

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2016

Public Authority: Bedford Borough Council

Address: Borough Hall
Cauldwell Street
Bedford
MK42 9AP

Decision (including any steps ordered)

1. The complainant has requested correspondence which passed between Bedford Borough Council and BT Openreach during the period 22 Feb 2010 and 15 March 2016.
2. The Commissioner's decision is that the Council does not hold any information which falls within the terms specified by the complainant in his request. She is satisfied that the Council has provided the complainant with information which is relevant to his request and that it has complied with section 1 of the FOIA.
3. No further action is required in respect of this matter.

Request and response

4. On 15 March 2016, the complainant wrote to Bedford Borough Council and asked to be provided with information in the following terms:

"Correspondence between Bedford Borough Council and Open Reach and BT regarding the installation and access to superfast broadband for the village of Pavenham. Correspondence between 22 Feb 2010 and 15 March 2016."

The complainant stated that: "There has been no update of information on the installation of superfast broadband from either Bedford BC, Open Reach or BT."

5. The Council responded to the complainant's request on 21 March 2016, confirming that there has been no specific communication in relation to Pavenham. The Council's letter stated that all non-commercially sensitive information is published on its website at www.bedford.gov.uk/broadband. The Council advised the complainant that it held documentation from BT, but did not hold information specifically relating to Pavenham by way of 'communications'. This documentation could not be released in its entirety as it was commercially sensitive.

6. The Council stated that, 'Communications covering Pavenham postcodes have been about the whole of each of our broadband projects and everything that is not commercially sensitive is published on our website which is continually updated'. The Council, drawing from its published information, advised the complainant that:

"Our second superfast broadband project is going through some changes at present – generally in a positive direction (i.e. some more useful acceleration is now being planned).

Looking at the very latest information we have from BT/Openreach it looks as though Phase 1 (main village) will be delivered in Quarter 3, 2016 and Pavenham East in Quarter 2, 2017.

Main village delivery will be through a straightforward Fibre to the Cabinet (FTTC) solution. We are still trying to get more information on the wholly new structures to be installed (i.e. where there isn't a 'copper' cabinet already). This will be the solution for Pavenham East."

7. On 23 March 2016, the complainant wrote to the Council about its response to his request for information. The complainant pointed out that he had asked for copies of correspondence between the Council and BT/Openreach, and whilst the Council has confirmed that this exists, it had not provided any. The complainant accepted that the Council had provided correspondence between it and Pavenham Parish Council, but asserted that this was not relevant to his request. To assist the Council further, the complainant refined his request, providing the Council with a list of the postcodes in the Pavenham area.

8. The Council conducted an internal review and responded to the complainant on 8 April. The Council provided the complainant with copies of emails with BT (where reference was made to Pavenham postcodes), Speed and Coverage Template Extracts regarding Pavenham postcodes and a copy of the Council's Implementation Plan.

Scope of the case

9. The complainant contacted the Commissioner on 15 April 2016 to complain about the way his request for information had been handled.
10. The complainant asserted that the Council has failed to supply him with the information he has requested, even though it has confirmed that this information exists. Further, the complainant asserted that the Council has given no reason for not providing the information he seeks. He has pointed out that the Council has sent him a screen shot copy of an email between the Council and BT which indicates two attachments which he is unable to view. The complainant contends that the Council has not taken his request for information seriously and it is failing to proactively put information into the public domain.
11. The Commissioner has investigated the extent to which Bedford Borough Council holds information specified in the terms of the complainant's request of 15 March 2016. This notice sets out the Commissioner's decision.

Reasons for decision

12. Section 1 of FOIA states that –

“(1) 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.

13. The Commissioner has sought to determine whether, on the balance of probabilities, the extent of to which the Council holds information which is relevant to the complainant's request.
14. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
15. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant. The Commissioner's

investigation also included and questions about the possible deletion/destruction of.

The Council's representations to the Commissioner

16. The Council has advised the Commissioner that it undertook searches of all emails, saved documents and its website in order to retrieve any information relevant to the complainant's request. Any documents relating to the broadband projects are saved on the departmental shared drive, kept in Outlook or available on the Council's website.
17. All documents, data and information relating to Broadband is kept on the Council's shared network and searches were made of this.
18. In order to mitigate data security issues, personal computers are not used by the Council's Officers.
19. Whilst it is understood that 'Postcodes' and 'Pavenham' would have been terms used in the searches conducted by the Council, it is not possible to describe any other terms which might have been used. This is due to personnel leaving the Council's employment.
20. The Council has not searched any of its paper-based records for information falling within the complainant's request. The Council did not search its manually-held records as these would merely reflect the contents of its electronically-held records.
21. The Council advised the Commissioner that all information relevant to the broadband projects is still retained and that none has been destroyed or deleted. This is because the broadband projects are still on-going.

The Commissioner's conclusions

22. The terms of the complainant's request are clear: The complainant specified that he seeks 'correspondence'...which concerns the installation and access to superfast broadband for the village of Pavenham", between 22 Feb 2010 and 15 March 2016."
23. In the absence of evidence to the contrary, the Commissioner must accept the Council's position that it does not hold any communication which specifically concerns the village of Pavenham.
24. It is clear to the Commissioner that the Council holds information which includes reference to the provision of broadband, including that to the village of Pavenham. This includes the two attachments shown on the screenshot which was disclosed to the complainant. The Commissioner has viewed the attachment documents. She is satisfied that the

attachments should be withheld in reliance on section 40(2) of the FOIA, by virtue of references to postcodes, which in some instances relate to single properties.

25. The Commissioner considers that the information which the Council disclosed to the complainant falls outside the scope of his request. She is satisfied that, on the balance of probabilities, the Council has provided the complainant with all the information it holds which relevant to his request, even though it does not fall within the precise terms he used.
26. Undoubtedly the Council holds further information which is relevant to its broadband projects. This is confirmed by the Council's reference to 'commercially sensitive' information which it has not made public. The Commissioner accepts that this information falls outside the scope of the complainant's request and she has not considered that information in this notice.
27. The Commissioner's decision is that Bedford Borough Council has complied with section 1 of the FOIA.

Other matters

28. The Commissioner has not seen any evidence substantiates the complainant's claim that Bedford Borough Council has not taken his request seriously and that it is failing to proactively put information into the public domain.

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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF