

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2023

Public Authority: **West Midlands Combined Authority**
16 Summer Lane
Birmingham
B19 3SD

Decision

1. The requester asked for the full business case documents regarding a number of railway schemes. West Midlands Combined Authority ("WMCA") failed to respond to the initial request but after follow up supplied copies of information it held in scope of the request. The Commissioner's decision is that, on the balance of probabilities, the WMCA has disclosed all the relevant information it holds in scope of the request.
2. However, WMCA failed to respond within the timeframe to the initial request and failed to carry out an internal review (even when prompted by the Commissioner). Therefore, the Commissioner finds WMCA breached section 10 of FOIA.
3. The Commissioner does not require WMCA to take any steps as a result of this decision.

Request and response

4. The complainant made the following information request to the WMCA on 16 December 2022:

“I would like to request the full business case documents for the following railway schemes:

 1. Rebuild of University station (Commonwealth Games)
 2. Rebuild of Perry Barr station (Commonwealth Games)
 3. New Moseley Village station
 4. New Kings Heath station
 5. New Pineapple Road station
 6. New Willenhall station
 7. New Darlaston James Bridge station.”
5. WMCA responded on 21 February 2023, after the Commissioner’s intervention, by sending the requester PDF copies of information in scope of the request. This was followed up with the disclosure of further outstanding information.
6. The requester sent an internal review request to WMCA on 20 March 2023. Despite the Commissioner’s intervention, on 20 April 2023, the WMCA failed to carry out an internal review. The final position of the WMCA is that it has disclosed all the information it held in scope of the request.

Reasons for decision

7. The Commissioner understands that the request in this case is asking for specific information held by WMCA regarding the business cases for several railway schemes. The Commissioner’s role is to determine whether WMCA disclosed the information it held in scope of the request under the FOIA.
8. The requester disputes that the information provided to them represented the full business case information they had requested and

therefore believes WMCA has not disclosed all the information it holds in scope of the request.

9. During the Commissioner's investigation a number of questions were raised about the searches carried out by WMCA in order to locate all of the information in scope of the request. WMCA confirmed that appropriate searches and search terms were used in order to locate all relevant information in scope of the request.
10. From the information provided by WMCA to the requester and during the Commissioner's investigation, the Commissioner is satisfied that, on the balance of probabilities, the WMCA supplied all the relevant information it held in scope of the request.

Procedural issues

11. The Commissioner has voiced his concerns to WMCA regarding its handling of this case and lack of explanation for the delays and lack of response to the requester and Commissioner's concerns.
12. The public authority breached section 10 of FOIA because it failed to inform the requester, within 20 working days, whether or not it held any information within the scope of their request.

Internal review

13. Whilst there is no formal requirement to undertake an internal review under the FOIA, the Commissioner considers it good practice to do so, which is addressed in the code of practice issued under section 45 of FOIA.
14. The Commissioner considers that, where offered, internal reviews should be completed promptly. Although no explicit timescale is laid down in the code of practice, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
15. In this case, the complainant requested an internal review on 20 March 2023. Having not received a response, he asked the Commissioner to intervene. The WMCA failed to respond to the Commissioner's intervention. To date, the WMCA has failed to provide an explanation for this.

16. By failing to complete the internal review within the timescales specified above, the Commissioner considers that the WMCA did not conform with the Section 45 code of practice.
17. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"¹.

¹ [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk)

Right of appeal

18. 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

19. 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.
20. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF