

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2015

Public Authority: Cheshire West and Chester Council
Address: Floor 2
HQ Building
58 Nicholas Street
Chester
CH1 2NP

Decision (including any steps ordered)

1. The complainant has requested information with regards to the awarding of a Sexual Health contract. The council provided its response but the complainant considered that further information was held to parts of his request.
2. The Commissioner's decision is that the council does not hold any further information within the scope of the request other than that provided.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 9 January 2015, the complainant wrote to the council and requested the following information:
 1. *"Please provide the names, job titles and formal qualifications for those people who sat on the panel that agreed to give the Sexual Health Service Contract for Cheshire West & Chester to East Cheshire Trust. Please also advise which Councillors sat on the Panel.*
 2. *Please provide minutes of meetings covering the personnel selection of the panel which show why those chosen for the panel were selected and what particular skills warranted their inclusion on the panel.*

3. *Please also provide minutes of meeting(s) leading to the decision. If these are already in the Public Domain, please advise me where I can access them.*
4. *I am seeking to understand the justification for awarding the tender to East Cheshire Trust despite their bid being more expensive than that submitted by The Countess of Chester Foundation Trust*

To justify the decision they presumably must have offered a superior service or additional services compared with that offered by the Countess of Chester Trust and I would be grateful if you would summarise these for me or point me to the record which enumerates them."

5. The council acknowledged the request on 15 January 2015 and provided its response of the 6 February 2015.
6. For part 1 of the request, the council provided the job titles of the people on the panel but refused to provide their names and qualifications relying on section 40(2) of the FOIA, as it considered this information to be third party personal data. It also advised that no councillors sat on the panel.
7. For parts 2 and 3 of the request, the council advised that it did not hold any recorded information.
8. For part 4 of the request, the council did not consider this to be a request for recorded information but did attach a Sexual health Services briefing as part of its response to this.
9. On 10 February 2015, the complainant requested an internal review for the council's response to parts 2 and 3 of the request – where it advised it did not hold the requested information.
10. The council provided its internal review on the 1 May 2015. It maintained its original response that no information was held for parts 2 and 3 of the request.

Scope of the case

11. The complainant contacted the Commissioner on 31 May 2015 as he is not satisfied with the council response to parts 2 and 3 of the request.

12. The Commissioner considers the scope of the case is to determine whether the council holds any recorded information for parts 2 and 3 of the complainant's request.
13. Also, for clarity, the Commissioner notes that the council had identified that the complainant had made a new request to the council with regards to part 4 of this request. With this, the Commissioner has advised the complainant that should he wish to pursue that new request he would firstly need to follow it up with the council. Then if required, once he has been through the council's review process, he can bring that request back to the Commissioner to consider as a separate complaint from this case.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

14. 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.
15. 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 must decide whether, on the civil standards of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. In this case, the complainant considers that the council holds information for parts 2 and 3 of his request, both parts being requests for meeting minutes. He considers that there must have been a decision process in order to select the panel and in order to provide the necessary standards of governance and accountability, there must have been notes taken of any such decision process or discussion.
17. The Commissioner has asked the council what searches it has undertaken and whether it is required to record such minutes or notes as per parts 2 and 3 of the complainant's request.
18. The council has told the Commissioner that it has contacted its officers in its Public Health, Procurement and Legal teams who were involved with the tendering and awarding of the contract as these would be the only services that would hold information relevant to this request.

19. The council has confirmed to the Commissioner that all of its officers contacted in these departments are aware of the need to check both manual and electronic records. However for parts 2 and 3 of the request, the council has told the Commissioner that its officers did not need to run these searches as they knew from their own involvement in the matter that the information was not held.
20. The council has specifically advised the Commissioner that no minutes to select the Panel or to make a decision on the awarding of the contract were required to be kept. Informal notes may have been made but if they were, none were kept and there is no record of their destruction.
21. It also provided the Commissioner with an extract from an email from its Procurement Category Specialist, which stated:

"this was done under the old "Part B" regulations which were not subject to full OJEU rules anywaywe have to be able to explain to bidders why they lost in a fair and transparent manner – no requirement to keep "minutes" as such just how we arrived at the scores. Under the new regulations we now have to keep a "Reg 84" report which should document amongst other things why we reached decisions so meeting minutes would be useful but are not explicitly required or mandated."

22. The Commissioner asked the council whether it recorded any other information in relation to the decisions made to further understand why no minutes were required.
23. It has explained that it does hold a sheet which records and brings together all the moderated scores, however this was not part of any meeting minutes, so would not fall within the scope of the request.
24. On consideration of the above, the Commissioner, sees why the complainant could reasonably expect there to be some record kept in the form of minutes or notes, by the council, with regards to parts 2 and 3 of his request. However the council has confirmed to the Commissioner that it is not a requirement for it to record meeting minutes.
25. As it is not in the Commissioner's remit to determine whether the council is required to record this type of information or not, he can only make a determination whether information is held on the information before him. On review of the council's response to the Commissioner's enquiries, and as no evidence has been presented to him to show the information is held, the Commissioner has determined that, on the balance of probabilities, no information is held by the council, within the

scope of the request, for parts 2 and 3 of the complainant's request. That being, meeting minutes.

26. With regards to the scores, as identified in paragraph 23 above, the Commissioner is satisfied that this information would not fall within the scope of the complainant's request as his request was for meeting minutes. The complainant would need to make a separate request to the council for this information should he wish the council to consider its release.

Right of appeal

27. 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

28. 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.
29. 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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Cheshire
SK9 5AF