

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2017

Public Authority: Darlington Borough Council
Address: Town Hall
Darlington
DL1 5QT

Decision (including any steps ordered)

1. The complainant has requested information relating to the rollout of superfast Broadband (funding and decision making) in the Darlington area. Darlington Borough Council failed to respond within the statutory 20 working days prescribed by FOIA.
2. The Commissioner's decision is that in failing to communicate to the complainant all the information it held to fulfil the request within the statutory timescale of 20 working days, Darlington Borough Council breached section 10(1) (time for compliance) of the FOIA.
3. The Council has now provided all the information to the complainant, therefore the Commissioner does not require the Council to take any steps.

Request and response

4. On 4 March 2017, the complainant wrote to Darlington Borough Council ('the Council') and requested information in the following terms:

"Minutes of all meetings relevant to the rollout of superfast Broadband (funding and decision making) from October 2015 to date concerning the Darlington West villages of: Redworth, Summerhouses, Denton and Killerby. To include Cabinet minutes, minutes of committees, and LA officers (both external and internal).

Details of meetings (dates / attendees – minutes) of DBC officers / Councillors / Cabinet members with relevant partner agencies including Tees Valley Combined Authority, Digital Durham and Openreach/BT.

Email trails (and other relevant correspondence such as letters, notes of phone calls etc) to and from LA officers / Councillors / Cabinet members between themselves and to relevant partners including: Digital Durham, BT/Openreach, TVCA – with specific reference to the phase 2/3 roll out of BDUK funding to the villages above, including decision making, agreements to fund and evidence of contracts being agreed and in place."

5. The Council responded on 17 May 2017. It provided some redacted emails and a summary report and minutes for a cabinet meeting held on 12 July 2016. A link was provided to the Council's online minutes, but without guidance or search terms to identify relevant meetings. It also provided a refusal notice citing the exemption at section 21, information reasonably accessible to the applicant by other means.
6. On the 17 May 2017 the complainant expressed dissatisfaction that the Council had not supplied all the requested information. She also disputed that the meeting information was reasonably accessible without some further guidance. She followed this up again on 12 June 2017 asking the Council to check that the request had been fully complied with.
7. On the 15 June 2017 the Council responded stating *"We do not routinely re-check the accuracy of responses sent, over and above the checks carried out prior to the response being issued. If however you are dissatisfied with the information provided in the response you do have the right to request an internal review"*
8. The complainant contacted the Council on 28 June 2017 stating that *"it is clear that a substantial proportion of significant information is missing."* The emails released in the initial response refer to meetings, negotiations and additional emails pertinent to the request that were not

provided. The complainant was particularly interested in information relating to the reason for the Council's withdrawal of match funding for the broadband rollout in Darlington.

9. The Council acknowledged the review request on 5 July 2017, and promised to respond by 25 July 2017. On 4 August 2017 the Council provided 18 batches of emails relating to the original request however some of the attachments could not be opened. The Complainant advised the Council of this issue and stated that information central to the request still appeared to be missing.
10. The complainant made a complaint to the Council on 21 August about the way the information request and information reviews had been handled and asked for a timescale to receive the missing information.
11. The Council responded on 21 August 2017 and explained that some of the attachments were emails that were included, albeit maybe not obviously, within the batches. However other information had been archived which was why the attachments could not be opened. It also promised to follow up with the relevant teams for the missing minutes.
12. On 29 August 2017 the complainant reconfirmed the information she considered to be missing with the reasons why.
13. On 31 August 2017 the Council provided the attachments that had been archived and could not be opened previously. It stated that on 4 August 2017 it had provided all of the outstanding information the Council held in respect of the meetings.
14. On 31 August 2017 the complainant wrote to the Council to express dissatisfaction at the response and raise a number of points including:

"the response implies that no record of what was said / agreed in meetings regarding this rollout, other than Cabinet papers exist

despite a large number of these meetings involving external partner no minutes were even taken or circulated?

there are no minutes to the external meeting in August 2016 attended by [redacted] that launched the change of direction with the rollout DBC have been keen to say that [redacted company] trebled the costs... I am still waiting for evidence that supports his claim"
15. The Council responded on 4 September 2017 and advised that it was not aware of any requirement to *"create and retain minutes of operational meetings"*. It also advised that having carried out a number of searches

it was satisfied that it had provided all the information that it holds falling within the scope the information request.

16. The complainant responded on 7 September 2017 stating that the Council still had not provided the information from [redacted company] regarding the increased connection costs which is central to the FOI request.
17. The Council provided the missing letter from [redacted company] to the Complainant on 12 September 2017, "*having undertaken a number of further searches*" and apologised for not providing it sooner.

Scope of the case

18. The complainant contacted the Commissioner on 26 July 2017 to complain about the Council's responses. Initially the complainant was dissatisfied in two respects: with the way the request had been handled; and disputing that the Council had responded fully to the request.
19. Through her own persistence however the complainant finally obtained all outstanding information by 12 September 2017 and has confirmed that she is satisfied in this respect.
20. The complainant remains dissatisfied with the way her information request was handled and the amount of time and effort required to obtain a full and proper response.
21. The Commissioner therefore considers the scope of the case to be whether the Council complied with its obligations under section 1 of the FOIA (general right of access to information held by public authorities) and section 10 (time for compliance with the request).

Reasons for decision

Section 1 – general right of access

22. Section 1(1) of the FOIA states:

"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."

Section 10 – time for compliance

23. Section 10(1) of FOIA states that:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

24. The complainant made her request for information on 4 March 2017. The Council provided its initial response on 17 May 2017, which falls outside of the 20 working days from the date the request was received.
25. Additionally the Council did not provide its complete response until 12 September 2017, which means it took 6 months to provide a response from the date that the request was received.
26. The Commissioner is therefore satisfied that the Council has breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

Other matters

27. The complainant also expressed concern at the late replies to her internal review requests, which she had to follow up with the Council a number of times before getting a response.
28. The Commissioner considers that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. The Commissioner notes that in this case it took significantly longer and multiple requests from the complainant.
29. The Commissioner also notes that the Council advised the complainant a number of times that information did not exist but then subsequently located it.
30. In view of the issues which this Decision Notice has highlighted with the response to the request, the Commissioner will be writing to the Council separately regarding this case.

Right of appeal

31. 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

32. 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.
33. 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