

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2018

Public Authority: Southend-on-Sea Borough Council
Address: Civic Centre
Victoria Avenue
Southend-on-Sea
Essex
SS2 6ER

Decision (including any steps ordered)

1. The complainant requested information relating to a published report on primary school catchment areas, following consultation by questionnaire. Southend-on-Sea Borough Council (the 'Council') responded, providing some of the requested information, but refused to provide the remainder as it said it would need to create information in order to do so.
2. Having considered the information available the Commissioner is satisfied that the information requested by the complainant in part 2 of the request is not held by the Council and FOIA places no obligation on it to create new information in response to the request.
3. In relation to part 3 of the request, the Commissioner finds, that on the balance of probabilities, the Council does not hold any further information beyond that already provided to the complainant.
4. The Commissioner does not require the Council to take any steps as a result of this notice.

Background

5. At the time this request was made, the Council was conducting a review of some of its school catchment areas.

6. During a pre-consultation exercise, members of the public were asked to give their views on a number of alternative options.
7. Views were provided by responding to a questionnaire. The responses were collated into a spreadsheet data base. Using this database, a number of outputs were created, including the tables in the 'Summary Report' from 'Phase 1 Public Engagement Review of Primary School Catchment Areas in Leigh on Sea' referenced by the complainant¹.
8. Data from a number of responses were excluded from the tables. The Council explained this was because 467 surveys were totally blank. Individuals did not answer any questions and did not provide any comments. Of these, 122 logged into the survey but did nothing else while 345 stated the age range into which their children fitted but no other information.
9. The Model B proposal concerned five specified schools; however, due to an error in the design of the survey, some respondents answered the Model B questions in relation to schools which were not actually included in Model B. These then had to be excluded from the Table relating to Model B as they were not relevant to the schools in the Model. Only the responses relating to schools not included in Model B were removed, all other responses from these surveys were included. This affected 226 surveys.
10. All survey responses where individuals had provided a response were included in full in the published Tables.
11. In the interests of transparency, it was openly stated in the Summary Report that some responses had been removed from the tables.

Request and response

12. On 23 October 2017 the complainant wrote to the Council and requested information in the following terms:

"I write for information related to the Summary Report from Phase 1 Public Engagement Review of Primary School Catchment Areas in Leigh On Sea – September 2017.

¹ <http://democracy.southend.gov.uk/documents/s13705/Appendix%20%20-%20Cabinet%20Report%20on%20Catchment%202019.pdf>

1. *For all of the tables in Section 5, it was stated that some responses were removed: how many responses were removed from the published results?*
 2. *Please provide all the tables in this section (5.12.2, 5.13.2, 5.14 and 5.17) updated to include the full set of responses the council received, including the responses previously removed.*
 3. *The output (actual numbers) of the Southend forecasting as reference is [sic] paragraph 3.12 including full details of the source of all numbers used or rationale for any subjective numbers.*
 4. *The Southend forecasting output (actual numbers) for the prior 8 calendar years. Please include the date the file for each year was last updated."*
13. On 17 November 2017 the Council responded to the request. It answered part 1, giving more detail about the survey response and why some of the results were removed (akin to the information included in the 'Background' section above).
14. For part 2 of the request, the Council said:
- "Freedom of Information legislation entitles you to receive details of information we hold. It does not entitle you to the creation of new information. During the creation of statistics for the tables specified, we have not created any with the full set of responses including removed responses in them, therefore we are unable to provide you with this information."*
15. For part 3 it advised the complainant that the output (actual numbers) of the Southend forecasting is based upon various factors (including housing developments, registered numbers of births and local trends etcetera) and provided a number of relevant spreadsheets and attachments.
16. In relation to part 4 it provided a document labelled 'Southend-on-Sea LEA 288 Pupil Forecast'.
17. On 2 December 2017 the complainant requested an internal review for parts 2 and 3 only of his request, which the Council provided on 15 December 2017.
18. The Council maintained that it had properly addressed parts 2 and 3 of the request. In relation to part 2, it told the complainant:
- "In your request for review you have said that 'all the responses were sent to Southend on Sea Borough Council, the council must hold the information I have requested'. The Council does indeed hold a record of all the responses to the consultation; however it does not hold tables such as those you have requested."*

As was explained, the responses excluded from the tables were not appropriate for inclusion. To add this information to the tables would change their meaning and would also require a level of skill and judgement in manipulating the data.

I have taken into account the advice of the Information Commissioner concerning determining whether information is held. In my opinion, revising the tables in the way you have requested constitutes the creation of new data and there is therefore no obligation for the Council to create the requested tables for you (Section 12(4) of the Freedom of Information Act applies).

19. The Council has subsequently confirmed that it has included the reference to section 12(4) in error; so the Commissioner has not considered this aspect any further.
20. For part 3, it reiterated its original response and addressed the complainant's concern below:

"In your request for review, you have said that with regard to item 3 [ie part 3], 'It was clearly stated that I wanted the output of the forecasting. To avoid confusion, I stressed 'actual numbers'. Any forecast for this purpose involves an actual number; the response does not answer my question'."

21. The Council reiterated its previous response and explained:

"Paragraph 3.12 of the specified report referred to 'Southend forecasting' and a number of sources upon which it had been based. You were supplied with the forecasting in question in numerical terms.

It is my opinion that you received an answer to the question it appeared you had asked. I am not sure with what you feel you have not been provided. It occurs to me that perhaps what you want is to know how the figures from the various sources were combined to result in the final figures in the forecast, if so, please let me know and I will arrange for a fresh request for this to be considered."

22. It also offered the complainant the opportunity to contact the Council again in relation to part 3 (see also 'Other matters'):

"If I have missed your point, please let me know and explain further what you are looking for and I will look at the matter again."

Scope of the case

23. The complainant contacted the Commissioner on 23 December 2017 to complain about the way his request for information had been handled. There was a short delay during which the Commissioner asked him to provide the requisite correspondence.
24. The complainant submitted the following concerns in relation to parts 2 (see (A) below) and 3 (see (B) below) of his request, which the Commissioner subsequently raised with the Council as part of her investigation:
- "A) There is a table in the report to Cabinet where the responses do not sum to 100%. Consequently, the council are using a different set of responses in the numerator compared to the denominator. I have requested that the missing data is included to numerator and revised data provided to me. The council have refused citing Section 12(4) of the act. I disagree. The council accept that they have the data I have requested and consequently the act requires them to provide it to me.*
- B) The council claim to use the **Southend** forecasting to determine how many children of reception age will apply for a primary/infant school place as in-catchment. The council has never revealed the output/result of the forecast, even in the formal consultation. I asked for the output of the forecast and even stressed actual numbers. The council originally provided file **Southend-on-Sea LEA 288 Pupil forecast**. This file actually states the school PAN², not a forecast. The reviewer has suggested that I might want to **know how the figures from the various sources were combined to result in the final figures in the forecast**. This is simply an alternative way of stating my original request. Consequently, I find the councils [sic] actions obstructive and in violation of the act. "*
25. The Council confirmed that it had cited section 12(4) of FOIA in error; therefore the Commissioner has not considered this aspect any further.
26. With close reference to the wording of the request, the Commissioner has considered whether the Council holds the *actual* information requested in part 2 of the request. She has also considered whether, on the balance of probabilities, the Council holds any further information
-

² The Commissioner understands that 'PAN' is a reference to published admission numbers.

beyond that already provided to the complainant relative to part 3 of his request.

Reasons for decision

27. Section 1 of FOIA states that “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.”

Part 2 of request

28. The Commissioner has considered whether the information requested by the complainant in part 2 is held by the Council.

29. The FOIA entitles individuals to ask for a copy of recorded information. The report in question had been made publically available, including the tables referenced by the complainant.

30. The Council has explained that the tables had been compiled by a member of staff who had transferred the data from customer questionnaires onto a spreadsheet, and then extracted from that data the responses which they decided were valid for inclusion in the various tables. The spreadsheet includes both numerical and free text data.

31. The Council said this was not an automated process and involved a human being making judgements concerning the validity of the data and whether it was appropriate for inclusion in the various tables. It advised that the tables in the published report are the only ones which were produced; there are no alternate versions.

32. In his FOIA request, the complainant asked the Council to amend specified tables in the report, to include all the responses received, including those previously removed.

33. The Council told the Commissioner that it:

“...holds all the data from the completed surveys but is not willing to amend the tables. The Council is satisfied that the tables in question have included all relevant data and that there is no business reason to amend them, and by association, the report in which they are contained.

Indeed the Council is of the opinion that to do so would create

tables which would not reflect an accurate position. To create such tables would imply Council endorsement, which would be misleading.

Under FOIA [the complainant] could have asked for the base data and, subject to the removal of any third party identifying data, this could have been provided. He could then have generated any variation on the statistics he so desired, based on his own interpretation of what was relevant for inclusion. However, [the complainant] wanted the Council to do the recalculating for him and present him with revised tables.

This was refused because in the Council's opinion, to create alternative tables would involve an individual having to evaluate the data, make a fresh decision what to include and make new tables. Indeed, producing the tables with revised data included would so change their meaning that they would be a different product entirely.

It is therefore the Council's view that such an activity is outside the remit of the FOIA as it involves the creation of new data."

34. The Council is of the view that it does not hold the information in the form requested by the complainant. Whilst the Council accepts that the raw data from which amended tables could be compiled is held, this data would need to be aggregated in order to meet the information request.
35. Therefore, although information could be extracted from the questionnaires held by the Council, and could then be aggregated to produce amended tables, this would involve considerable effort. There may be situations where the ease and simplicity with which data can be manipulated to present the actual information requested means it would be difficult for a public authority to argue that it does not hold the information. However the resource implications that would be involved in this case clearly amounts to the creation of new information.
36. Additionally, producing the tables as requested would alter their meaning and equate to a different 'product'. The Commissioner considers that while FOIA is an appropriate method to seek recorded information to enable the public scrutiny of information held and decisions made, it is not the vehicle through which to then question the validity of statistics presented by the Council. Other mechanisms exist through which to do this, such as the public consultation in question and the public meetings of the Council. The complainant could also have raised any questions with the officers and Councillors involved in the catchment review.

37. The Commissioner accepts that the specific information that the complainant has asked for is not held in the form requested. The Council would need to undertake considerable work to manipulate the raw data held and create new tables. Creation of new data is not a requirement of the FOIA. If the complainant requires the raw data in order to manipulate the data himself, ensuring that it suits his own requirements, then this is something which is open for him to request.

Part 3 of request

38. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any information relevant to part 3 of the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the First-tier Tribunal when it has considered the issue of whether information is held in past cases.
39. The complainant has asked for the for "*The output (actual numbers) of the Southend forecasting as reference is paragraph 3.12 including full details of the source of all numbers used or rationale for any subjective numbers.*"
40. Again, FOIA entitles the complainant to recorded information held by the Council. Specified Paragraph 3.12 states Southend forecasting is based upon:
- Registered births (data supplied by registry services)
 - Historical and current numbers on school roll (January school census DfE) housing developments (confirmed planning applications)
 - Local trends (admissions preference data local knowledge)
 - Information received from schools and early years providers
 - Early Years data (based upon 2, 3 and 4 year old funding places)
41. At paragraph 3.13, it was explained that: "*forecasts are predicted by clustering schools into areas, rather than forecasting specifically by individual school. Due to the different data sources, some of which are soft data and local intelligence, forecasting cannot be an exact formula based science*".
42. In response to his FOIA request for the forecasting numerical data, the Council provided the complainant with a PDF Document entitled 'Southend-on-Sea LEA 288 Pupil Forecast', which included the following:
- 'Pupil Forecast NOR' - these provide forecast data for all schools combined, presented by academic year. It is shown as including data up to January 2017.
 - 'Pupil Forecasts by Academic Year' – These provide forecast data

presented by individual school, with all years combined. It is shown as including data up to January 2017.

- 'Primary Forecast 2002/2009' - This spreadsheet copy provides all the supporting data and outputs used in the forecasting. The date of generation is shown as 26 July 2017.
43. Part 3 of the request was for the forecasting output as referenced in paragraph 3.12. The Council has advised that the documents supplied comprise the forecasting output referred to in paragraph 3.12. It stated that there are no other forecasting documents held.
44. In his complaint to the Commissioner, the complainant has said: "*The council has never revealed the output/result of the forecast, even in the formal consultation*".
45. The Council said :
- "[The complainant] may not consider the documents provided to constitute a forecast, but these are the forecasting documents referred to in the report paragraph he specified in his request. The request has therefore in the opinion of the Council been properly met and [the complainant] has correctly been provided with the information held by the Council in relation to his request, fulfilling its FOIA obligation."*
46. Having considered the arguments raised by both parties, (including the Council's offer to revisit this part of the request if the complainant felt it had "*missed the point*"), the Commissioner is satisfied that, on the balance of probabilities, and an objective reading of the request, the Council had provided all the information held relative to part 3 of the complainant's request.

Other matters

47. The Commissioner notes that the Council offered the complainant advice and assistance in accordance with section 16 of FOIA, when responding to the internal review request.
48. As noted in paragraph 21 above, for part 3 of the request, it said:
- "It is my opinion that you received an answer to the question it appeared you had asked. I am not sure with what you feel you have not been provided. It occurs to me that perhaps what you want is to know how the figures from the various sources were combined to result in the final figures in the forecast, if so, please let me know and I will arrange for a fresh request for this to be considered."*

If I have missed your point, please let me know and explain further what you are looking for and I will look at the matter again."

49. From the available correspondence, it does not appear that the complainant contacted the Council again.
50. In his complaint to the Commissioner labelled (A), (see paragraph 24), the complainant has said that there:

"is a table in the report to Cabinet where the responses do not sum to 100%. Consequently, the council are using a different set of responses in the numerator compared to the denominator. I have requested that the missing data is included to numerator and revised data provided to me".

51. The Council has responded as follows:

"I would suggest that this is a different request to that which [the complainant] actually made. He did not ask for revised data, he asked for all the specified tables to be revised to include 'missing' data. He did not specify a table in which he believed that responses do not sum to 100%. Even had he done so, such a query would be outside the FOIA process."

Right of appeal

52. 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

53. 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.
54. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF