

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 March 2019

Public Authority: Dorset County Council

Address: County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Decision (including any steps ordered)

1. The complainant requested from Dorset County Council (the Council) a report concerning the Partnership for Older People Programme (POPP). The Council withheld this information under the exemption provided by section 41(1) (information provided in confidence) of the FOIA.
2. The Commissioner's decision is that as the information was not supplied to the Council from a third party, section 41(1) is not engaged. The Council is now required to disclose the requested information to the complainant.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information – the report titled "POPP Review".
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Background

5. The withheld information in this case is a report titled "POPP Review". This report was written during late 2017/early 2018 and regards the POPP in Dorset. It concerns the decision making process of the programme and consists of a programme description, details of the review process, findings from the review and details of operational issues. The Council explained:

"The POPP (Partnership for Older People Programme) began in 2006 as part of a national Department of Health funded initiative. The original vision was 'to build supportive communities to enable people to remain living in their own homes for as long as they wish' and was focussed on older people aged 65+. However, in 2016, the programme was broadened to support any Dorset resident aged 18+."

Request and response

6. On 22 May 2018 the complainant wrote to the Council and requested information in the following terms:

"I request a copy of the report/review written by [name redacted] after she undertook a review of Adult and Community Services / Dorset Partnership for Older People Programme (POPP) during late 2017/early 2018. This report resulted in the decision to decommission POPP as of September 2018."

7. On 26 June 2018 the Council responded. The Council referred to the FOI legislation stating how it is concerned specifically with providing access to "information" and not "documents". With this in mind, the Council produced a summary of the report in question and provided this to the complainant in response to her request. The Council did not confirm whether or not it held the specific requested information, nor did the Council cite any grounds for withholding that information.
8. On 4 July 2018 the complainant stated that she was not satisfied with the response and asked the Council for an internal review.
9. On 31 July 2018 the Council provided its internal review response. The Council stated that it had provided the complainant with *"relevant information in the form of a summary, but not the actual document requested."* The Council again did not confirm whether or not it held the requested information, nor did it cite an exemption or provide reasons for withholding the original report which was requested.

10. The Council said to the complainant that having read both the report and the summary, it confirmed that the information provided in the summary was accurate.

Scope of the case

11. The complainant contacted the Commissioner on 8 August 2018 to complain about the way her request for information had been handled. The complainant expressed her dissatisfaction with the summary of the report provided by the Council, as this was not the information she had requested.
12. The Council considers the information requested had been disclosed to the complainant in a "*different format.*" The Council stated that some details had been removed from the information which was disclosed to the complainant. Although the Council confirmed that this was not personal data, it later relied on section 41 of the FOIA for withholding the information requested – the original report.
13. The following analysis considers whether the Council correctly withheld the original report relevant to the request under section 41(1) of the FOIA. It also covers the failure by the Council to issue a valid response to the request.

Reasons for decision

Sections 1 and 17

14. Under section 1 of the FOIA, a public authority is required to confirm or deny whether requested information is held and either disclose that information, or give a valid reason for refusing to disclose it. This necessitates reading the request correctly.
15. In this case the request was clear; it was for a copy of the POPP report. Whilst the Council supplied to the complainant a summary of the report, this was not what was requested. In order to satisfy the request, it should have confirmed or denied whether it held the report specified in the request. In failing to do this, the Council breached section 1 of the FOIA.

16. Section 17 of the FOIA requires that, where a public authority is refusing a request, it must write to the requester setting out its grounds for refusing the request. In this case, the Council did not disclose the information the complainant had requested, but did not write to the complainant giving any grounds for this. In failing to issue a valid refusal notice, the Council breached section 17 of the FOIA.

Section 41 – Information provided in confidence

17. Section 41(1) of the FOIA provides an exemption for information that was obtained by the public authority from another person and where the disclosure of that information would constitute an actionable breach of confidence.
18. To reach a decision on whether section 41(1) applies, the Commissioner will first determine whether the information was obtained by the Council from a third party. As noted above, the analysis relates to the original report in question and the Commissioner will determine whether this information was obtained by the Council from a third party. If this information was not obtained by the Council from a third party, then section 41(1) cannot be engaged. The exemption will not cover information which a public authority has generated itself.
19. The position of the Council is that the information resulted from a consultation with a number of stakeholders (mainly external). The Council believes that it is likely that the complainant is able to link each issue of the report, to a stakeholder as she was employed by the Council for a number of years.
20. The Council said there would have been an expectation from the stakeholders that any feedback on the scheme would have been treated by the Council "in confidence". Therefore, the Council had relied on section 41 of the FOIA. It considered the information would have been obtained from the stakeholders, on the understanding that the Council required their "frankness" in offering their views on the current service and the future of the POPP scheme.

The Commissioner's conclusion

21. The Commissioner has viewed the withheld information. She does not accept that the content of the report amounts to information supplied by a third party. Therefore, this is not information obtained by the Council from a third party.

22. On the basis that the information was not supplied to the Council by a third party, the Commissioner finds that the exemption provided by section 41(1) of the FOIA is not engaged. The Council is therefore now required at paragraph 3 above to disclose to the complainant the POPP report relevant to the request.

Other matters

23. As covered above, although the complainant's request was clear in asking for a copy of the POPP report, the Council regarded it as sufficient to supply a summary of that report. When dealing with future requests, the Council must ensure that it clearly understands and responds to the request that has been made. Where a request is for a copy of specific information, that copy is what the response must relate to; substituting a summary of that information is not sufficient.

Right of appeal

24. 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

25. 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.
26. 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

**Ben Tomes
Team Manager
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