

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2019

Public Authority: Halton Borough Council
Address: Municipal Buildings
Kingsway
Widnes
WA8 7QF

Decision (including any steps ordered)

1. The complainant has requested information about the finances and use of the Silver Jubilee and Mersey Gateway bridges. Halton Borough Council responded, supplying some information falling within the scope of the request but confirming some information was not held. After further clarification of the information requested, the Council applied section 43 of the FOIA – commercial interests, to some of the requested information. During the course of the Commissioner’s investigation, the Council decided to release the withheld information
2. The Commissioner’s decision is that Halton Borough Council has breached section 10 of the FOIA by failing to provide all the information held within 20 working days.
3. As the Council has now disclosed the information, the Commissioner does not require it to take any steps.

Request and response

4. On 23 November 2017, the complainant wrote to Halton Borough Council and requested information about the Mersey Gateway and Silver Jubilee bridges in the following terms:

'Actual traffic figures for new bridge and equivalent figures for old bridge

1.1 Can we have the traffic figures from when the new bridge opened shortly after midnight on Friday 13th October, up to whatever recent date is convenient. We would like the figures split according to the following categories -

Class 1, Class 2, Class 3, Class 4, vehicles registered with Merseyflow by Blue Badge holders, vehicles registered with Merseyflow under the Local User Discount scheme, other traffic. We would like the figures on a day by day basis.

1.2 We assume that you will have done a comparison of the total traffic with the situation before the new bridge and the tolls opened. So will you let us have a copy of the latest comparison made. If you have not done a comparison then can you give us the total traffic on SJB for the equivalent

period last year. If you have not got that information then can we have it for whatever is the most recent period (month or year or part year) before the 14th October that you have available.

Forecast of finances and traffic for the Crossing (new and old bridges)

2.1 We would like a copy of the last summary, before the bridge opened, that you have of the forecast finances and traffic, financial year by financial year up to the end of the concession.

2.2 I assume that the summary would show the following items a to l, if not then can we also have the forecast amounts, year by year for them. If you have not got the information separately for any items then will you please indicate which other item they are included with

a) Payable to Merseyflow. Split between the Gateway and the SJB.

b) Payable to Emovis (we assume that this is a separate contract from the one with Merseyflow)

c) Expenditure on enforcement (bailiff's etc).

d) Expenditure not included in a to c. We would like some explanation of what is included in d.

e) Toll income. If you have the split then we would like it split between the categories as per 1.1.

f) Government grants and subsidies

g) Registration fees for Blue Badge holders and Local User Discount.

h) Penalty charge notices income (exc bailiff's fees etc) net of amounts that have been de-recognised (i.e. the penalty is cancelled or reduced) or written off as bad debt or provided for as a bad debt.

i) Enforcement income exc penalty charges but inc bailiff's fees etc. Net of write offs.

j) Income not included in e to i. We would like some explanation of what is included in j.

k) Net amount credited or debited to the Council's accounts. If this is not going to the General Fund,

then will you please say where it is going to.

l) Forecast traffic from which the figures at e have been derived, split into the categories as at 1.1.'

5. On 21 December 2017 the Council responded. It provided some information falling within the scope of the request but confirmed some of the information was not held as it had not been included in the forecasting.
6. On 5 January the complainant asked some follow-up questions in relation to the Council's 21 December 2017 response. In particular the complainant clarified that for question 2.2a, it had meant Merseylink and not Merseyflow.
7. The Council replied on 15 February 2018 responding to the complainant's questions, but in relation to question 2.2b, stated that it now needed to apply a public interest test and hoped a decision would

be provided in early March. The complainant chased the Council for a response on 11 April 2017 as nothing had been received.

8. On 17 April 2018 the Council responded, refusing to supply a more detailed breakdown of payments to Merseylink/Emovis than that already provided, citing section 43(2) of the FOIA – commercial interests – as its basis for doing so and said that the public interest favoured maintaining the exemption.
9. The complainant requested an internal review on 17 April 2018. The Council sent the outcome of the internal review on 6 June 2018 and upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 17 July 2018 to complain about the way his request for information had been handled. He considered that that in the interests of transparency the information should be released, particularly given the controversy surrounding the introduction of tolls to a previously free crossing.
11. At the outset of the Commissioner's investigation, the focus was on the information withheld by the Council under section 43(2) of the FOIA. However, the Council disclosed this information following the Commissioner's intervention. The complainant then requested that the Commissioner consider the timeliness of the Council's response.

Reasons for decision

Section 10

12. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
13. The Complainant made the request on 23 November 2017 and the Council responded on 21 December 2017, exactly 20 working days later.
14. Following the Council's response, the complainant asked some follow up questions, and clarified his request under question 2.2a. The Council then identified further information falling within scope the 2.2a which it withheld under section 43(2).

15. Technically, the Council should have considered this change to 2.2a as a new request. However as it resulted from a typing error on the part of the complainant, the Council dealt with it under the original request.
16. The Council eventually released the withheld information as part of the Commissioner's investigation. Regardless of whether the complainant's change to 2.2a should have been dealt with as a new request, the Council still failed to supply all information falling within the scope of the request within 20 working days as it was not disclosed until the Commissioner's intervention.

Other matters

17. The Commissioner notes the overall time the Council took to deal with the request, notably from the time of the complainant's clarification to question 2.2a on 5 January 2018 and to its full response on 17 April 2018, despite having said it hoped to reply early March.
18. The Council also took over 6 weeks to carry out the review, and whilst there is no statutory time limit for carrying out an internal review, the Commissioner's guidance states that they should normally be carried out within 20 working days, or 40 working days in exceptional circumstances. The Commissioner can see no exceptional circumstances as to why the review of this request might warrant anything over 20 days.
19. The Commissioner reminds the Council of its duty to respond to requests within the statutory time for compliance, and to internal reviews within a reasonable and timely fashion.

Right of appeal

20. 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

21. 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.
22. 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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