

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2015

Public Authority: Wirral Metropolitan Borough Council
Address: Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. In four related requests, the complainant has requested information about the contracting and financial arrangements of Mobberley Court: a supported housing project for people with learning and physical disabilities.
2. Wirral Metropolitan Borough Council ('the Council') handled three of the requests as one request: 'Request 1'. The Commissioner's decision is that it has breached section 10(1) of the FOIA with regard to these requests because it did not respond to them within 20 working days. The Commissioner has found that the Council complied with section 10(1) with regard to Request 2.
3. The Commissioner has also found that the Council's internal reviews of Request 1 and Request 2 were satisfactory and in line with the Code of Practice at section 45 of the FOIA.
4. The Council has responded to the requests and the Commissioner does not require it to take any steps.

Request and response

5. At 22:23, 22:26, 22:29 and 22:33 on 25 May the complainant submitted four requests to the Council. The requests submitted at 22:23 and 22:33 were found to be the same. Given their commonality, the Council

logged the three remaining separate requests as one enquiry, as follows:

Request 1:

Q1 Are Aspire Care Support Services currently registered on any Procurement frameworks or Dynamic Purchasing Systems of Wirral Borough Council?

Q2 What is the total value of the contract relating to the delivery of Core Hours at Mobberley Court per year? On 25/05/15, who is the current holder of this contract? When is this contract due for renewal?

Q3 Can you provide details (Name/Address/Contact numbers/Email addresses) of all companies who are on the following framework Wirral-Contract-NWCE-9AACUJ?"

6. **Request 2** – On 4 June, the complainant requested the following information:

"On 04/06/15, who is the current holder of the contract relating to Core Hours provision at Mobberley Court? When is this contract due for renewal? Is this contract Commissioned by Wirral DASS or is it funded through Direct Payments?"

7. The Council responded to the three questions that it considered comprised Request 1 on 23 June. It released information in response to Q1, said it did not hold information within the scope of Q2 and provided the complainant with a link to where information within the scope of Q3 is published.
8. The Council also responded to Request 2, in a separate email, on 23 June. It said it did not hold this information.
9. Following an internal review of both requests the Council wrote to the complainant on 20 July. With regard to Request 1, the Council maintained its position with regard to Q1 and Q3 although did provide some additional information concerning Q1. It acknowledged there had been an error in respect of Q2 and provided a fresh response to this part, disclosing information regarding the value of the core hours per annum. With regard to Request 2, the Council provided some additional information relevant to this request and responded to other general questions the complainant had raised about Mobberley Court.
10. During the Commissioner's investigation, and after liaising with the Council and the complainant, the Commissioner clarified to the Council that, with regard to Q2, the complainant considered that the figure the Council had released was inaccurate and that he expected to be given a

breakdown of the costs. With regard to Request 2, the complainant was not satisfied with the apparent discrepancy between the information the Council had provided on 23 June, and the information it provided in its internal review of 20 July.

11. On the basis of this clarification, the Council provided the complainant with a further response on 9 October. The Council disagreed that there was a difference between information it provided on 23 June and in the review. It did however acknowledge that confusion could have been avoided if it had provided a more detailed response on 23 June. It confirmed that the Council does not have a formal contract with Aspire Care and provided additional information about aspects of its financing arrangements.

Scope of the case

12. The complainant contacted the Commissioner on 27 July to complain about the way his request for information had been handled. At that stage, he considered that the Council had delayed responding to his requests by aggregating the three requests he submitted on 25 May. He also considered that he had not received all the information he had requested and that the information he had received from the Council in its response and internal review was inaccurate or contradictory.
13. Following the Council's further response of 9 October, the complainant confirmed on 26 October that he remains dissatisfied with the length of time it took for the Council to respond and its aggregation of three of his requests. The complainant also considers that he would not have received all the information he finally did receive had he not asked for an internal review.
14. The Commissioner has focussed his investigation on the time the Council took to respond to the requests. As part of this he has also considered the Council's aggregation of three of the requests. Finally, he has considered the internal reviews that the Council undertook.

Reasons for decision

Section 10 – time limit for response

15. Section 1(1) of the FOIA says that when a public authority receives a request it must confirm or deny whether it holds the information and, if it does, the information must be communicated to the requester.

16. Section 10(1) of the Act says that public authorities must comply with section 1(1) promptly, and within 20 working days of receiving the request.
17. In this case, the complainant submitted three requests within 10 minutes on 25 May. He submitted a separate request on 4 June. The Council's response to the first requests were all due by 22 June, and to the separate request by 2 July. The complainant received responses to all the requests, in two emails, on 23 June.
18. The Council's responses to the first three requests were all one day late and therefore breached section 10. The Council responded to the separate request within the time limit.
19. The complainant considers that because the Council aggregated the three requests he submitted on 25 May, this enabled it to not respond to any of the separate requests within a very short timescale. He considers, for example, that the web link that was a response to Q3 and which was included in the Council's response of 23 June could have been provided well before this.
20. As referenced at paragraph 16, section 10 requires a public authority to respond to a request 'promptly' and within 20 working days. The Commissioner appreciates that, at any time, authorities are likely to be handling a number of FOI requests from different applicants. They will have their own processes for managing this workload. The Commissioner notes that the complainant considers that one or more of his individual requests could have been responded to very quickly. However, it is the Commissioner's opinion that as long as a public authority responds to an FOIA request within 20 working days, it has complied with the Act.
21. In this case though, the Council provided a response to the first three requests one day after the 20 working day deadline, which is why the Commissioner has found that it breached section 10 with respect to these requests. Given that they were submitted within minutes of each other, it may well have been the case that even if the Council had treated each of the three requests separately it would have taken a similar amount of time to respond to any or all of them.
22. In its further response of 9 October, the Council told the complainant that under section 5(2) of the Act, public authorities can aggregate requests where two or more requests relate, to any extent, to the same or similar information and the authority receives them within any period of sixty consecutive working days.

23. It appears to the Commissioner that the Council has made a mistake here. Section 12(1) says that public authorities are not obliged to comply with a request if the cost of complying exceeds the appropriate limit. Section 12(4) says that, when considering the cost of complying with a request, authorities can aggregate similar requests received within a short time of each other and to regard the cost of handling one of them as the cost of handling them all. Aggregating requests must be for the purpose of considering the application of section 12.
24. The Council in this case does not appear to have aggregated the complainant's three requests of 25 May for the purpose of considering whether to apply section 12(1) to them. It told the complainant it was handling the three requests together "for simplicity". In the Commissioner's opinion, given that the requests concern the same subject, it was not unreasonable for the Council to conclude that handling them in this way would be helpful. Technically, however, the requests were submitted separately and the Council should have managed them separately – unless it had been considering whether to apply section 12(1) to them.

Internal review

25. The complainant considers that if he had not requested internal reviews of the Council's responses to his requests, he would not have received all the information that he did. This seems to the Commissioner to be a good example of the purpose and benefit of an internal review. Undertaking an internal review gives a public authority the opportunity to reconsider its original response. Having reconsidered its response it may conclude that the response was correct, it may apply a different exemption or, as in this case, it may identify additional information that it can release or it can clarify its response.
26. Ideally, all public authorities should provide accurate and thorough responses to the FOI requests they receive. In reality, responses can often be improved and this is the function of the internal review. In this case, having reviewed Request 1 and Request 2, the Council acknowledged to the complainant the shortcomings in its original responses, and provided further information and clarification. In the Commissioner's view, this aspect of the Council's handling of the complainant's requests was satisfactory.

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

Pamela Clements
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