

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 August 2019

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has made two requests to Birmingham City Council ("the Council") for information about a consultation undertaken by the King Edward VI Trust ("the Trust"). The Council responded that the information was not held.
2. The Commissioner's decision is that the Council does not hold the information requested in request 1 and request 2 (part 1), but has failed to respond to request 2 (part 2). The Council has breached section 10(1) by failing to provide a valid response to request 1 and request 2 (part 2) within the time for compliance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a response to request 2 (part 2) under the terms of the FOIA.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 3 April 2019, the complainant wrote to Council and made request 1 (which the Council gave the reference 5727867):

"I would like to have the raw data for the responses in the consultation upon the catchment plans for the six grammar schools of King Edward VI Trust."

6. The Council responded on 5 April 2019. It indicated that the information was held, but was exempt from disclosure under section 40.

7. On 5 April 2019, the complainant wrote to the Council and made request 2 (which the Council gave the reference 5800966):

1. *"I would like a list of the responses given to the recent consultation run by King Edward VI Schools, upon the catchment area plans.*

I would like the categorisation of these responses. i.e. whether each individual response was classified as

- (i) In favour.*
- (ii) Amendments suggested.*
- (iii) Against.*
- (iv) Invalid*

Opinions of individuals are not classed as personal data under the Data Protection Act. If they were, you would not have been able to publish them in all the consultations that you have held. I accept that occasionally an opinion could perhaps be used to identify an individual. In such a case, the standard procedure is to block out the relevant information.

2. *I would also like any communications that the Birmingham City Council have had with the King Edward VI Schools upon this consultation. For example, the emails sent between the two bodies. This includes communications regarding this request."*

8. The Council responded on 7 May 2019. It stated that the information was not held.

9. Following an internal review the Council wrote to the complainant on 3 June 2019 (under the reference of 5800966). It maintained that the information was not held by the Council, and that the original refusal under section 40(2) was provided on behalf of the Trust.

Scope of the case

10. The complainant contacted the Commissioner 10 May 2019 to complain about the way his requests for information had been handled.
11. The Commissioner considers the scope of the case to be the determination of whether the Council holds the information sought by request 1 and request 2 (part 1), and whether the Council has otherwise responded to request 2 (part 2).

Reasons for decision

Section 1(1) – General right of access to information

12. Section 1(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 relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
13. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The Council's position

14. The Council has explained that its response to request 1 was provided following discussion with the Trust, which is the public authority that holds the raw data that has been requested. The Council's actual position under the FOIA was not provided to the requester until its response to request 2 (part 1), when the Council denied that the information was held.
15. The Council elaborated during its internal review that the information was collated by the Trust through a third party service (the 'Be Heard' survey website) that the Council subscribes to, and which the Trust was provided the use of to undertake the consultation.

The Commissioner's analysis

16. The Commissioner understands that the consultation was undertaken by the Trust, which is a separate public authority to the Council. The Commissioner also understands that a separate information request has

been submitted to the Trust, which has confirmed that the information is held (but exempt from disclosure under section 40(2)).

17. Having considered these factors, the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold the information requested by request 1 and request 2 (part 1).
18. It is evident to the Commissioner that the root of this complaint is the Council's unclear response to request 1, which failed to inform the complainant that the information was not held by the Council, or that the request should be directed to the relevant public authority (the Trust).
19. However, from reviewing the correspondence, the Commissioner perceives that the Council has clearly failed to respond to request 2 (part 2).

Section 10(1) – Time for compliance with request

20. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) within twenty working days following the date of receipt. In this case the Commissioner has identified that, in respect of request 1, the Council did not issue a response that complied with section 1(1), and in respect of request 2 (part 2), did not issue any response.
21. On this basis the Commissioner finds that the Council has breached section 10(1) in respect of both requests.

Right of appeal

22. 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

23. 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.
24. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF