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Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2022

Public Authority: Central Bedfordshire Council

Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

Decision (including any steps ordered)

1. The complainant has requested information with regards to Education, Health and Care Plans. Central Bedfordshire Council (the council) refused the request under section 21 of the FOIA – Information reasonably accessible. The Commissioner's decision is that the council has incorrectly applied section 21 of the FOIA.
2. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which does not cite section 21 of the FOIA.
3. 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 FOIA and may be dealt with as a contempt of court.

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Request and response

4. On 12 April 2021 the complainant requested the following information from the council:

“Please can you provide the following information in relation to Education, Health and Care Plans (EHCP):

1. Following receipt of a request for an EHC needs assessment (NA), the policy, procedure, guidelines and any other related documents or criteria (including the job title of the person responsible for making the decision) used to decide whether a NA is to be carried out
 2. Following an EHC NA, the policy, procedure, guidelines and any other related documents or criteria (including the job title of the person responsible for making the decision) used to decide whether to issue an EHCP
 3. The policy, procedure, guidelines and document templates used to write an EHCP (and the job title of the person responsible for writing)
 4. Policy, procedure, guidelines or any other documents relating to a co-production or co-construction meeting with parents/carers prior to finalisation of the EHCP”
5. The council acknowledged the request on 21 April 2021. After the complainant followed up on a response, the council responded on the 24 May 2021. It stated that it had responded to this request on 15 January 2021 and provided a copy of it.
6. The 15 January 2021 response refused the request under section 21 of the FOIA – Information accessible by other means- stating that the information was available via a link¹ to a page on its website “Special Education Needs and Disability – Local Offer”

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https://www.centralbedfordshire.gov.uk/info/15/special_educational_needs_and_disability_-_local_offer

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7. The complainant requested an internal review on 25 May 2021 pointing out that the response the council states it provided on 15 January 2021 is dated three months before the request was even made.
8. The council issued a further response on 27 May 2021 providing the same link in 15 January 2021 response.
9. The complainant advised the council on the same day that the response provided is irrelevant as the link takes her to a webpage that does not contain the information she had requested.
10. The complainant requested an internal review again on 26 June 2021 and followed up further on the 12 July 2021. The council acknowledged the internal review request on 4 October 2021.
11. The complainant contacted the Commissioner on 27 August 2021 to complain that the council has not carried out an internal review.
12. The Commissioner wrote to the council on 28 September 2021 asking that it carry out an internal review within 10 working days.

Scope of the case

13. The complainant contacted the Commissioner further as no internal review has been received following the 10 working days and has complained that the link provided by the council has no relevance to this request.
14. On 11 May 2022 the Commissioner asked the council again to carry out an internal review. To date, the council has not done so.
15. The scope of the case is for the Commissioner to determine whether the council has correctly relied upon section 21 of the FOIA.

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Reasons for decision

Section 21(1) of the FOIA – Information reasonably accessible

16. Section 21 of the FOIA states:

- (1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

17. Paragraph 19 of the Commissioner's guidance² on section 21 of the FOIA references the Tribunal decision *Christopher Ames v Information Commissioner and the Cabinet Office (EA/2007/0110)* which stated:

"The Tribunal expressed doubt that, where a public authority is asked for a very specific piece of information which it holds, it would be legitimate for the authority to tell the applicant that the information can be found on a large website (such as that of the Hutton Inquiry), even if the applicant is well informed. In other words, it is unlikely to be reasonably accessible to the applicant if a large amount of searching is required in order to locate the information. In such circumstances, the authority would be expected to provide a precise link or some other direct reference as to where the information could actually be found."

18. The Commissioner's guidance at paragraph 20 goes on to say that "information, although generally available elsewhere, is only reasonably accessible to the applicant if the public authority:

- knows that the applicant has already found the information; or
- is able to provide the applicant with precise directions to the information so that it can be found without difficulty.

19. The council provided the complainant with the link to the "Special Education Needs and Disability – Local Offer" webpage however the complainant has made it clear she has been unable to locate the specific information requested as the this link does not contain the information

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

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she has requested. The Commissioner has also reiterated this to the council.

20. As the council has not provided any precise direction to the information, it is not clear whether any of the requested information is reasonably accessible to the complainant. It also has not provided any counter arguments to the complainant's position that the link provided is for the wrong information.
21. The Commissioner's decision, therefore, is that the council has incorrectly applied section 21 of the FOIA to the request.
22. The Commissioner requires the council to provide the complainant with a fresh response to the request that does not rely on section 21. In relation to each part of the request this fresh response must confirm or deny whether the requested information is held. If the requested information is held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

Other matters

23. The Commissioner considers it necessary to highlight that for both this case and case IC-126593-J3H0, the council has failed to issue an internal review, even after several requests for it to do so from the complainant and the Commissioner.
24. The Commissioner would expect the council to be very much aware of the FOIA Code of Practice³ (the Code). It is not clear why the council has failed to carry out internal reviews in these cases, but this failure has resulted in a missed opportunity to correct the issues with the initial response. The council must ensure that it carries out prompt internal reviews in future.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

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Right of appeal

25. 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

26. 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.
27. 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**

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