

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 June 2024

**Public Authority:** Derbyshire County Council  
**Address:** County Hall  
Matlock  
Derbyshire  
DE4 3AG

#### **Decision (including any steps ordered)**

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1. The complainant requested from Derbyshire County Council ("the council") the names of council officers who knew that statistics which were provided to councillors for a council meeting were incorrect. The council argued that it does not hold specific information which can respond to the complainant's request for information. It also applied section 40(2) to withhold a list of council officers who had had access to that information (personal data).
2. The Commissioner's decision is that the council was correct to state that it does not hold information falling within the scope of the complainant's request for information. He has, however, decided that the council did not comply with the requirements of section 10(1) of FOIA.
3. The Commissioner does not require further steps.

## Request and response

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4. On 26 April 2023, the complainant wrote to the council asking a number of questions relating to why incorrect statistics relating to sickness absence at the council were provided to councillors for a council meeting. The council responded on 25 July 2023. It said that the requests were not requests for recorded information as they required the creation of new information.
5. The complainant requested that the council carry out an internal review on 26 July 2023. He also asked additional questions of the council.
6. Following further correspondence during which the majority of the complainant's questions were responded to, on 17 October 2023 the complainant outlined the remaining questions he wished the council to respond to:
  - (i) "I request that the full circumstances around the delayed response to my FOI request being explained much more thoroughly than that already – in granular detail - especially having a regard for my above observations regarding the contents of the correspondence from the Council on 25-07-23 and then on 22-08-23 (dated 21-08-23)".
  - (ii) Which officers knew that previously reported figures in Quarterly reports had been incorrect?, and
  - (iii) Which officers knew that past reported figures had now been changed in the Quarter 3 2022/23 report that related to Quarter 2 (i.e. 5.7% changed to 5.4%)."
7. The council provided the outcome of its internal review on 1 December 2023. As regards request (i), it said that no granular information is held which can evidence why the delay in it responding to his request occurred. It applied section 40(2) to parts (ii) and (iii) of the request.

## Scope of the case

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8. The complainant contacted the Commissioner on 9 January 2024 to complain about the way their request for information had been handled.
9. The complainant argues that the council has not fully explained the delay which occurred in providing a correct response to his initial request. They also argue that the council is not correct to apply section 40(2) to withhold the names of the relevant council officers.

10. During the course of the Commissioner's investigation the council explained to the Commissioner that it does not hold the names of officers who knew that the statistics were incorrect.
11. Additionally, the council responded again to the complainant. It provided a further explanation along with a chronology which responded to part (i) of the request. The Commissioner is aware that the complainant has asked the council for a further explanation of some aspects of this, but this falls outside the scope of this decision notice and is a new request for information.
12. The Commissioner therefore considers that the scope of his investigation is to firstly determine whether the council holds information falling within the scope of the complainant's request for information. If his decision is that it is held, then he must decide whether the council has applied section 40(2) correctly to withhold that information. He will also consider the time which the council took to respond to the complainant's request for information.

## Reasons for decision

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### **Section 1(1) – is the requested information held by the council**

13. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
14. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.

16. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

#### The complainant's position

17. The complainant argues that the council holds the information falling within the scope of their request for information.

#### The council's position

18. The council explained to the Commissioner that the information regarding the incorrect statistics was posted on a Microsoft Teams' channel which 81 council officers have access to. However, it does not know which officers read the post, and it cannot say which officers 'knew' that the relevant statistics were incorrect. It argued that it is therefore unable to disclose a list of those officers.
19. It argues that even if it disclosed a list of the 81 officers who had access to the channel, this would still not identify which officers had specifically read the post and knew that the statistics were incorrect. It argued, however, that section 40(2) would apply to that list in any event.

#### The Commissioner's analysis

20. The Commissioner has considered the arguments of both parties.
21. The Commissioner must take an objective view of the request that was made. The relevant parts of the request were for:

"Which officers *knew* that previously reported figures in Quarterly reports had been incorrect?" (ICO emphasis added);

And

"Which officers *knew* that past reported figures had now been changed in the Quarter 3 2022/23 report that related to Quarter 2 (i.e. 5.7% changed to 5.4%)." (ICO emphasis added).

22. The specific wording of the request is for a list of officers who 'knew' that the information was incorrect. Whilst the council holds a list of individuals who had access to the relevant team's channel, this would not identify which of those officers 'knew' the information concerned.

23. 'Knowing' information requires a different level of understanding to having read something. Having access to read information clearly does not mean that that person did read it, or that they could be said to 'know' it. Officers may have read the post, and therefore know it. They may have glanced at it but not retained it in memory, or they may simply have not read the post at all. The council could not therefore hold recorded information on which of its officers 'knew' that information.
24. Under FOIA, the council is also not under a duty to ask its officers which of them read the report, and therefore knew the information for the purposes of responding to the request for information.
25. The Commissioner is therefore satisfied that the council does not hold recorded information which could respond to the complainant's specific request.

#### **Section 40(2) – personal data of third parties**

26. Given the specific wording of the request, the Commissioner has not found it necessary to consider whether the council was correct to apply section 40(2) to withhold the names of the 81 council officers who had access to the team's channel.

#### **Section 10 – time for compliance**

27. 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."
28. 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".
29. The complainant made his request for information on 26 April 2023. The council did not provide its response stating that no information was held by it until 25 July 2023.
30. The Commissioner has therefore decided that the public authority has breached section 10(1) by failing to respond to the request within 20 working days.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**