be two versions of the requested information; those being the dataset sent to the Department of Education by the council, and the dataset processed by the Department for Education and sent back to the council. It asked the council to provide clarification of whether this is the case and, if so, whether the council considers both of these versions fall within the scope of the request?
16. In its response, the council explained that it receives the dataset requested from the Department for Education and passes it on to each school. The information is included in a financial model, which has to be accessed from the Department for Education's website via secure access and is password protected. It said it had consulted with the Department for Education, who has confirmed that:

"The dataset was sent securely so it could not be accessed outside of the LA (Local Authority) which it was intended for, once the data has been received by the LA it becomes the LA's responsibility to ensure it is managed appropriately and becomes subject to any local data controls and restrictions. In principle there is no problem with an external body having access to the data assuming that the contractor is held to the same security standards as any LA employee who would have had access to the data."
17. The council said it is therefore abiding by the Department for Education's instructions, as disclosing the information under the FOIA, that being "to the world", would not allow it to offer the security guarantees required by the Department.
18. The council also said that dataset contains information regarding the number or percentage of, for instance, Looked After Children (LAC). It commented that these numbers are low and it fears their disclosure could lead to the identification of vulnerable children. Having viewed the dataset provided to him, it is not apparent to the Commissioner how an individual could be identified from the figures.
19. The Commissioner considers that the council's response does not provide the requested explanation as to why the withheld information is not held by the council. He considers that the council has been provided with sufficient opportunity to provide its rationale for withholding the requested information. The rationale should have been in place since the request was refused and therefore opportunities for providing this existed at the original refusal, at the internal review and when

requested by the Commissioner. The council was also informed by the Commissioner that it must justify its position and was provided with the Commissioner's guidance on how he deals with complaints² which clearly states that it is the public authorities' responsibility to satisfy the Commissioner that information should not be disclosed and that it has complied with the law.

20. As the council did not provide sufficient arguments as to why it does not hold the requested information for the purposes of the FOIA, in circumstances of this case, the Commissioner has concluded that the information is subject to the FOIA.

Other matters

21. As the request is for a dataset in electronic form, the council should take into consideration the Commissioner's guidance on 'Datasets' when issuing its fresh response.
22. The Dataset guidance is available at the following link:

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/datasets-foi-guidance.pdf

² http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

Right of appeal

23. 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

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

24. 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.
25. 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

Steve Wood
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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