

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2024

Public Authority: Plymouth City Council
Address: Ballard House
West Hoe Road
Plymouth
PL1 3BJ

Decision (including any steps ordered)

1. The complainant submitted a three part request to Plymouth City Council (the council) for particular information relating to infant mortality.
2. The council initially advised the complainant that it did not hold any information that was relevant to their request. However, during the Commissioner's investigation, the council identified and released information to the complainant in response to part 1 of their request.
3. The Commissioner's decision is that the information which has been provided to the complainant is an accurate reflection of the information that is held that is relevant to part 1 of the request and that, on the balance of probabilities, the council does not hold any further information that falls within scope of the remaining parts of the request.
4. However, as the council failed to provide the complainant with the information relevant to part 1 of their request within the statutory 20 working days, the Commissioner has found a breach of section 10(1) (time for compliance) of FOIA.
5. The Commissioner does not require further steps to be taken by the council as a result of this decision notice.

Request and response

6. On 10 November 2023, the complainant wrote to the council and requested information in the following terms (the Commissioner has separated the request into parts 1 - 3 for ease of reference):

Part 1. "Please provide the Annual still birth statistics for the local authority of Plymouth from Jan 2014 to Jan 2023 for each of these district postcodes

PL1,PL2,PL3,PL4,PL5,PL6,PL7,PL8,PL9,PL10,PL11 & PL12. (Please provide the actual numbers where 5 or below are recorded as clear ICO case presidents exist for both)".

Part 2. "Please provide the total number of still birth autopsies that has been conducted by the local authority of Plymouth from Jan 2014 to Jan 2023.

(To include the district postcodes listed above)."

Part 3. "Please also provide a list of the Plymouth doctor surgeries with the highest recorded still birth Mortality incident rates."

7. The council responded to the complainant, advising that it did not hold any information relevant to the request. The council explained that Registration and Coroners are not subject to FOIA, but said that the Superintendent Registrar and the Coroner are data controllers for the purposes of the Data Protection Act 2018. The council said that the data requested under FOIA therefore does "not belong to the local Authority so is not subject to disclosure" under FOIA.
8. The council went on to provide the complainant with a link to the website for the Office for National Statistics, saying that this may provide some helpful information.
9. On 29 November 2023, the complainant requested an internal review. They argued that the council owns the data bases upon which the requested information is stored, and "provides salaries to the staff concerned." The complainant said that they believe that the council therefore holds the data that they have requested.
10. On 12 December 2023, the council provided its internal review response to the complainant. It reiterated its previous position, stating that the Registrar's Office and the Coroner's Office are not subject to FOIA. It

provided a link to a previous decision notice¹ issued by the Commissioner in support of its position.

11. During the Commissioner's investigation, the council revisited the request, and provided the complainant with a revised response.
12. The council said to the complainant that it wished to further clarify that neither the Coroner's Office or the Registration Office are public bodies for the purpose of FOIA, and it is only where these organisations share the information that they hold with the council, that it would become information held by the council and subject to FOIA.
13. The council then went on to confirm that it had identified some information relevant to part 1 of the request, which it provided to the complainant with its response. The council said that whilst the Registration Service does provide a statutory return to the council relating to still births, this does not include postcode data. However, the council confirmed that it does hold the information "from another source", although it said that as there is a delay in receiving this data, this only covered the period up to the year 2022.
14. The council went on to provide the complainant with some further explanations of the data set it was now releasing, and apologised for not providing this with its original response to the request.
15. The council confirmed to the complainant that it did not hold information relevant to part 2 of their request, saying that it does not carry out post-mortems, and Coroners do not have the jurisdiction to carry out still birth post-mortems.
16. The council also advised the complainant that the information requested in part 3 of the request was not held. It advised that GP details are not provided to the Registration service when still births are registered, nor are they recorded in the National Registration Database to which Registration Officers have access. The council went on to say that the Officer of Public Health has also confirmed that it does not receive this information from another source.

¹ [Decision notice \(ico.org.uk\)](https://ico.org.uk)

Scope of the case

17. The complainant remains dissatisfied with the council's handling of their request.
18. The complainant has said that the information that they have received is inaccurate, and that the council has continued to withhold information that is relevant to their request.
19. The Commissioner considers that the scope of his investigation is to consider whether the council has, on the balance of probabilities, provided the complainant with the information that is held that is relevant to the request, and whether the information provided is an accurate reflection of what is held.
20. The Commissioner will also consider certain procedural matters.

Reasons for decision

Section 1 – general right of access to information

21. Section 1(1) of FOIA provides 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 them.
22. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a 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.
23. The council has confirmed to the Commissioner that it has provided the complainant with all of the information it holds that is relevant to part 1 of the request. It has said that it was able to provide this information from data it receives directly from NHS England.
24. The council has said that it receives provisional datasets from NHS England on a quarterly basis, and the finalised data sets are provided approximately 22 months after the end of the year to which the data

applies. Given this, the council has said that it only held finalised data sets up to the year 2022, at the time that it received the complainant's request.

25. The council has confirmed that aside from the data it receives from NHS England which has now been provided to the complainant, it has not received, and does not hold, any other information that is relevant to the request.
26. The council has said that, when considering the request, it looked into the possibility of whether any particular departments might hold further information, and after consultations took place with the relevant departments, established that this was not the case.
27. The council states that it does not hold any other information relevant to the request for the reasons set out in its responses to the complainant (as described in paragraphs 10-15 of this decision notice).
28. With regard to the complainant's concern that there are discrepancies with the information that they have received, and that it does not concur with information that they already have in their possession, the council has confirmed that NHS England conducts checks to verify the accuracy of the information before the finalised datasets are released to the council.
29. Having considered all of the available information, the Commissioner considers that there is no substantive evidence to indicate that the information which has been provided to the complainant is not an accurate reflection of the data that the council holds.
30. The Commissioner is satisfied that the council has provided sufficient and reasonable explanations as to why it does not hold further information, and has clarified to the complainant why information that might be held by the Coroner or Registrar is not considered to be information held by the council for the purposes of FOIA. The Commissioner considers that decision notice FS50723286 (issued by the Commissioner on 3 May 2019), which was referred to by the council in its internal review response to the complainant, further supports his reasoning as to why it is unlikely that the council holds any further information.
31. The Commissioner is therefore satisfied that, on the balance of probabilities, the council has provided the complainant with copies of all of the information held that is relevant to the request.

Procedural matters

32. Section 10(1) of FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
33. It was only at the time of the Commissioner's investigation that the council identified information that was held that was relevant to part 1 of the request and provided this to the complainant. As the council failed to provide this information within the statutory 20 working days, the Commissioner has found a breach of section 10 of FOIA.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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