

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2021

Public Authority: City of Bradford Metropolitan District Council

Address: Britannia House
Hall Ings
Bradford BD1 1HX

Decision (including any steps ordered)

1. The complainant requested information from City of Bradford Metropolitan District Council ("the Council") about a permanent mortuary. The Council stated that because the information was held only on behalf of the coroner, it was not held for the purposes of the FOIA.
2. The Commissioner's decision is that the information is not held by the Council for the purposes of the FOIA, since it is held only on behalf of the Coroner.
3. She does not require the Council to take any steps.

Request and response

4. On 13 June 2020, the complainant wrote to the Council and requested information about temporary and permanent mortuaries. The Council responded on 29 August 2020 and provided information about the temporary mortuary, but stated that some of the information about the permanent mortuary was held only on behalf of the Coroner, and was, therefore, not held by the Council for the purposes of the FOIA.
5. The information requested, and which the Council stated was not held for the purposes of the FOIA, was as follows:
 - *"The maximum capacity of the permanent mortuary*

- *The maximum limit reached / peak during this pandemic at the permanent mortuary? And on what date was this during the pandemic*
 - *Maximum time a body was left in the permanent mortuary during this pandemic before being released for burial or cremation?"*
6. Following an internal review, the Council wrote to the complainant on 30 September 2020. It upheld its position.

Scope of the case

7. The complainant contacted the Commissioner on 30 September 2020 to complain about the way his request for information had been handled.
8. This notice covers whether the Council holds the information set out in paragraph 6, above, for the purposes of the FOIA.

Reasons for decision

Section 3(2) - information held by a public authority

9. Section 3(2)(a) of the FOIA states that information is "held" by a public authority if it is held "otherwise than on behalf of another person".
10. Therefore, if information is held only on behalf of another person, including a "legal person" such as an organisation, it is not "held" for the purposes of the FOIA, and does not need to be considered for disclosure in response to a request made under the FOIA.
11. The Commissioner is satisfied that the Coroner, described on the Courts and Tribunals Judiciary website as "an independent judicial officer", is a separate legal entity from the Council and is therefore a separate "person" within the meaning of the FOIA.
12. Her task, therefore, is to determine whether the Council, as it has asserted, holds the requested information set out in paragraph 6, above, only on behalf of the Coroner. If the information is held to any extent by the Council for its own purposes, then it will be held for the purposes of the FOIA.

13. The Commissioner's guidance *Information held by a public authority for the purposes of the FOIA*¹ explains that whether information is held by a public authority depends on the facts of each case. There are various factors that assist in determining whether the public authority holds the information for the purposes of the FOIA.
14. As the guidance explains, factors that may indicate that the information is held solely on behalf of another person include:
 - the authority has no access to, use for, or interest in the information;
 - access to the information is controlled by the other person;
 - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
 - the authority is merely providing storage facilities, whether physical or electronic.
15. However, as the guidance emphasises, each case needs to be viewed individually to determine whether a public authority holds information for its own purposes, or solely on behalf of another person.
16. The Commissioner asked the Council to explain how and why the information was held, including whether it had any access to and control over the requested information.
17. The Council's responses focused on the fact that it has certain obligations under the Coroners and Justice Act 2009 ("the CJA"). In particular, it explained that under section 24 of the CJA, it was required to provide "accommodation" appropriate to the needs of the Coroner in carrying out his or her functions.
18. Section 24 of the CJA reads as follows:

"The relevant authority:

a) must secure the provision of whatever officers and other staff are needed by the coroners for that area to carry out their functions;

¹ https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf

- b) must provide, or secure the provision of, accommodation that is appropriate to the needs of those coroners in carrying out their functions;*
- c) must maintain, or secure the maintenance of, accommodation provided under paragraph (b)”*
19. The Council explained to the Commissioner that it, itself, has no functions relating to the storage of the deceased, which the requested information relates to.
 20. The Commissioner questioned whether Council staff had any access to and control over the information, and what they were able to do with it.
 21. The Council explained that certain officers, appointed pursuant to the CJA as set out above, did have access to the information.
 22. In confidence to the Commissioner, the Council also provided further supporting information describing how some information was used. These explanations covered how the information was compiled and used during the relevant period, which the complainant has described as “*during the pandemic*”.
 23. The Council also referred to a previous ICO investigation which, it claimed, had upheld its position that this type of information was held only on behalf of the Coroner. However, the Commissioner notes that, in that case, she was not required to make a decision; she contacted the Council merely to note that it had clarified its position, prior to the complaint being withdrawn.
 24. The Commissioner, in this case, has also considered evidence provided by the complainant. He noted that some information about the maximum capacity of the mortuary is already in the public domain² on the website of the Human Tissue Authority. His concern is simply that the Council is “hiding behind” exemptions, to avoid making information available to the public when it has been requested.
 25. However, having considered the information published on the relevant website, the Commissioner is not persuaded that it assists in determining whether the Council holds the information requested in this case, other than on behalf of the Coroner.

² <https://archive.hta.gov.uk/establishments/bradford-public-mortuary-and-forensic-science-centre-12046>

The Commissioner's decision

26. In her guidance, the Commissioner describes an older case³ which considered whether information held by a local authority was held only on behalf of a Coroner. In that case, the information in question was the transcript of a Coroner's hearing. The First-tier Tribunal found that the local authority held the information only on behalf of the Coroner, noting that the Coroner had sole control of the information, and had statutory authority to determine who had access to it. The Tribunal also commented that, in its view, "ownership" of the information lay with the Coroner.
27. However, the guidance also notes that: *"There will be cases when a local authority may hold information originating from the Coroner in its own right. For example, it is possible that following a road traffic accident a local authority could obtain a copy of the Coroner's report in order to consider, in its capacity as highways authority, whether any road safety measures are necessary."*
28. In this case, while it is a fact that the Council had some access to the requested information, the key issue is whether the Council holds the information, to any extent, for its own purposes. The Council has emphasised that the information is "held" only in order to fulfil its obligations to the Coroner, in relation to the Coroner's functions, and not in relation to any functions of the Council.
29. The Commissioner is satisfied that the Council's explanations about its access to and use of the information, all relate to enabling the Coroner to fulfil his or her functions. Since the Council has explained it has no function relating to the storage of deceased people, other than in relation to providing "accommodation" for the Coroner, the Commissioner is satisfied that the information is not held for the Council's own purposes.
30. The Commissioner is satisfied that the information is not held by the Council for the purposes of the FOIA, since it is held only on behalf of another person. She does not require the Council to take any steps.

³ *Digby-Cameron v Information Commissioner* (EA/2008/0010, 16 October 2008)

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF