

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

### **Decision notice**

**Date:** 19 March 2018

**Public Authority:** South Tyneside Council  
**Address:** Town Hall and Civic Offices  
Westoe Road  
South Shields  
NE33 2RL

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

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1. The complainant has requested information on the decision to relocate adult day care services from a particular centre and the assessments that were carried out in respect of the alternative venues to be used for providing that care. The council initially said that it did not hold the requested information. However during the course of the investigation the council reconsidered its interpretation of the request and provided information which the Commissioner considers does fall within its scope.
2. The Commissioner's decision is that by not providing this information within twenty working days the council has breached section 10 of the FOIA.
3. However as the council has now provided the information the Commissioner does not require the public authority to take any further action in this matter.

#### **Request and response**

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4. On 28 March 2017, the complainant wrote to South Tyneside Council and requested information in the following terms:  
  
"I am writing to apply under the Freedom of Information Act for a copy of the documentation that lead to the decision to close the purpose built Father James Walsh Day Centre. I also request the information regarding what will happen to the building following closure. I request a

copy of the Health and Safety Checks on the proposed buildings who will take over the roll providing day care centre, also what services they will provide i.e. meals.”

5. The request then referred to an article in the local paper dated 5 December 2016 which explained that the services currently offered at the Father James Walsh centre would be relocated as part of a larger rationalisation of facilities. This article was itself based on the council's own press release of the same date.
6. The council responded to the request on 13 April 2017. It stated that that the service currently being offered by the Father James Walsh Day Centre was not being closed, rather it was being relocated. It went onto say that as the decision as to which venues would be used for delivering these services in the future had not yet been taken and therefore it did not hold the requested information. The council did not address the request for information on the future use of the Father James Walsh Day Centre.
7. The complainant asked the council to carry out an internal review the same day, i.e. 13 April 2017. The Commissioner is satisfied that at this stage the complainant made it clear that she had not suggested the services offered by the Father James Walsh centre were being closed; rather she was seeking information on why the Father James Walsh Centre was no longer going to be used to deliver those services. She also reminded the council of the press article she had referred to when making her original request as evidence that the decision to relocate services from the day centre had already been taken by the time she made her request. She therefore considered the council would hold information on why that decision was taken.
8. The council provided the outcome of the internal review on 5 September 2017, and explained that it had not actually received her request for a review until 12 July 2017. It reiterated that the services offered at the Father James Walsh Day Centre were not closing, the decision was simply to relocate the service. The council went onto say that this decision had not been taken until May 2017. It also provided some information on risk assessments relating to the venues which would now provide the services previously offered by the Father James Walsh Centre. A limited amount of information was withheld from those documents under section 31 on the basis that its disclosure could prejudice the prevention or detection of crime.

## **Scope of the case**

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9. The complainant contacted the Commissioner on the 11 September 2017 to complain about the way her request for information had been handled. She did not challenge the use of section 31 to redact information from some of the risk assessments. Her main concern was that the council had misinterpreted her request and therefore failed to provide the information she had requested in respect of the decision to stop using the Father James Walsh Centre for delivering adult day care services.
10. During the course of the Commissioner's investigation the council did release further information including a copy of the decision under delegated powers to move services from the Father James Walsh Centre dated 17 May 2017 and a copy of the planning permission to demolish the Father James Walsh Centre. The former document did contain some information on the reasons why services were to be relocated and clearly the second document dealt with what would happen to the day centre afterwards.
11. However the complainant maintained that based on press reports, press releases published on the council's website and correspondence between herself and the council, it was clear that, at the time she made her request, a decision had already been taken to relocate services away from the Father James Walsh Centre. The focus of the Commissioner's investigation became identifying whether the council held any information captured by this element of the request and, if so, securing its disclosure, subject of course to the application of any exemptions.
12. Ultimately the council did identify information which it held at the time of the request and which did explain the decision to stop using the Father James Walsh Centre for delivering the service. The council subsequently disclosed that information. The remaining issue therefore is the council's compliance with the statutory time limit for dealing with requests set down in section 10 of the FOIA.

## **Reasons for decision**

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

13. So far as is relevant section 1 of FOIA states that upon receipt of a request a public authority must confirm whether it holds the requested information and, if it does, communicate that information to the applicant, subject of course to the application of any exemptions.

14. Section 10 of FOIA provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt.
15. The Commissioner recognises that the council's initial response to the complainant was within 12 working days of the request being received. The Commissioner also accepts the request referred to the Father James Walsh Centre being 'closed' rather than more accurately referring to the decision to stop using the centre for the delivery of adult day care services. There is therefore some room for confusion as to what the request was seeking, i.e. whether it was seeking information on a decision to close the centre altogether, to close it for the purposes of delivering adult day care, or to stop providing the adult day care service altogether.
16. However reading the request with a fresh pair of eyes and in the context of the press article that the complainant had referred to in her original request, it is clear to the Commissioner that she was seeking information on why the decision was taken to no longer use the Father James Walsh centre for the provision of adult day care services.
17. The Commissioner accepts that the council is correct when it states that the formal decision to relocate services away from the day centre was not taken until 17 May 2017, as evidenced by the record of the decision made under delegated powers. However it is also clear that for all practical purposes a decision to stop using the Father James Walsh Centre had been taken by the time the request was received and was being acted upon. This is based not least on the press release issued by the council and published on its website on 5 December 2016 stating that service would move from the centre as part of a larger review of the adult social care service.
18. Once the scope of the request was clarified, the council identified two presentations, one of which set out the need to review the service as a whole and one which focussed on the suitability of the Father James Walsh Centre. The first presentation was given to the most senior council officials and lead councillors. The second was given at a later stage in the process to the Chief Executive and Corporate Directors. Both of these presentations/briefings were given prior to the council's press release of 5 December 2016 and before the request was received. The Commissioner is satisfied that these two presentations fall within the scope of the request and that, given the working practices adopted by the council, these documents best match the information described by the request.
19. This information was disclosed to the complainant on 13 March 2018. This is clearly outside the twenty working days set out in the FOIA and is a breach of section 10. However, as the council has now provided the

information the Commissioner does not require it to take any further action in this matter.

20. Although it is clear and understandable that the complainant feels a sense of frustration over how her request was dealt with, the Commissioner acknowledges that the council has adopted a constructive approach to the investigation.

## **Right of appeal**

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21. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

22. 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.
23. 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**

**Rob Mechan**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**