

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2022

Public Authority: Kent County Council

Address: County Hall
Maidstone
Kent ME14 1XQ

Decision (including any steps ordered)

1. The complainant requested information from Kent County Council (the "council") relating to changes to special educational needs and disabilities (SEND) home to school transport provision. The council disclosed some information and withheld other information under the exemptions for information intended for future publication (section 22) and prejudice to the effective conduct of public affairs (section 36). The council subsequently dropped its reliance on exemptions and disclosed the withheld information.
2. The Commissioner's decision is that the council breached section 10(1) of FOIA by failing to comply with section 1(1) within the statutory time frame of 20 working days. No steps are required.

Request and response

3. On 21 February 2022, the complainant made the following request for information to Kent County Council (the "council"):

"i. The risk assessment (or equivalent document or documents) which KCC took into account in determining whether or not it is safe to provide school transport for fifteen or sixteen disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children; and

ii. any documents referred to in the risk assessment (or equivalent document or documents); and

iii. any further information in KCC's possession, custody or control which is relevant to determining whether or not it is safe to provide school transport for fifteen or sixteen disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children; and

iv. any further specific information which KCC took into account in determining whether or not it is safe for [redacted] to be transported to and from school with fourteen or fifteen other disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children.

ALTERNATIVELY, IF THERE WAS NO RISK ASSESSMENT THEN PLEASE PROVIDE THE FOLLOWING INFORMATION:-

i. All information (including expert evidence) which KCC took into account in determining whether or not it is safe to provide school transport for fifteen or sixteen disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children; and

ii. any further information in KCC's possession, custody or control which is relevant to determining whether or not it is safe to provide school transport for fifteen or sixteen disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children; and

iii. any further specific information which KCC took into account in determining whether or not it is safe for [redacted] to be transported to and from school with fourteen or fifteen other disabled children of varying ages with varying special needs but with only one escort on that transport to care for those children."

4. The council responded to the request on 29 April 2022 and directed the complainant to information on its website. It also confirmed that it was withholding other information under the exemptions for information intended for future publication (section 22) and prejudice to the effective conduct of public affairs (section 36).
5. On 29 April 2022 the complainant asked the council to carry out an internal review into its handling of the request.
6. The council sent the outcome of its internal review on 8 August 2022. This confirmed that it was maintaining its reliance on the exemptions cited in its initial response. The council also confirmed that it intended publishing the withheld information by the end of September 2022.
7. On 6 October 2022 the council issued a further response to the complainant which confirmed that it was dropping its reliance on the exemptions cited. It disclosed the withheld information to the complainant and addressed other outstanding queries raised by the request.

Reasons for decision

8. The Commissioner advised the complainant that, in cases where an authority drops its reliance on exemptions and discloses previously withheld information, he does not investigate whether the original grounds for applying exemptions were correct. The complainant asked the Commissioner to issue a decision notice which records the delays involved in the handling of the request.
9. Section 1(1) of FOIA states that:

“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. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

11. From the evidence provided to the Commissioner in this case, it is clear that the council did not deal with the request for information in accordance with FOIA. The Commissioner finds that the council has breached section 10(1) by failing to comply with section 1(1) within 20 working days.
12. As the council has now disclosed the requested information to the complainant the Commissioner does not require it to take any steps.

Other matters

13. Although they do not form part of this decision notice the Commissioner would like to raise the following matters of concern.

Section 45 code of practice: Internal review

14. The code of practice issued under section 45 of the FOIA (the "Code") contains recommendations as to best practice in the handling of requests for information¹.
15. In relation to complaints about the handling of a request, paragraph 4.5 of the Code states:
- "Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt."
16. In this case, the Commissioner notes that the council failed to provide its internal review response within the recommended timeframe and its practice did not conform to the Code.
17. Although contraventions of the Code do not amount to statutory breaches of the FOIA, repeated or severe failures to conform to the Code can result in the Commissioner issuing an authority with a practice recommendation.
18. The Commissioner expects that the council's future practice will conform to the recommendations of the Code.

1

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

Right of appeal

19. 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

20. 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.
21. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF