

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 August 2016

**Public Authority:** City of Wolverhampton Council  
**Address:** Civic Centre  
St Peters Square  
Wolverhampton  
WV1 1SH

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to organisational structure. The City of Wolverhampton Council (the Council) refused to comply with the request citing section 22(1) of the FOIA. However, the Commissioner considers that section 22(1) does not apply to this request.
2. The Commissioner considers that the information had already been provided as part of a response to a previous request. Therefore the information was reasonably accessible to the complainant and exempt under section 21 of FOIA. As the Council was not obliged to provide the information to the complainant, section 11 (means for communication) does not arise.

#### Background

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3. In November 2015, the complainant asked the Council for the name and contact details including email for the manager directly responsible for the Children's Leaving Care Service.
4. On 13 January 2016, the Council advised the complainant that the request was exempt under section 21 of FOIA as the information sought was already accessible and published in the public domain. The Council provided a link to the page on its website.
5. The Commissioner notes that this linked to organisation charts in a pictorial format which contained names, contact details, job titles and

responsibilities and was over and above the request for specific details of one manager.

6. Whether this was the correct response to the specific request has already been considered by the Commissioner in his decision notice dated 1 June 2016, case reference FS50620570.
7. On 14 January 2016 the complainant submitted another request concerning this link to organisation charts which is the subject of this complaint.

## Request and response

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8. On 14 January 2016 the complainant requested the following information:

*'I have taken a look at the link you provided to the organisational structure. Having read your Transparency and Open Data Policy I looked for this as a published open data set only to find that the contact details are not included. I appreciate why this may be the case, I then checked the Publication scheme and it appears that a different dataset is included in the Scheme.*

*Can I have the information contained in the charts you sent me a link to as a dataset in a reusable csv format? I appreciate this is a new request.'*

9. On 11 February 2016 the Council advised the complainant that

*'your request for information is exempt under Section 22 of the FOI Act, intended for future publication.*

*This information is currently in the process of being collated, and is due to be published as a Data Set at the end of April 2016 to replace the current data sets which are published on our Data Share site. The current versions can be found here:*

*<http://data.wolverhampton.gov.uk/View/employees>*

10. The Commissioner notes that this links to a list of information that includes job titles, salaries and telephone numbers, it does not include names and email addresses.
11. On 11 February 2016 the complainant requested an internal review *'as I am concerned that the response does not fully comply with the terms of FOIA as amended by the Protection of Freedoms Act?'*

12. On 26 February 2016 the Council sent the outcome of its internal review which upheld the exemption under section 22:

*'It is clear that the Council intends to publish this information in April 2016 as part of a planned upgrade to its published and publicly-available information assets.'*

13. The Council also addressed the matter of datasets and the significant amendments made to Section 11 of FOIA by the provisions of the Protection of Freedoms Act 2012 which allow for requesters to express a preference for information to be provided in a suitable reusable data set:

*'A dataset is defined further as a collection of factual information in electronic form to do with the services and functions of the authority that is neither the product of analysis or interpretation, nor an official statistic and has not been materially altered...'*

*This does not apply to any information that is exempt from disclosure under a valid exemption.*

*Therefore, before applying the data sets provision of Section 11, the public authority must first have decided what information should be released and what, if any, is exempt under an exemption, as it would do with any request for information.'*

14. The Council stated that in this case, *'as a valid exemption under the Act applies to the requested information, the requirement to prepare and disclose a data set in response to a request for information does not arise as the information is scheduled for future publication during 2016.'*

15. On 26 February 2016 the complainant wrote to the Commissioner.

16. On 11 May 2016 the Commissioner wrote an initial letter to both the complainant and the public authority asking if the dataset had been published as planned for the end of April 2016 as it may be that an informal resolution would be possible.

17. On 2 June 2016 the Council wrote to the complainant (with a copy to the Commissioner) advising that the planned update had been duly made and attached a copy of both the requested structure charts and a reusable version. It also provided links to the information which include names and email addresses:

Structure charts:

<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=9826&p=0>

Dataset: <http://www.wolverhampton.gov.uk/article/3198/Who-we-are-and-what-we-do>

18. The Council also stated that some information in respect of tiers below those published had not been included under section 40 (personal data) in respect of lower level employee details.
19. On 3 June 2016 the Commissioner contacted the complainant seeking an informal resolution as he understood that the Council had now provided the outstanding withheld information.
20. On 9 June 2016 the complainant stated that *'my request was not for the updated dataset but for the information as then published but in a reusable format. So section 22 should not apply. My preference is for a decision notice.'*
21. On 10 June 2016 the Commissioner contacted the Council by telephone and email to progress the case. Unfortunately, there was a delay caused by an email from the Commissioner that was not received at the Council. This matter was resolved and on 8 July 2016 the Council provided the Commissioner with its submissions. The Commissioner asked a number of further questions as part of her investigation and these were answered promptly by the Council.

### **Scope of the case**

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22. The Commissioner considers that the scope of the request is to determine whether the requested information is exempt. If it is, then the obligation under section 11 (means of communication) to provide the information in the complainant's preferred format does not arise. If the information is not exempt the Commissioner will consider the Council's obligations under section 11.

### **Reasons for decision**

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23. The Commissioner first considered whether this request (the request of 14 January 2016) was a new request for information.
24. The Council provided the information to the complainant on 13 January 2016 as a link. This was in response to a previous specific request (November 2015) when the Council provided additional and broad information on a voluntary basis.
25. During the course of the investigation the complainant made it clear that he was not seeking an updated version of the organisational chart, but a copy of the information he had already received in a particular format. It follows that by the time he made his request on 14 January he already

had the information he was seeking. The information was therefore exempt under section 21 which provides an exemption in respect of information that is reasonably accessible to an applicant.

26. In its response to the complainant, the Council did not clearly state that it did not hold the information in a reusable format. Rather, the Council stated that *'this information is currently in the process of being collated'* and applied section 22 as it intended to publish the information as part of its managed program of refreshing its published information.
27. The Commissioner considers that section 22 would not apply as the information intended for future publication was not the information which was requested. The Council intended to publish an updated version of the organisation in chart and reusable formats.
28. As the Council did not provide any information in response to this request (14 January 2016), the Commissioner refers to his guidance (<https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf>) on section 11 (means of communication):

*'Section 11 is relevant when a public authority is providing information to a requester in response to a FOIA request. If the public authority is not providing the information because of an exemption, it is not relevant.'*

29. In addition, the Council has confirmed to the Commissioner that the organisation charts provided in the link on 13 January were part of the Council's Publication Scheme.
30. In the Commissioner's guidance on section 11, where information is readily accessible (for example, in a publication scheme), the guidance makes it clear that there is no obligation to provide the information in a particular format (paragraph 55):

*'If the information is reasonably accessible to the requester, then it may be exempt under section 21, and the public authority does not have to provide it in response to the request. There may be a case where the information is already available to the requester under the public authority's publication scheme but not in the form in which the requester would prefer to receive it. If so, the public authority is not obliged to provide the information in the requester's preferred form; the public authority has no duty under section 11, because the information is exempt, and it has no duty to communicate the information in response to the request.'*

31. In the First-tier Tribunal case of Liam Costello v the Information Commissioner and Northamptonshire County Council (EA/2011/0291, 3

July 2012), the Tribunal supported the Commissioner's view that it was necessary to consider whether the information was exempt under section 21 before considering section 11 (paragraph 16 of the Tribunal decision).

## Conclusion

32. The Commissioner has concluded that at the time of the request the information was exempt under section 21 as the complainant already held the information, and that the exemption section 11 (means of communication) does not arise.

## Other matters

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33. Datasets have been mentioned in the request and the Council's response, but the Commissioner considers that the organisation charts, in themselves, are not datasets.
34. In the Commissioner's guidance on data sets, <https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf> he refers to  
*'The dataset provisions contain no additional right to obtain information that is not otherwise accessible under FOIA. They are about providing the information in a re-usable form and making it available for re-use, if it is a dataset.'*
35. Following the definition of datasets within the guidance, the organisation charts contain 'factual information', are to do with the organisation of 'services and functions' of the authority **but** consist of information that has been 'organised, adapted or otherwise materially altered since it was obtained or recorded.'
36. The guidance states that the 'intention of the subsection seems to be to define a dataset as a collection of raw data that is presented in essentially the same way that it was organised when the public authority originally obtained or recorded it.'
37. The Commissioner considers that an organisation chart is more than raw data. It is information that is presented in a particular style to visually demonstrate the hierarchy between and within the roles of the Council.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**