

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2015

Public Authority: Bolton Council

Address: Town Hall
Civic Centre
Bolton
Lancashire
BL1 1RU

Decision (including any steps ordered)

1. The complainant has requested information on the costs of the council associated with a court case which he was involved in a number of years ago. Costs were awarded to the council at the end of the case. The complainant requests are for more information about how the council funds litigation, on its costs when in litigation and on any legal obligation which the council has to repay the money it spends. He asked if the money used to fund litigation is drawn from a third party fund. The council clarified that legal services, and litigation are paid for via the normal council budget, and therefore no information is held relating to any third party fund. Information is already published highlighting funds received by the council from normal means (i.e. local taxation and funds paid by central government) via its published accounts. The council therefore applied section 21 to that information. The Commissioner has decided that the council was also correct to apply section 21.
2. The Commissioner's decision is that the information the council does hold is subject to section 21 of the Act. He has also decided that on a balance of probabilities no further information is held by the council falling within the scope of the complainant's request. The council did however fail to respond to the request within 20 working days and so the Commissioner's decision is that it did not comply with section 10(1) in this respect.

The Commissioner does not require the council to take any steps.

Request and response

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

"Whether you view this as a new request, or a review of the handling of the 15/7/14 request; the information is still the same, & identified in simplest form in the attached letter, & as that unlined in point a.. & the final bullet point at c.

- 1. Does it actually cost the Council Corporate any money to pay for the cost of employing Legal Services?*
- 2. Does such money to pay for these services not come from a third party owned fund? &*
- 3. Payments drawn from which are at no risk to the Council?*
- 4. Is the council obliged to repay any of the money so spent back to the fund? &*
- 5. If so what are the terms of such specific obligation?*
- 6. If there is no obligation, &/or it has not cost the Council any money, is it said that the Council can still mount a claim to recover money that it has not lost? &*
- 7. If so then how is it said the Council can lawfully sustain such a claim?"*

The further points added from previous letters relate to:

"Given that [name redacted] was party to past meetings, & when she did confirm to the fact that "C itself had suffered no loss at all" it is clear that what was required now was written confirmation of that fact.

Section C. wherefrom, & as itemised in the last paragraph of 15/7/14 request, disclosure of a copy of a resultant Monitoring Officer's report is thereby also required."

4. The council responded on 8 January 2015 with the following responses:

Q 1: It confirmed that there costs associated with litigation are charged to those council services which require legal and advice and support.

Q2 - 5: The council confirmed that money to pay for these services comes from a combination of council tax, business rates, dedicated school grant, revenue support grant, other specific government grants and other contributions – it confirmed that the money does not come from a third party owned fund. It therefore said that no information was held in relation to the remained of questions 2 – 5 as his understanding of the situation was incorrect.

Q6& 7: The council said that it was able to recover costs as awarded by the courts.

5. The council also confirmed that no monitoring officer's report had been created and so no information was held in respect of this part of the request.
6. Following an internal review the council wrote to the complainant on 8 January 2015 seeking to clarify its earlier response for the benefit of the complainant. It said that:
 - *The general fund is not a third party owned fund, it is part of the budget for services.*
 - *Monies which are divided and assigned to the various departments are taken from the council's budgets.*
 - *These departments use this money to pay for staffing and those services for which they are responsible, such as refuse collection, street lighting, libraries etc.*
 - *Money used for any legal proceedings required by these departments is also funded from these monies.*
 - *Therefore any legal proceedings are funded via monies from council budgets and there is therefore a cost to the council.*

The council therefore confirmed that as the money does not come from a third party owned fund it does not hold relevant information in respect of questions 3-7. It confirmed that whilst information is held in respect of parts 1 & 2 of the request, this is available from its statement of accounts on its website. It provided a link to this and copied relevant parts of the information into the response. It therefore applied section 21 to this part of the request.

Scope of the case

7. The Commissioner clarified with the complainant that his complaint is that he does not accept that the council's responses are correct, and that he believes that further information is held by the council.
8. The council also told the complainant that it considered that it could apply section 14 to the request , but did not do so (vexatious requests).
9. As the council did not however apply section 14 the Commissioner has not considered it further within this decision notice.

Reasons for decision

Section 21

10. Section 21 of the Act provides that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

11. As regards parts 1 and 2 of the request the council confirmed that its legal services department does cost money. It also confirmed that no third party fund exists other than funding through the normal local government methods of raising capital, including council tax etc. Where necessary, money assigned to departments to fund local services is used to pay for legal services instead. The council confirmed therefore that there is a cost to the council in litigation, consisting of salaries, overheads and other legal expenditures.
12. The council therefore provided an explanation to the complainant how this occurs and provided links as to how he could obtain further information regarding the legal services department budget from its published accounts.
13. The council noted that the ICO's guidance on Section 21 refers to a distinction between information that is reasonably accessible to the particular applicant and information that is available to the general public. It is possible to consider the circumstances of a particular applicant when considering whether information is already reasonably accessible to the requestor. The council provided the complainant with a link to its Statement Of Accounts document on the council's website, and in particular to sections relating to the legal services department budget. It also referred to information it had provided him previously which it considers answers questions 1 & 2 of the request.
14. It outlined that information which it has provided in response to the complainant's requests adds to the information already publically available from the statement of accounts. When considered together it argues that this makes the information falling within the scope of parts 1 & 2 of the request fully accessible to him. This includes the fact that there is no third party fund. The Commissioner has noted from the past correspondence which the council has had with the complainant that it has stated to him that no third party funds exist on a number of occasions. The complainant however refers to a conversation which he had with a council officer in which he says it was clarified to him that no council funds were at risk from entering into litigation due to this fund.

15. The council argues that any person who had access to the information which the complainant had received from the council previously would understand from the text in the published Statement of Accounts that there was a cost attached to legal services, borne from the council's budgets, not a third party fund. It argues that this answers parts 1 and 2 of the request. It added that they would also have an understanding as to how that was funded.
16. Having considered this response the Commissioner is satisfied that the council has applied section 21(1) correctly. The complainant's 'request' is in fact 2 questions which the council has responded to by providing him with an explanation of its funding, pointing him to the information necessary to respond to the questions, and by clarifying how that applies to the questions which he had asked.
17. Section 21 is an absolute exemption. This means that there is no requirement for the council (or the Commissioner) to carry out a public interest test where the exemption is engaged.

Section 1(1)

18. Section 1(1) of 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."

19. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"
20. In respect of the complainant's request for a monitoring officer's report on the legal issues which had occurred previously the council confirmed that no such report had been created and therefore no report was held.
21. The complainant considers the nature of the litigation was such that a monitoring officer's report would have been required, the council has

clarified that that is not the case. He argues that: *"The post of MO is a statutory position that 'mandates' a report to the Full Council [i.e. here the Leader] on complaints of actual, or potential wrongdoing. It is beyond belief to expect anyone to accept that in 5 meetings, & over 12 months [name redacted] did not prepare any notes at all, made no enquiries, & then reported nothing whatsoever to the Leader that could not constitute a MO report. [formal, or informal]. More so as we observed her making notes, she made enquiries of others, & later gave oral answers, & 30/08/13 relates to some of what she had conceded, & she had said was actually reported to the Leader, & CEO."*

22. The Commissioner considers that there is little value in requiring the council to carry out searches for information which the council can confirm categorically was never created in the first instance. Its categorical assurance that no such report was created must be taken on face value unless there is evidence to the contrary. The complainant's arguments in this respect relate more to what he considers 'should' have occurred rather than what did occur.
23. Additionally, whilst the monitoring officer may have informed the council leader or the Chief Executive of the outcome of meetings, the request was specifically for a monitoring officer's report. It was not for any informal correspondence or notes informing on the outcome of the meetings within the complainant. A monitoring officer's report is generally a specific report outlining the failings, or the potential failings of a local authority in respect of a specific situation, outlining whether the council has acted in accordance with its legal obligations in the circumstances of a particular case. The statutory basis for such reports is set out in section 5(2) of the Local Government and Housing Act 1989.
24. The Commissioner therefore accepts that on a balance of probabilities no information is held as regards this part of the complainant's request. The complainant may however wish to make a further request to the council for any relevant correspondence between the monitoring officer and relevant parties.
25. In respect of parts 3 – 7 of the request the council said that the complainant has misinterpreted its previous answers. He believes that he was told by a council officer that the council made no loss from the litigation as the funds were raised from a third party fund. The complainant has raised issues with the interpretation of the council's responses in respect of the third party fund. He argues that there is a third party fund which the council may have no control over. He considers that if that is the case the council's argument is not correct. He also argues that the council has confused the request for information on the fund with a request regarding the council's budget.

26. The council however confirmed that:

- i. The request is for any information held about the costs of the council in litigation cases.
- ii. The council considers that the council's quantification of costs reflects the time, and resources expended preparing and carrying out legal cases. Time spent by legal services and/or other departments is quantified by calculating the time and expenses dealing with a case.
- iii. Costs to the council are generally paid for from the relevant department's budget. Each department will set aside part of its budget for the purposes of funding legal services for the time/salaries spent on cases for their department. There will be an additional cost for overheads spread across departments.
- iv. As a corporate body the cost of employing legal services is paid out of normal council funds. There is therefore no third party fund – it is the councils overall capital which is drawn upon and budgeted to the legal department annually. If further costs are incurred these would be sought from each department as necessary, or from the councils central funds if this proves necessary.
- v. As such, there is no obligation to repay any third party for costs incurred from a third party fund. The council is however able to seek recover its litigation costs through the courts. In general this is in the public interest as it recovers taxpayers' money which would otherwise be lost.
- vi. In conclusion, in terms of this request, the separation of its overall capital between internal department's budgets (and how that is managed) are no more than budgetary and administrative measures employed in managing the overall funding which the council has available to it.
- vii. The answer to the complainant's questions are therefore that relevant information is not held; the council does not fund its legal services department or litigation in the manner which the complainant considers that it does. There is no independent third party fund which the council draws from to pay for litigation, and therefore no information is held relating to this or to any obligation to repay the funds to the third party.

27. Having considered both arguments the Commissioner is satisfied that no information is held by the council in respect of parts 3 – 7 of the complainant's request.

Procedural issues

Section 10(1)

28. In its internal review the council acknowledged that its initial response to the request was made outside of the 20 working days required by section 10(1) of the Act. The initial request was made on 3 November and the council responded on 4 December 2015. It also accepted that it initially failed to respond to the complainant's request for the monitoring officer's report until it responded to the request for review on 8 January 2015.
29. The Commissioner is therefore satisfied that the council did not comply with section 10(1) when responding to the complainant's request.

Right of appeal

30. 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

31. 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.
32. 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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