

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **26 September 2023**

Public Authority: **Cheshire East Council**
Address: **Municipal Buildings**
Earle Street
Crewe
CW1 2BJ

Decision (including any steps ordered)

1. The complainant requested information from Cheshire East Council (the Council) relating to its SEND/EHCP provision. The Council initially responded with a link to its website, however, at internal review, the Council apologised for its initial response and made a limited disclosure.
2. The Commissioner's decision is that the Council, on the balance of probabilities, has now provided the information within scope of the refined request.
3. However, the Council has breached section 10(1) and section 17(1) of FOIA by failing to respond to the original request within 20 working days and issue an appropriate refusal notice.
4. The Commissioner does not require any steps to be taken as a result of this decision.

Request and response

5. On 19 March 2023, the complainant wrote to the Council and requested information in the following terms:

"I wish to make a Freedom of Information Act request for the following information relating to Cheshire East's SEND/EHCP provision (for all children and young people for whom CEC is the responsible LA, irrespective of whether educational establishments are within/outside Cheshire East):

- All reference/training documents, guides, protocols, work instructions, or similar (howsoever classified or named), used by CEC in connection with the following classes of activity:
 - o Preparation and/or internal review and/or external review of EHCPs;
 - o Authorising of draft, amended, or final EHCPs
 - o Evaluation of funding related to EHCPs;
- All reference/training documents, guides, protocols, work instructions, or similar (howsoever classified or named), used by CEC in connection with the abovementioned classes of activity outlining language/terminology/phraseology that is:
 - o Preferred by CEC when expressing needs and/or provision;
 - o Prohibited by CEC for use in connection with expressing needs and/or provision without seeking additional approval;
 - o Prohibited by CEC for use in connection with expressing needs and/or provision without exception.

In each case, please provide all documents in use during the period 1st Jan 2019 to date and state the period in which they were in use.

It is not necessary to provide copies of the following (these being available from other sources):

- Children and Families Act 2014
- DfE/DoH Special educational needs and disability code of practice: 0 to 25 years.

If it is the case that CEC wishes to claim that the S12 limit would be exceeded, please provide advice and assistance, under the Section 16 of the Act, as to how I can refine my request. In order to reduce the costs associated with this request, please provide information in electronic format.”

6. The Council responded on 28 April 2023 confirming it held information in scope of the request and provided a link to information on its website but failed to cite any exemption applicable to the request.
7. At internal review, the Council apologised for its initial response and made a limited disclosure, but it failed again to cite any applicable exemption for the limited disclosure.

Refined request

8. The complainant made a refined request on 19 June 2023 as follows:
“Materials relating to the following programmes outlined in the SEND Training Programme 2022-23.pdf (supplied on 1st June 2023):
 1. “Managing Complex Cases”
 2. “Home to School Transport”
 3. “Tribunals”
 4. “Supporting Transition”
 5. “Autism Pathway.”
9. The Council provided its response on 14 September 2023 where it disclosed relevant information subject to redactions under section 40 (personal information) of FOIA.

Scope of the case

10. Although the Council made a limited disclosure as a result of its internal review, it did not cite any exemption to withhold information in scope of the request until 15 June 2023 which formed part of further

correspondence between the complainant and the Council after the internal review response.

11. The complainant has pointed out that the Council was late in its reliance on section 14 of FOIA to refuse their initial request and as a result has only received a limited disclosure as they were advised that if their request were refined, the Council could potentially comply with a narrowed request.
12. The Council has argued that they have now complied fully with the request and disclosed all the information it held in scope of the request.
13. The Commissioner investigation has considered whether the Council has complied with both the initial request and refined request.

Reasons for decision

14. Section 1(1) of the 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."

15. The Commissioner has sought to determine, on the balance of probabilities, whether the Council holds any additional information within scope of the refined request.
16. From the evidence provided to the Commissioner during his preliminary findings and further investigation, he is satisfied that, on the balance of probabilities, the Council does not hold any additional information in scope of the complainants refined request.

Procedural matters

17. Where a public authority receives a request for information it must communicate any non-exempt information to the requester (section 10) and provide a refusal notice specifying any exemptions being relied upon to withhold information (section 17), within 20 working days.

18. As the Council did not respond to the initial request within 20 working days, it breached section 10 and section 17 of FOIA.

Other matters

19. The Commissioner considers it to be necessary to record his concerns about the Councils overall handling of this request.
20. The Commissioner is satisfied that the complainant was clear about what information they required in their request, and further clarification was provided at the internal review stage, and in additional correspondence which the complainant sent to the Council in their refined request.
21. Furthermore, in the Council's original response it failed to recognise or cite the relevant exemption for the request, which was further compounded at internal review.
22. Whilst the council has since corrected the errors that it made in its initial handling of the request, it is the Commissioner's view that this case indicates broader issues with regards to the Council's information rights practices.
23. As a result, the Commissioner seeks to remind the Council of its obligations under information rights legislation and trusts that it will ensure future compliance with FOIA and its accompanying Codes of Practice.

Right of appeal

24. 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

25. 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.
26. 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

Deirdre Collins

Senior Case Officer

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF