

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2019

Public Authority: West Midlands Combined Authority

Address: 16 Summer Lane
Birmingham
B19 3SD

Decision (including any steps ordered)

1. Through a nine part request the complainant has requested information from West Midlands Combined Authority (WMCA) about the rebranding of certain of its services. WMCA provided a response to each part of the request. The complainant is dissatisfied with WMCA's response to three parts of the request; he considers that WMCA holds information relevant to these parts in recorded form that it should release.
2. The Commissioner's decision is as follows:
 - WMCA has complied with section 1(1) with regards to parts 4, 5 and 6, as these parts are phrased.
3. The Commissioner does not require WMCA to take any remedial steps.

Request and response

4. On 23 July 2018 the complainant wrote to WMCA and requested information in the following terms:

"Q1. Is there a business case for the rebrand, if so, could you please provide it.

Q2. What is the breakdown of expected costs to (a) WMCA (b) other parties.

Q3. What are the exact colours being used for each WMT mode.

Q4. Who decided that buses should be red, trams blue, etc.

Q5. Was there a competition for the design of the rebrand.

Q6. Who designed the rebrand, and what is the value of the contract.

Q7. Is the shade of red for WMT branded buses different to the shades of red currently used on National Express West Midlands buses.

Q8. "TfWM recently took over the Metro so we would have needed to rebrand this in any case." Since the magenta colour of the trams was chosen by Centro (i.e. TfWM), not National Express, why would 'we have needed to rebrand in any case'?

Q9. "We will be rebranding bus stops and stations in the months and years to come as part of the normal process of replacing them, meaning while this will be gradual, it will mostly be natural." What is the service life of a bus stop? Please define "the normal process of replacing them", and explain what "it will mostly be natural" means."

5. On 23 July 2018 WMCA acknowledged the request and confirmed that it would be handling it under the FOIA.
6. On 16 August 2018 WMCA responded to the request. It addressed each of the complainant's questions.
7. The complainant requested an internal review on 10 September 2018. With regard to question 4 the complaint said WMCA's response had not explained who decided that buses should be red, trams blue etc and that the response suggested only that focus groups responded to an unknown question about their favourite colours. With regard to question 5 the complainant said WMCA's response had answered the query in the narrowest sense. With regard to question 6 the complainant said that, from its response, it was not possible to ascertain: which parties were/are involved in the rebrand (other than McCann Erickson); what parts of the rebrand they were/are responsible for; and what the values of their contracts were/are.
8. WMCA provided an internal review on 20 November 2018. It gave a little more information about the above three parts of the request as follows:
 - Question 4 - the colour recommendation was subject to approval by Transport for West Midlands.

- Question 5 - that there was a competitive process for the commission for the initial work, won by McCann Erikson, which devised a number of options from which one was chosen by the West Midlands Rail Executive Board of Directors. This was then evolved for other modes.
- Question 6 - to date purchase orders raised came to £35k

Scope of the case

9. The complainant contacted the Commissioner on 18 January 2019 to complain about the way his request for information had been handled, specifically parts 4, 5 and 6 of the request.
10. The Commissioner's investigation has focussed on the complainant's three questions as these questions are phrased and whether WMCA has complied with section 1(1) of the FOIA with regard to these parts.
11. In his correspondence to the Commissioner the complainant has also expressed dissatisfaction with WMCA's handling of the internal review; this is considered under 'Other Matters'. Provision of an internal review is not a requirement of the FOIA and the Commissioner cannot make a formal decision on this aspect of the complaint.

Reasons for decision

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told whether the authority holds the information and under subsection (b) to have the information communicated to him or her if it is held, and is not exempt information.
13. Under section 1(3), if a public authority reasonably requires further information in order to identify and locate the information requested, and has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
14. The FOIA concerns only information a public authority holds in recorded form at the time of a request. The FOIA does not oblige a public authority to give opinions or explanations, or to create new information in order to comply with a request.
15. In its submission to the Commissioner WMCA has first provided a general background. It has explained that it is a combined authority

established by statutory instrument under the Local Democracy, Economic Development and Construction Act 2009. WMCA formally came into being on 17 June 2016.

16. On creation, WMCA took over responsibilities for public transport in the West Midlands Metropolitan County from West Midlands Passenger Transport Executive. This transport arm of its work operates under the name Transport for West Midlands (TfWM).
17. Bus, train and tram services are delivered by a number of private companies who WMCA has awarded franchises to deliver these services. In July 2018 it announced that it would be introducing a single identity to bike, bus, rail, and tram services so as to demonstrate an integrated transport system. In essence over a period of time this would mean all operators being required to display a livery of orange for trains, blue for trams, red for buses, green for bikes.
18. In its submission WMCA then notes that the three questions from the complainant were part of a total of nine direct questions on a rebranding exercise it undertook. It considers each question to have been brief, and to the point as to the query being made. WMCA says it interpreted the complainant's series of questions as asking questions and seeking explanations rather than requests for the release of specific documents. In the interests of openness and transparency WMCA says it provided information addressing each question, and explained how the branding process evolved.
19. The Commissioner understands from this that WMCA considered that it did not require further information from the complainant in order to help it identify and locate the information requested: it considered it understood what was being asked for. She notes too that while WMCA says it considers the questions were seeking explanations, it had confirmed to the complainant on 23 July 2018 that it would be handling the request under the FOIA. As such it had a duty to consider what information it holds that would be relevant to the request.
20. WMCA's submission goes on to explain that it obtained the information it provided to the complainant from records it holds. For example: from material associated with the procurement of McCann Erickson as its specialist partner in the branding process; from documents produced by McCann Erickson; and records of the decision making process.
21. WMCA says that whilst its responses indicate it does hold information associated with the rebranding process, to date it has not received any specific request to disclose particular documents. It appears to WMCA that the complainant has asked questions in order to seek clarification

on the process leading to WMCA's decision. WMCA says its responses provided information it holds that address each point.

22. The FOIA provides access to information, and not to documents as such. Similarly, an applicant does not necessarily have to submit a request for a specific document. Clearly, however, it is often the case that the most sensible way to release information is to release any document that a public authority holds that contains the information. In this case WMCA's responses – ie the information it has provided – have been derived from related information it holds. The Commissioner will consider whether this was an acceptable approach as, through his questions, the complainant has not requested specific documents, but has requested broad information.
23. In his correspondence to the Commissioner the complainant has said that he considers that WMCA would hold relevant recorded information, without, however, naming particular documents or types of documents such as the business case he requested in question 1. The Commissioner notes that in his internal review request, the complainant expressed dissatisfaction with WMCA's responses but did not refer to specific information or documents that he was expecting to receive.
24. Question 4 of the complainant's request is as follows: *Who decided that buses should be red, trams blue, etc.* Through its response and internal review response to this question WMCA explained that the original concept for the rebrand was developed by an agency, that focus groups were conducted around the region and, finally, that the colour recommendation was subject to the internal approval process within TfWM.
25. In his request for an internal review the complainant said WMCA's response to question 4 had not explained who decided that buses should be red, trams blue etc and that the response suggested only that focus groups responded to an unknown question about their favourite colours. In his correspondence to the Commissioner the complainant has said that through this question he was requesting information on the decisions (plural) around the rebrand. This appears wider in scope than the question put to WMCA.
26. The Commissioner has considered question 4 and considers it to be a broad question on one particular aspect of the decision-making process: the decision that buses should be red, trams blue etc. The Commissioner has also considered WMCA's interpretation of and response to question 4; initially and following the internal review. Given the generality of the question (the complainant had not requested the minutes of any particular meeting for example), in the Commissioner's view WMCA's interpretation of it was reasonable. Following the internal review, WMCA

provided an answer – that the colour recommendation was approved by TfWM – that the Commissioner considers was also reasonable and addressed the question as it is phrased. As such, the Commissioner finds that WMCA complied with section 1(1) with regard to this question.

27. Question 5 of the complainant's request is as follows: *Was there a competition for the design of the rebrand*. Through its initial response WMCA had confirmed that there was no competition for the design of the rebrand. It had advised that the initial design work supported the commitment by the new rail franchisee to provide a regional identity and that this work was then continued to include the other travel modes. It said 'the agency' created some options which were then used in the focus groups.
28. In its internal review response WMCA advised that that there had been a competitive process for the commission for the initial work, won by McCann Erikson, which devised a number of options for rail from which one was chosen by the West Midlands Rail Executive Board of Directors. This was then evolved for other transport modes.
29. In his request for an internal review the complainant said WMCA's response had answered question 5 "in the narrowest sense". In his correspondence to the Commissioner the complainant has said that through this question he was requesting information on the methods used to award contracts in the various stages of the rebrand. Again, this appears to be broader in scope than the complainant's original question.
30. The Commissioner has considered question 5. It reads as a straight forward question as to whether there had been a competition for the design re-brand; it was not a request for, for example, particular tender documentation.
31. In its initial response WMCA had advised that there had not been a competition for the design of the rebrand. From WMCA's responses it appears to the Commissioner that there had previously been, presumably, a tender exercise to develop rail options, which McCann Erikson had won, but that the development of the preferred rail option for the other modes of transport had not been subject to a competition.
32. The Commissioner does not consider that WMCA could have identified from the question as it is phrased, or following the internal review, that the information at paragraph 29 is the information the complainant was seeking through this question. She considers that WMCA's interpretation of question 5, initially and following the internal review, was reasonable and that it has adequately addressed this question as it

is phrased. As such the Commissioner finds that WMCA complied with section 1(1) with regard to question 5.

33. Question 6 of the complainant's request is as follows: *Who designed the rebrand, and what is the value of the contract*
34. In its initial response WMCA had confirmed that McCann Erickson had undertaken the original rail branding development work, at a cost of approximately £50k. WMCA also confirmed that freelancers were being used as part of its in house team to undertake the next steps. At internal review it advised that, at that point, purchase orders raised came to £35k.
35. In his request for an internal review the complainant said that, from its response to question 6, it was not possible to ascertain: which parties were/are involved in the rebrand (other than McCann Erickson); what parts of the rebrand they were/are responsible for; and what the values of their contracts were/are. In his correspondence to the Commissioner the complainant has said that through this question he was requesting information on contractors' identities and the purpose and value of their contracts.
36. Again, the Commissioner has considered the complainant's question and the further detail he provided in his internal review request. And again, she has considered whether WMCA's interpretation of the question was reasonable and whether its initial and internal review responses were satisfactory.
37. The Commissioner considers that WMCA's interpretation of the question and its responses were reasonable. The complainant had asked:
 - who was responsible for the re-brand and he was given the answer McCann Erickson, and freelancers as part of its in house team;
 - what is the value of the contract and was given the answer £50k (for McCann Erikson) and £35k (to date for freelancers); and
 - what parts of the rebrand they were responsible for and had been given the answer McCann Erikson for the rail mode and the freelancers for the other transport modes.
38. The request was not for, for example, a copy of any particular contract. As such the Commissioner is satisfied that WMCA has reasonably interpreted and adequately addressed question 6, as it is phrased, and has complied with section 1(1) with regard to this part.

Other matters

39. With regard to the matter of the internal review, provision of an internal review is not a requirement of the FOIA and the FOIA Code of Practice indicates that provision of an internal review is a matter of good practice.
40. In correspondence to the Commissioner the complainant has expressed dissatisfaction with WMCA's internal review because it did not undertake a "full re-evaluation" in his case.
41. It is true that WMCA supplied some further general information with regard to questions 4, 5 and 6 following its review. However, WMCA had acknowledged that it was handling the request under the FOIA and, as such, the Commissioner would have expected WMCA to give more consideration, through its review process, as to what recorded information was being sought. At that stage if WMCA did not understand what was being asked for, it would have been obliged to seek clarification from the complainant under section 1(3) and to offer advice and assistance as part of that process.
42. The Commissioner considers that WMCA missed the opportunity presented by the internal review to clarify with the complainant what recorded information, specifically, he was seeking ie to help him frame a new and clear request. As such, the Commissioner considers that WMCA's internal review fell short, on this occasion. Had WMCA clarified with the complainant the specific information he was seeking at the point of its internal review, the matter might not have come to the Commissioner but might have been resolved to the complainant's satisfaction.

Right of appeal

43. 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

44. 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.
45. 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

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