

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2023

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle upon Tyne
NE1 8QH

Decision (including any steps ordered)

1. The complainant has requested information held by Newcastle City Council (the council) about car parking within a specific area of the city.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold information within the scope of the complainant's request.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 22 March 2023, the complainant wrote to the council requesting information about car parking within a particular area. The original request is set out below, together with the council's response in bold:

"1. Number of complaints received by the council or made directly to councillors relating to parking on grainger park road or western avenue since October 2021.

Council response: Newcastle Parking Services do not maintain a record of general queries relating to parking contraventions received by telephone call, email, social media posts, face-to-face queries to Civil Enforcement Officers (CEOs) on patrol, etc.

2. Copies of any and all correspondence sent by the council or councillors to the mosque on Grainger Park Rd which relate to parking since October 2021.

Council response: Newcastle Parking Services have not written to the Mosque on Grainger Park Road regarding the parking problems around their premises. Please note that Parking Services do not keep records of correspondence that may have been issued by other departments within the Council or by Councillors.

3. Copies of any and all responses received to any correspondence referred to in 2 above.

Council response: See response to question 2 above.

4. Copies of any internal instructions or guidelines issued to the council's enforcement officers relating to enforcing parking control in the vicinity of the central mosque on Grainger Park Rd, since October 2021.

Council response: The Parking Enforcement Team Manager has advised that whilst staff do have a catch up with supervisors in the morning, this is an informal discussion that sets out areas that need priority enforcement to address complaints, high levels of vehicles in contravention of restrictions, as well as any concerns from the day before, etc. As these are only informal discussions, no notes are kept in this regard.

5. Copies of any plans or intended actions to be taken to address the persistent matter of anti social and illegal parking around the mosque or, if there are no plans or intended actions, confirmation of such."

Council response: Feedback from residents and stakeholders such as the time periods when parking problems are particularly severe, is taken into account so effective enforcement action can be planned and carried out. Due to high levels of requests for parking enforcement across the city and the need to manage resources effectively to provide a consistent service for all requests, Civil Enforcement Officers (CEOs) are unable to maintain a permanent presence in an area or to patrol an area for extended periods. CEOs have patrolled the area around the mosque with enforcement action taken against vehicles parked in contravention of the restrictions in place."

5. Whilst the complainant requested an internal review on 21 April 2023, the council failed to provide a response.

Scope of the case

6. The complainant contacted the Commissioner on 20 July 2023, raising concerns about the council's handling of their request. In particular, the complainant believes that the council has failed to properly consider the terms of their request and has not provided the relevant information that is held.
7. The Commissioner will decide whether, on the balance of probabilities, the council holds information that is relevant to the complainant's request.

Reasons for decision

Section 1 of FOIA – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
9. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
10. When making a decision, the Commissioner will consider the complainant's arguments, and details and evidence of the searches conducted by the public authority along with its reasoning as to why it is unlikely that relevant information is held.

The complainant's position

11. The complainant is concerned that the council's response to their request indicates that the searches which were carried out to identify information relevant to the request had been restricted to one department, that being Parking Services. They have also complained that the council may not have considered whether any councillors held relevant information. They have said that one councillor has confirmed to them that they had written to the mosque about the parking issue.

12. The complainant has also argued that the council has misinterpreted the terms of their request and has dealt with it as a request for general information about parking, rather than as a request for information held about complaints relating to parking in a very specific area of the city.

The council's position

13. The council has advised the Commissioner that it does not hold information relevant to any part of the request.
14. The council has confirmed that any complaints made about parking within the specific area referred to within the request would have been received by its Corporate Complaints team, and that the normal process would be to pass this to the relevant service which, in this instance, would be Parking Services. The council has said that Parking Services have advised that no parking related complaints have been received for Grange Parker Road since October 2021 (the date that the complainant referred to in their request).
15. The council has advised that electronic searches of emails held within its outlook system were carried out using the search terms, 'parking', 'complaint', and 'Grainger Park Road', in Parking Services and Democratic Services in order to identify emails that might be relevant to the request.
16. The council has said that manual records and associated documents were searched in each of the relevant teams, and key officers also asked staff if any complaint had been received by email or letter.
17. The council has also confirmed that it has searched the email accounts of four councillors from the Elswick Ward. The council advised that its searches were restricted to these four individuals as they are the only councillors who represent the area to which the request relates; the council has said that to have searched the council's entire email system for information would have exceeded 12 hours, and would have been a disproportionate use of staff time and resources.
18. The council advised that, when carrying out its searches of the four councillors' emails, it used the terms 'parking complaints' and 'Grainger Park Road'. The council has also confirmed that it has conducted a manual search of letters held by the relevant councillors.
19. The council has advised the Commissioner that its searches did not identify any information that would fall within the scope of the request.

The Commissioner's finding

20. The Commissioner has considered the complainant's concerns, details of the council searches, and its explanations about the parking issue relevant to the request, and why information is not held.
21. It is the Commissioner's view that whilst part of the council's response to the request did provide information that was about, or relevant to, parking enforcement within the area relevant to the request, it was not the specific information that had been requested by the complainant.
22. The Commissioner would not wish to discourage a public authority from providing information it does hold or indeed further explanations where it considers it would be helpful to a requester; however, when doing so the public authority must ensure that it has made it clear whether (or not) it holds the specific information that has been requested.
23. The council's initial response to the complainant's request indicated that the searches for information held relevant to the request had been restricted solely to Parking Services. The Commissioner considers that the searches which the council has now confirmed were carried out are adequate and proportionate, and are likely to have identified any information relevant to the complainant's request, if held by the council.
24. With regard to the complainant having been informed by a councillor that they had written to the mosque about parking, the Commissioner considers it pertinent to note that such information, if still held by that councillor, may not be considered to be information held by, or on behalf of the council. Circumstances where a local councillor holds information as a result of performing their function as an elected member, for example, when corresponding with residents of their ward rather than as a result of performing functions of a local authority, is unlikely to be information held by, or on behalf of the council.
25. Having taken full account of the evidence available to him, the Commissioner therefore concludes that, on the balance of probabilities, the council does not hold the specific information set out within parts 1-5 of the complainant's request.

Other matters

26. In this case, the complainant requested an internal review on 21 April 2023. As they did not receive a response by 20 July 2023, they submitted a complaint to the Commissioner.

27. There is no formal requirement to undertake an internal review under FOIA. However, the [code of practice](#) issued under section 45 of FOIA confirms that it is considered best practice for public authorities to have a procedure in place for dealing with disputes about its handling of requests for information.
28. The code of practice says that, in most instances, a reasonable time for completing an internal review is 20 working days from the date of the request for review.
29. The council has advised the Commissioner that it was not in a position to carry out an internal review in this particular case as it was waiting for further information from Parking Services and Democratic Services. The council goes on to say that it acknowledges that it should have informed the requester of the delay.
30. The Commissioner is mindful that if the council had provided an internal review response in a timely manner, setting out the same information which has been presented now, this may have allowed the complainant to have a much better understanding of the council's handling of their request. Furthermore, by failing to conduct an internal review as requested by the complainant, the council did not act in accordance with the section 45 Code of Practice.

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

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