

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2023

Public Authority: Sunderland City Council
Address: Civic Centre
Burdon Road
Sunderland
SR2 2DN

Decision (including any steps ordered)

1. The complainant has requested information from Sunderland City Council ('the Council') about ICT projects completed during 2022. The Council explained that it does not hold the requested information.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information within scope of the complainant's request.
3. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

4. On 17 June 2023, the complainant wrote to the Council and requested information in the following terms:

"I am creating an Artificial Intelligence chat assistant for Project Managers who work in Local Government. I request, under the Freedom of Information Act, the following information:

Final project documentation for all ICT projects completed during 2022 including:

- * Project Plan (Project Initiation Documentation)
- * Risk Register
- * Issue Register

I would like you to provide this information in the following format:

As CSV files, spreadsheets, text or Word documents.”

5. The Council responded on 29 June 2023. It stated that it may hold some information which would fall within the remit of the request. However, the ICT Service does not retain a record of historical projects in a format that would enable the requested data to be identified and extracted.
6. Following an internal review the Council wrote to the complainant on 9 August 2023. It stated that it maintained its original position and that it had considered its duty to provide advice and assistance, but the requested information is not held in an alternative format.

Scope of the case

7. The complainant contacted the Commissioner on 15 August 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if, on the balance of probabilities, the Council holds information relevant to the request.

Reasons for decision

Section 1 of FOIA – general right of access

9. 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 if it's not exempt information.
10. 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 more likely than not that the public authority holds information relevant to the complainant's request.

Complainant's position

11. The complainant has explained that the Council's response does not sufficiently address the practicality of extracting information that could fall within the scope of the request.
12. The complainant explained that the Council's response suggests that it has not conducted a comprehensive search of its systems to determine if the information could be located or extracted.

Council's position

13. The Council has explained to the Commissioner that it accepts that it could have made its response to the complainant clearer from the outset.
14. The Council explained that the complainant's request is precise; asking for ICT projects completed in 2022. It added that the documents requested are very specific and form part of a series of documentation typically used in a methodology for project management.
15. The Council advised that at the time of the initial response and subsequent review, it did not carry out a word-based search of electronic files. It added that as this was not a broad request, officers within the Council's ICT and intelligence service areas immediately advised that the information did not exist in the requested form.
16. The Council went on to explain that, for the sake of completeness, it has carried out a further search of electronic files held in the shared network drives maintained by the Council's law and governance team. It used the terms 'project plan', 'project initiation document', 'risk register' and 'issue register', for all the ICT projects completed in 2022. It advised that the search uncovered no results that would fall within the scope of the complainant's request.
17. The Council has advised that when reconsidering the response for the internal review, it followed ICO guidance and evaluated whether it needed to create information to satisfy the request.
18. The Council explained that providing the requested information would amount to more than a representation of existing information. It added that the precise information that has been requested could not be produced by the mere collation of existing information.
19. The Council went on to explain that the information could only be constructed by presenting a collation of information to more than one Council officer, with the requisite expertise in ICT projects and the

specific project management documentation and would need to spend a significant amount of time creating this new information.

20. During the Commissioner's investigation, the Council carried out additional searches of the shared network drives maintained by the Council's procurement team. These searches found six documents that may have been relevant to the complainant's request. However, the Council explained that when it reviewed the documents, they were not relevant to the request.
21. The Council also advised that the documents were provided by third party suppliers in response to competitive procurement exercises. It therefore was not identified by its ICT and intelligence service during the initial responses.
22. The Council also advised that it considered its duty under section 16 of FOIA but in these circumstances, as the specific documentation was not held, it did not consider that the original request could fall within the scope of FOIA following further clarification or refinement.

Commissioner's finding

23. The Commissioner has considered the complainant's concerns and understands why they would consider the Council holds information in relation to their request. However, FOIA only looks at information that is held by a public authority. There is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
24. The Commissioner has also considered the explanations from the Council as to why the information is not held.
25. The Commissioner also notes that the complainant is concerned that a public interest test was not carried out by the Council. A public interest test is not required when the Council does not hold information.
26. The complainant has requested a specific set of project management documents. The Council has indicated that it may hold relevant information but explained that it doesn't hold the information in the specific format requested ie a discrete set of project management documents. It would take someone, or more than one person, with the necessary expertise to use their judgement and prepare versions of those documents from more general information that the Council may hold. FOIA doesn't require a public authority to carry out such a task in order to respond to a request. If an individual's judgement is needed to collate or prepare information that's been requested - ie it's more nuanced than simply cutting and pasting information from elsewhere - then the information isn't held.

27. It is the Commissioner's view that, from the above explanations and the searches carried out, on the balance of probabilities, the Council does not hold the information in the format that the complainant has requested. To determine if such information was held and to be put into the specific format, it would require a specialist to do such a job. As FOI does not require new information to be created, the Commissioner is satisfied that the information is not held in a way which falls within the scope of the request. As such, it has complied with the requirements of section 1 of FOIA.

Right of appeal

28. 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

29. 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.
30. 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

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