

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2019

Public Authority: Derbyshire County Council
Address: County Hall
Smedley Street
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant requested from Derbyshire County Council (the Council) information about the management of finances. The Council provided some information and stated other information was not held.
2. The Commissioner's decision is that the Council:
 - has not issued an adequate response to part 5 of the complainant's request;
 - on the balance of probabilities does not hold any additional information relevant to the remainder of the request.
 - did not provide the complainant with a response within 20 working days, thus breaching section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps:
 - Respond to the complainant with a fresh response regarding part 5 of the complainant's request of 20 May 2018. This response must clearly state the amount of information it holds within the scope of this part; and either disclose any such information or explain why the FOIA does not require such disclosure.

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.

Request and response

5. On 20 May 2018, the complainant wrote to the Council and requested information in the following terms:

"The information sought is in respect of the management of finances of individuals (the individual) in the care of the Council, and subject to an Appointeeship arrangement, to include the disbursement of monies received from Governmental organisations, the placement of such monies in savings or other accounts, the withholding or diversion of unspent personal allowance,

Please provide copies of, or web addresses for, the following:

1) All policies or procedures which deal specifically or have content which refers to the information sought.

2) Data which sets out how the Council apply for and secure an appointeeship.

3) The legislation which the Council adheres to which sets out the duties placed upon such an authority in relation to Appointeeships.

4) All information, including guidance material, pertaining to how Derbyshire County Council manages the individual's finances, including;

a. disbursement of monies received from Governmental agencies,

b. allocation into savings or other accounts,

c. protocols for the individual to gain access to these funds

d. controls on personal expenditure,

e. set authority levels for transferring monies between the individual's accounts.

5) Copies of information providing guidance issued or forwarded to care home staff regarding the handling and accounting for monies of the individual.

6) Data which sets out the basis, grounds or authority for the Council withholding or allocating or not delivering the statutory personal allowance to the individual.

7) Data which shows the required nature and frequency of assessments which guide actions carried out in 4) above.

8) Data which shows how the decisions made within 4) above are recorded, where stored.

9) Data which shows the Policy for reviewing/auditing the management of activity within an Appointeeship and the reporting of results to the Finance Director.

10) The data destruction policy which relates to records made or accrued during the above activity."

6. The Council acknowledged receipt of the request on 22 May 2018 and provided the complainant with a response on 11 July 2018. It stated that it did not hold information in relation to part 1 and part 9 and responded to the remainder.
7. On 10 July 2018, the complainant requested the Council to conduct an internal review and advanced arguments in relation to each point.
8. Following an internal review the Council wrote to the complainant on 31 July 2018. In the outcome of its internal review the Council found that it failed to respond to the complainant's request in a timely fashion, thus it breached section 10 of the FOIA. It also provided additional information in relation to part 1 and part 9 of the request, and explanations on each point of the complainant's request.

Scope of the case

9. The complainant contacted the Commissioner on 21 August 2018 to complain about the way her request for information had been handled. In particular, the complainant was concerned about whether the Council had supplied all the information it held that was within the scope of her request.
10. The following analysis covers whether the Council was correct to state that it provided the complainant with all the information it held within the scope of the request.

11. In addition, the Commissioner has examined whether the Council complied with its obligations to respond in a timely manner as required by section 10(1) of the FOIA.

Reasons for decision

Section 1

12. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
13. In this case, the complainant disputes that the information that was disclosed is all the information that the Council holds that is within the scope of the request.
14. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
15. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the Council to check whether the information is held and any other reasons offered by the Council to explain why the information is not held. In addition, she will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's position

17. The complainant is of the opinion that the Council should be in possession of further detailed information falling within the scope of her request. She maintains that despite the fact that the Council, in its internal review provided some additional web-links containing some of the information requested "*the response fails to provide the information which was requested.*"

The Council's position

18. The Commissioner wrote to the Council requesting a submission in respect of the handling of the complainant's request. The questions were focused on the searches conducted by the Council for the purpose of complying with the complainant's request, its retention policy and other relevant matters.
19. The Council maintains that *"adequate searches were undertaken at the time of the request and during the internal review process and we do not believe that any further information within the scope of the request is held."*
20. The Council explained that *"Searches have been carried out within the Finance Section of the Audit Care Department. This has involved searches of all internal software systems used within the Section, and has included emails and other documents."* Moreover, *"Relevant staff within the Finance Department have been spoken to in order to ascertain whether any local guidance exists. Consultation has taken place with the Head of Finance and the relevant Finance Manager. Additionally, any relevant systems within the Finance Section including paper and electronic records have been searched for this purpose."*
21. The Council believes that if any further information was held it would be held electronically.
22. The search terms used in the process of the Council's efforts to identify the relevant information were *"Appointeeship", "Phoenix", "Procedures"* and *"Guidance"*. These searches were carried out locally on personal computers and its network.
23. The Council confirmed to the Commissioner that no information has been deleted or destroyed as *"a specific search for historical documents has been undertaken."*
24. In respect of its retention policy in relation to information similar to what was requested by the complainant in the present request, the Council stated that it follows the guidance that is provided by the Department of Work and Pensions.
25. The Council stated that it is not subject to a statutory requirement to hold further information within the scope of the request.

The Commissioner's view

26. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all information that a complainant believes it holds, it is seldom possible to prove with

absolute certainty that it holds no relevant information. As set out in paragraphs 14 to 16 above, the Commissioner is required to make a finding on the balance of probabilities.

27. The Council described to the Commissioner the searches for relevant recorded information it undertook. From the copies of correspondence submitted by the complainant, the Commissioner notes that the Council provided the complainant with additional explanations in its internal review outcome.
28. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the requests, the Council has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner which would indicate that the Council's searches have been insufficient, or that further recorded information is held falling within the scope of the requests.
29. The Commissioner appreciates the complainant's concerns that she raised in a number of occasions with the Council about the accuracy of the information provided. In response to this, the Commissioner wishes to note that the FOIA provides a right of access to recorded information. It does not, however, require public authorities to guarantee the accuracy and completeness of the information.
30. In light of the above, the Commissioner is, on the balance of probabilities, satisfied that the Council identified all information it holds that falls within the scope of the complainant's requests. The Commissioner's decision is, therefore, that the Council has complied with section 1(1) of the FOIA when it dealt with the information request, apart from its part 5.

Relating Part 5

31. In relation to this specific part, the Commissioner notes that the Council's response did not address the request appropriately. Whilst an objective reading of this part of the request indicates that the complainant sought access to information providing guidance to care home staff, the Council's response only asserts that such guidance is held in its IT system.
32. The Commissioner wishes to refer to her Guidance on determining whether information is held¹ which states that "*When a public authority receives a request, its first task is usually to determine whether it holds the requested information.*" Once that determination is made it is the Council's principal obligation under the FOIA to clearly state whether it

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

holds information falling within the scope of the request and, in relation to any relevant information that is held, to provide that information or to issue a refusal notice clearly outlining the grounds for refusing the request.

33. In this respect, the Commissioner considers that the Council's response to part 5 of the request by only stating that "*Staff guidance is available on a "help" tab within the IT system*" without providing any indication whether that information is accessible to the complainant, did not comply with its statutory obligation provided under section 1(1)(a) of the FOIA.
34. Therefore, the Commissioner finds that the Council failed to comply with section 1(1) of the FOIA when it responded to this part of the complainant's request. As noted at paragraph 3 above, the Council is now required to write to the complainant and provide a fresh response in relation to this matter.

Section 10 – time for compliance

35. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.
36. In this case, the complainant submitted her initial request on 20 May 2018 and did not receive a response until 11 July 2017. Therefore, the Commissioner found that the Council has breached section 10(1) on this occasion.

Right of appeal

37. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**