

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 January 2016

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested information in relation to an incident that happened within his block of flats. The council provided some information to part of his request and refused to provide the CCTV footage as it considered it third party personal data. Following a complaint to the Commissioner, it was clarified that it was not the CCTV footage, but the timeframes of the incidents that the complainant was seeking for the parts refused by the council.
2. The council, after clarification of what was actually being sought, no longer looked to refuse the request as third party personal data and provided the timeframe for one of the 3 incidents, and stated the information was not held for the other two.
3. Following enquiries by the Commissioner, his decision is that the council does hold information in order to provide a response to parts 1 and 3 of the request and is satisfied with the time provided for part 2 of his request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant with regards to parts 1 and 3 of his request as outlined in paragraph 30 and 31 of this decision notice.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 4 January 2015, the complainant wrote to the council requesting the following information regards to CCTV footage:

"1. Time assailant enters Home Tower [CCTV bin room /fire exit camera] to time he is picked on [CCTV main lobby camera] main lobby (it take 5 seconds. Over that is the tirade/ threats/ abuse!)

2. CCTV will have the assailant entering his GF flat and re-emerging, that length of time inside GF flat?

3. How long did the Assailant remain on my landing swearing issuing threat whilst I was on the phone to the police #2 (approx. 70 seconds plus?)

4. What is BCC policy on informing the police if CCTV later shows EVIDENCE of a crime

5. Why did [name redacted] NOT inform the police asked multiple times and in letter! (Help offered "This includes referral to victim/witness support services as appropriate", but surprisingly NOT the Police)From Tenancy Conditions

6. Would [name redacted] again NOT notify the police for another tenant

7. What is the criteria [name redacted] and his team, found to open an investigation. Basbu have NOT stated what a person should do when a category A offence is about to be inflicted whilst that person is inside their OWN FLAT"

7. The council responded to the request on the 29 January 2015 as part of its stage 3 complaint's procedure. In response to part 1 to 3 of the request the council advised that the images on the CCTV that had been requested may be subject to an exemption under the provisions of the Data Protection Act 1998 (the DPA), as it contains third party information. It advised that it could not provide the complainant with this information as it could identify another living individual.

8. For part 4 of the request the council advised that it does not hold such a policy. For part 5 to 7 of the request the council responded to the questions.
9. The complainant contacted the Commissioner on the 2 February 2015 as he was not satisfied with the council's response to Parts 1 to 3 of his request.
10. Following contact from the Commissioner, the council provided a further response to the complainant on the 16 February 2015 under the FOIA. In particular, to parts 1 to 3 of the request, it relied on section 40 of the FOIA to refuse this part of the request as it considered the information to be the personal data of a third party.
11. The complainant requested an internal review on the 27 March 2015 with regards to the information being withheld under section 40 of the FOIA. That being parts 1 to 3 of his request, arguing that:

"First there is NO disclosure this information is ALREADY known by me as I am both witness (and victim) to the events. You are NOT disclosing information that is not already known, you are providing PRECISE/ ACCURATE information

Second the CCTV warnings are covered by Section 29 Data Protection Act, there id[sic] NO exemption. PROSECUTION OF OFFENDERS"

12. The council provided its internal review response on the 1 June 2015. It maintained its decision to withhold the information to parts 1 to 3 of the request under section 40(2) of the FOIA – third party personal data.

Scope of the case

13. The complainant contacted the Commissioner again advising that he was not satisfied with the council refusing parts 1 to 3 of his request. Following communications with the complainant, the Commissioner determined that the complainant was not requesting the CCTV footage itself, but the exact times in which the described incidents occurred.
14. The Commissioner wrote to the council explaining this and asking it to consider whether it considered providing the exact times would fall under section 40(2) of the FOIA.
15. On consideration of this, the council issued a fresh response to the complainant on the 9 September 2015. It no longer sought to rely on section 40(2) of the FOIA as it did not consider the clarification of what

was actually being requested to be third party personal data. Its fresh response to parts 1 to 3 of the complainant's request was that the information to parts 1 and 3 were not held and it calculated the length of time to part 2 as being 57 seconds.

16. The complainant has told the Commissioner that he considers the council holds the requested information to parts 1 and 3 of his request and has questioned whether the length of time provided to part 2 of his request is accurate.
17. The Commissioner considers the scope of the request is to determine whether the council holds footage recording the described information in order to determine the requested times and whether the council has provided the correct length of time for part 2 of the request.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

18. 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.
19. 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).
20. In this case, the complainant considers that the council would hold CCTV footage recording the described incidents to parts 1 and 3 of his request and therefore be able to provide the requested times. He also has questioned the timeframe stipulated by the council for part two of the request.
21. The Commissioner has asked the council what types of searches it conducted in order to establish whether the information was held to parts 1 and 3 of the request and how it determined the stipulated time to part 2 of the request.
22. With regards to part 2 of the request "*...assailant entering his GF flat and re-emerging...*", the council determined and advised the complainant that the timeframe was 57 seconds. The council, following the

Commissioner's investigation, reviewed its footage and provided the Commissioner with screen shots from the CCTV footage. The screen shots provided show a timeframe of 43 seconds, not the 57 seconds originally advised by the council.

23. Although there is a difference in the times, the Commissioner sees that it is difficult to give an exact time of entering and leaving as it is subjective in determining exactly when to start the timing of someone entering and leaving. For instance, is it when the door starts to open or is it when the 'individual' is in full view after the door has opened? The same for when leaving, is it when the door has fully shut behind? The screen shots provided show the 'individual' in full view. So the Commissioner considers the council has provided the requested information as accurately as possible, to part 2 of the request, following its further investigations and explanations.
24. The council has explained that although it does hold CCTV footage within the block of flats and the cameras are fully functional and working for the prevention and detection of crime, there is no footage held relating to the specific areas to where the described incidents took place due to the cameras not being focused in those areas.
25. With regards to parts 1 and 3 of the request, the council initially explained to the Commissioner that the CCTV cameras within the block of flats in question are only located on the stairwells and in the lift areas. They are not located on the landings which would show the entrances to the requested flats. The only exception to this is the ground floor flat which is located next to a lift and this flat entrance is therefore picked up by the camera that is focusing on the lift.
26. However, the screenshot that the council provided the Commissioner seemed to suggest that the first floor flat was in view of the CCTV, not the ground floor flat stated by the council.
27. The Commissioner sought clarification on this from the council, after speaking further with its service team, it came back to the Commissioner explaining that CCTV cameras are located on all landings and are aimed directly at the lifts. The CCTV camera on each floor landing will capture any flat that is next to the lift, so for example, the area described for part 2 of the complainants request – which it clarified is actually on the first floor, not the ground floor it initially stated – is captured by the CCTV camera. But the other two flats on the first floor landing are not covered by the CCTV camera.
28. Additionally, the council has explained that CCTV cameras are not located in the bin room or any fire exit.

29. On the complainant's floor landing, the council has told the Commissioner that there is only one flat – the complainant's. The actual entrance to his flat is not covered by the CCTV camera as this camera is situated above the door of his flat. So where the council has said no information is held, it says this is partially correct and stated to the Commissioner after clarification from its Service Team:

"...as we are not able to validate what was said at the time by [complainant name redacted] or the alleged assailant as there is no sound recorded by the CCTV cameras. However, we did say that there are no CCTV cameras, this is not completely accurate and is again a confusion in regard to the use of 'stairwell' and lift 'landings/areas'. CCTV cameras are located on the floor landings as detailed above but are pointing at the lifts, not at tenants' doors.

In question 3 of the original...We cannot validate what is being said by any party as there is no sound recorded. However, we do have CCTV footage of the alleged assailant entering [complainant's name redacted] floor landing and we would be able to provide the length of time he spent on this landing, however this, in itself, will prove nothing apart from the fact that he was there.

In regard to Q1 of the original complaint from [complainant's name redacted] we do have CCTV footage of the alleged assailant entering the bin room and returning back into the main lobby."

30. With this, it appears to the Commissioner that the council's response to parts 1 and 3 of the complainant's request should not be 'information not held' as it appears that it is able to provide times to the complainant offering the explanations as it has, quoted in the above paragraph.
31. Therefore the Commissioner's decision is that the council holds information that would allow it to be able to provide times to the complainant for parts 1 and 3 of the request and therefore needs to issue the complainant with a fresh response to parts 1 and 3 of his request providing the recorded times from the CCTV footage. The council needs to take these steps in the timeframe outlined in paragraph 5 of this decision notice.
32. With regards to part 2 of the request, the Commissioner is satisfied with the council's response of 43 to 57 seconds and does not require it to take any steps with regards to this part of the request.

Right of appeal

33. 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

34. 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.
35. 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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