

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2015

Public Authority: Royal Borough of Windsor and Maidenhead

Address: Town Hall
St Ives Road
Maidenhead
Berkshire
SL6 1RF

Decision (including any steps ordered)

1. The complainant has requested information on fees paid by the public authority to Leonard Cheshire Disability (LCD) for residential care and representations from LCD to the public authority on increases in fees paid for social care provided to them. The public authority stated that some information was not held and provided the remaining information.
2. The Commissioner's decision is that on balance he is satisfied the information requested in the first part of the request is not held by the public authority and he requires no steps to be taken.

Request and response

3. On 30 January 2015, the complainant wrote to the Royal Borough of Windsor and Maidenhead ("RBWM") and requested information in the following terms:

"1) What representations Leonard Cheshire Disability (LCD) have made to the Council asking for increases in the fees paid for social care provided to them, in order to pay their carers the Living Wage.

2) Some idea as to the fees currently being paid to the Council to LCD for residential care, per resident per week. A range of fees or a set of anonymised figures of the fees perhaps. Other Councils have opted to supply statistical median and range as they were concerned that

individual fees could make it possible for people to have a guess at which residents had which fees.

3) Equivalent information for fees paid to other providers for residential care in care homes for people with physical impairments under the age of 65."

4. RBWM responded on 26 February 2015. In response to Q1 and Q3 it stated no information was held. For Q2 RBWM provided a cost per placement range.
5. Following an internal review RBWM wrote to the complainant on 2 April 2015. With regard to Q1 it further explained that information is recorded by the home name and its systems could not identify LCD specifically, after a further search of its records it had again concluded no information was held. For Q3 RBWM changed its response and now considered section 21 applied as the information was reasonably accessible by accessing a link to information on its website.
6. During the Commissioner's investigation, in explaining why section 21 was now being applied RBWM stated it did not know if the specific information the complainant had requested could be ascertained from the links provided. The Commissioner therefore required RBWM to reconsider if section 21 was engaged. RBWM conducted some further enquiries and was able to establish some further information which allowed it to amend its answer to Q2 of the request and provide a response to Q3. RBWM therefore no longer sought to rely on section 21 to refuse any part of the request.

Scope of the case

7. The complainant contacted the Commissioner on 6 April 2015 to complain about the way his request for information had been handled. In particular the complainant was concerned by the response that information could not be provided in response to Q1 as it was not held by reference to LCD as the provider.
8. The complainant also expressed his dissatisfaction at the response to Q3 that the information was reasonably accessible as he stated the links only allowed him to access whether the placement was residential or nursing care, if it was for a primary need or physical or other impairment and if it was for an adult aged 65 or under. The complainant argued this did not allow him to ascertain the information he requested.

9. As RBWM withdrew its use of the section 21 exemption and provided information in response to Q3 the Commissioner will not consider the use of this exemption any further.
10. The Commissioner considers the scope of his investigation to be to determine whether information is held with regard to Q1 and whether RBWM has complied with its obligations under the FOIA when dealing with the request.

Reasons for decision

Section 1 – information held

11. Section 1(1) of the FOIA 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."

12. The Commissioner has considered whether RBWM has complied with this section of the FOIA when it stated that no information was held on representations from LCD to RBWM for increases in fees paid for social care provided to them in order to pay carers the living wage.
13. RBWM had informed the complainant that it did not hold the specific information requested as it recorded information by reference to the name of the care home so could not identify LCD specifically. The Commissioner therefore wrote further to RBWM and in determining whether it held any information within the scope of the request he considered the standard of proof to apply was the civil standard of the balance of probabilities. In deciding whether the balance lies in cases such as this one the Commissioner may look at:
 - Explanations offered as to why the information is not held; and
 - The scope, quality, thoroughness and results of any searches undertaken by the public authority.
14. The Commissioner wrote to RBWM to ascertain what searches it had carried out to determine that no relevant information was held. The Commissioner also asked RBWM to comment on the complainant's comments that other Councils had been able to provide this information.

15. RBWM confirmed it could find no evidence of specific representations it had received from LCD for increases in the fees paid for social care provided by LCD in order to pay their carers the living wage. RBWM did state that it had received representation from LCD for increases in other areas that fall outside the scope of this request.
16. The Commissioner has asked RBWM to provide details of the searches it had carried out and why it considered these searches would have returned relevant information.
17. RBWM has explained that searches were carried out through its centralised contract and financial systems and by its services in those areas that may have held further detail. RBWM again stressed it had been unable to confirm whether it had any clients in LCD residential care due to the way the information is recorded – that being that information is not recorded by company name, such as LCD, but recorded by the name of the care home.
18. RBWM has stated it uses thin-client and centralised storage technologies. Initial searches were carried out on the centrally held database and systems including financial spreadsheets, placement records and the central financial database which are all centrally collated systems. As well as this RBWM performed email archive system searches against its entire Outlook email system to search for electronic records related to the request.
19. In conducting its searches RBWM used several key word searches: Leonard Cheshire Disability; Leonard Cheshire; Leonard; Cheshire; LCD; and Living Wage. None of these search terms resulted in any information. As well as this, RBWM also searched their systems by age and physical disability criteria.
20. RBWM contacted any officers who might have been likely to hold documents relating to the request including senior managers. Any relevant information held in any format would therefore have been identified and this also resulted in no information being found.
21. RBWM has confirmed that it is required to hold certain financial information in accordance with financial regulations and it would normally hold finance records for seven years. This information is retained for the purpose of ensuring there are records of provider payments i.e. care homes, and to provide a reference for client records to ensure details regarding placements are available. RBWM has stated that its financial records are held in line with relevant policies and procedures but the information is still not held by reference to company name.

22. In reaching a decision in this case the Commissioner has considered the arguments presented by both parties and considers his decision needs to focus on two issues: firstly, whether he is satisfied RBWM holds information by reference to care home and not company; and secondly, whether the searches carried out by RBWM could have identified information on LCD relevant to the request.
23. With regard to the first point; the Commissioner accepts that different public authorities will have different ways of recording and storing information and whilst it may have been possible for some Councils to provide the information requested, RBWM has explained the reason why its systems do not hold the information in a way that allows it to be obtained. That being said, the Commissioner has to be assured when making his decision that although the information is not held by reference to LCD, that the information is not still held within other electronic records and able to be extracted by way of conducting other searches.
24. The Commissioner is satisfied the searches conducted by RBWM were thorough and wide enough to have resulted in information relevant to the request being found, should it be held, within RBWMs systems. The key word searches appear to be relevant to the information request and the Commissioner has no reason to doubt that the electronic systems searched by RBWM were the most relevant systems. As well as this the additional searches of the email archive system and requests to relevant officers should have been wide-reaching enough to have uncovered any information within the scope of the request.
25. The Commissioner has to make a decision on balance and in doing so he has looked at the searches carried out by RBWM to establish if any information relevant to the request is held. He acknowledges that the searches carried out by RBWM were robust enough to have identified any information on LCD and then to have allowed further analysis of any documents to see if they contained information within the scope of the request. As the searches resulted in no information being found he has therefore concluded that RBWM has complied with section 1 of the FOIA. He finds that, on balance of probabilities, RBWM does not hold any information within the scope of question 1 of the request.

Section 10 – time for compliance

26. Section 10(1) states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

27. The complainant requested the information on 30 January 2015 and although RBWM initially refused Q3 of the request on the basis of section 21 on 26 February 2015, it later withdrew its reliance on this exemption and provided the information to the complainant on 21 August 2015. This final response, providing information within the scope of the request was sent several months after the request was made.
28. Therefore the Commissioner finds that RBWM has breached section 10(1) of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Pamela Clements
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