

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2014

Public Authority: Leeds City Council

Address: Calverley Street
Leeds
West Yorkshire
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information in relation to bus lane infringements. Leeds City Council (the council) provided the information it held, but did not hold a policy on enforcement of bus lane infringements. The complainant considers that a policy must be held by the council.
2. The Commissioner's decision is that the council does not hold a policy on the enforcement of bus lane infringements.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 February 2014, the complainant wrote to the council and requested information in the following terms:

"Local Councils usually have a policy on enforcement of alleged bus lane infringements. This should contain information such as how long a car travels in a bus lane before an infringement is considered. Could you send me a full copy of this please via email to this address?"

Additionally I would ask:

1. *What are the hours of operation of the bus lane in question?*
2. *Can you confirm for me that the entry and exit signage[sic] of the Bus Lane is correct and within the legal requirements? Also*

were there camera enforcement signs in the vicinity?

3. Were twin recordings made of the alleged offence with one recording on a VHS tape at the rate of 25 frames a second?"

5. The council responded on 7 February 2014, providing the information it held.
6. On the 12 February 2014 the complainant advised the council that he was not satisfied with its response. On the 17 February 2014 the complainant advised the council that the information he still requires is:
 - The council's policy on enforcement of alleged bus lane infringements,
 - The hours of operation of the bus lane in question and
 - If there is camera enforcement signs in the vicinity.
7. The council responded on the 19 March 2014. It advised the complainant that it does not hold a written policy that he has described and that all the information is in the leaflet provided on the 7 February 2014. It also advised that it has sent photographs of the signs and advised that the bus lane is 24 hours.

Scope of the case

8. The complainant contacted the Commissioner on 18 March 2014, a day before the internal review was provided to the complainant, and has stated that he is not satisfied with the council's response. The complainant considers that the council would hold a policy on enforcement of alleged bus lane infringements.
9. The Commissioner considers the scope of the case is to determine if the council is correct when it says that it does not hold a policy on enforcement of alleged bus lane infringements.

Reasons for decision

Section 1 of the FOIA – Held/ Not held

10. 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.

11. 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, applies the civil standard of the balance of probabilities.
12. Therefore the Commissioner must decide on whether, on the balance of probabilities, the council holds any information which falls within the scope of the request (or was held at the time of the request).
13. The Commissioner asked the council to explain the searches it carried out to determine that it does not hold a policy on enforcement of alleged bus lane infringements.
14. The council has advised the Commissioner that if this policy were held, it would most likely be held by its parking services department. The council explained that this department did not carry out searches for the policy because if it existed, then the manager and staff of this department would know about it, and therefore be able to provide a copy.
15. The council confirmed that if it did hold such a policy then it would be held in both electronic and hard copy.
16. The council has confirmed to the Commissioner that no policy was ever held that has been deleted or destroyed.
17. The council has stated to the Commissioner that there is no business purpose or statutory requirement for it to hold the requested policy.
18. The Commissioner advised the council that the complainant had provided him with a link to a website¹ which states:

"Did the enforcing authority abide by its own protocol? – Enforcing authorities will have a protocol stating their policy on enforcement of different offence. This may be on their website or you can ask for it. It will contain items such as for how long a vehicle should be observed in a bus lane before a penalty charge

¹ <http://www.penaltychargenotice.co.uk/bus-lanes/information-and-grounds-for-appeal/>

notice is issued... We do not know whether a request for a copy under the freedom of information act would succeed but we believe a local authority should be open and in any event how would you know whether the enforcement officer acted within their remit without sight of this. We would suggest that you check the website of the enforcing authority and if their protocol is not published request a copy."

19. The council states that the website quoted is published by a private individual and the views expressed have no legal or statutory import.
20. Lastly the council informed the Commissioner that it uses a fixed camera system which automatically records clips of suspected bus lane offences. The camera view and the duration of the video clip cannot be altered by the user.
21. However, if it was using an older bus lane enforcement system, based on the camera being controlled by the user, there would be the potential for the clips to show varying camera views and they would vary in duration. The council stated that in those circumstances it may be necessary to establish protocols of this type so that enforcement is carried out fairly. But the council has never used such systems, so that is why it would not have such a policy that the complainant has requested.
22. The Commissioner has considered the reasons why the complainant thinks that a policy on enforcement of alleged bus lane infringements would be held by the council. However on considering the council reasons as to why it does not hold such a policy and its maintained stance, the Commissioner's decision is that, on the balance of probabilities, no such policy is held by the council.
23. As no such policy has been found to be held by the council, the Commissioner does not require the council to take any steps in this case.

Right of appeal

24. 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

25. 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.
26. 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
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SK9 5AF