

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2020

Public Authority: City of Bradford Metropolitan District Council

Address: First Floor
Britannia House
Bradford
BS1 1HX

Decision (including any steps ordered)

1. The complainant has requested information from the City of Bradford Metropolitan District Council ("the Council"), in relation to Penalty Charge Notice (PCN) appeals from the police force.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 20 December 2019, the complainant wrote to the council and requested information in the following terms:

"Councils across the UK have various powers to issue Penalty Charge Notices for parking, bus lane and moving traffic contraventions. There will be occasions where such a penalty is issued in relation to a police vehicle. There will be occasions where the police challenge the penalty via the statutory appeals process but the council does not accept the challenge, and the police force concerned eventually appeals the penalty to the tribunal. In such instances, the tribunal would send a

copy of its decision to the council, which would then be information held by the council for FOI purposes.

With this in mind, I would like to request:

A) *Copies of the last 10 tribunal decisions for parking PCNs where:*

- 1) The appellant was a police force.*
- 2) The council won the appeal.*

B) *Copies of the last 10 tribunal decisions for bus lane PCNs where:*

- 1) The appellant was a police force.*
- 2) The council won the appeal.*

C) *Copies of the last 10 tribunal decisions for moving traffic PCNs where:*

- 1) The appellant was a police force.*
- 2) The council won the appeal.*

If the council does not issue one or more of the types of PCNs mentioned, that part of the request should be disregarded."

5. The council responded on 22 January 2020. It advised the following:

"A&B) The Council does not store this information as our notice processing system is not configured to isolate this data. All appeals processed are in the name of the appellant so we are not able to identify who the employer of the appellant would be. Therefore, we are unable to provide this data.

C) Bradford Council does not issue Penalty Charge Notices for moving traffic contraventions."

6. Following an internal review the council wrote to the complainant on 11 February 2020. It advised that it was upholding its original position with regards to A and B. However, it also explained that the information required would be held on the Traffic Penalty Tribunal's website.

Scope of the case

7. The complainant contacted the Commissioner on 14 February 2020, to complain about the way his request for information had been handled.

8. The Commissioner considers that the scope of this case is to establish whether, on the balance of probabilities, the Council holds any information in scope of the request. Furthermore, she will consider whether the Council incurred any procedural breaches of the FOIA.

Reasons for decision

Section 1 of the FOIA – information held by public authorities

9. Section 1 of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled-
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him."

10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).

11. 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 the balance of probabilities.

12. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the Council and other information or explanation offered by the Council which is relevant to her determination.

The complainant's view

13. The complainant has explained that within the Schedule to The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007, it states

"(3) Upon the decision being given (whether at a hearing or otherwise), the proper officer shall—
(a) as soon as practicable record the decision in the register, together with the adjudicator's reasons and any directions given; and
(b) send a copy of the register entry to each party."

14. He explained that due to this, he considers that the Council would have received a copy of the outcome of any appeals from the Tribunal.

Therefore, the information would be held by the Council for FOIA purposes.

15. The complainant has also explained that he considers that if the Council search for key words, such as "police" or "constabulary" within its system, it is likely to find information that would fall within the scope of his request.

The Council's response

16. The Council has explained that it does not hold the requested information within its system.
17. It has explained that the information is held by, and belongs to, the Traffic Penalty Tribunal. As it belongs to the Traffic Penalty Tribunal, the Council does not have access to it.
18. The Council has advised that its Adjudication Officers can access the Traffic Penalty Tribunal's system, but only to view their own cases and they do not have permission to share the information. This access is provided through secure access and only allows each officer to view their own case data. The information is not stored within the Council's system.
19. The Council has also explained, in relation to the Tribunal providing a copy of the outcome of the appeal, that their system is not configured to isolate the data of who an individual's employer is. It advises that all appeals are processed in the name of the appellant, rather than their employer.
20. The Commissioner asked the Council further questions regarding the registered keeper passing on a Penalty Charge Notice to the driver of the vehicle. The Council explained that the police, as the registered keeper of the vehicle, will pass the Penalty Charge Notice to the relevant driver, who may choose to appeal or pay the charge.
21. The Council also advised that when a vehicle has been involved in a police operation or emergency and a ticket has been issued, the police Inspector will make representations on behalf of the driver. However, in these circumstances, the Penalty Charge Notice would be cancelled.
22. The Council acknowledged within its response to the Commissioner, that its original response to the request could have been a more detailed and clearer response. However, it confirmed that it does not hold the requested information, nor has it deleted it. It also confirmed that it does not have authorisation to delete or destroy anything from the Traffic Penalty Tribunal's system.

Conclusion

23. The Commissioner has considered the Council's responses in respect of whether it holds the information.
24. The Commissioner understands the purpose of the request, as stated by the complainant. However, it is clear from the Council's responses that it does not hold the required information, as it is not held on its own system.
25. Ultimately, the FOIA is limited to giving the public the right to access information that is held, rather than any person's determination of what information *should* be held.
26. Having considered the Council's responses, and on the basis of the evidence provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold information within the scope of the request.
27. The Commissioner therefore considers that the Council complied with its obligations under section 1(1) of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Phillip Angell
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