

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 August 2018

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant requested information from Birmingham City Council ("the Council") about the way in which 'exceptional circumstances' are determined for adults who have been awarded direct payments.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided the complainant with all of the information which it holds falling within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 26 October 2017, the complainant wrote to the Council and requested information in the following terms:
"All draft and final information eg policy held by the council (possibly located within Adult Social Services division) related to how exceptional circumstances are determined for adults who have been awarded direct payments. Any correspondence by the incumbent interim or previous Director of Adult Social Services related to determination and applicability of exceptional circumstances for Birmingham residents."
5. The Council responded on 6 November 2017. It stated that it held "the information requested" and provided some extracts from the Department of Health's Guidance on Direct Payments (2009) ("the 2009 Guidance").

6. The complainant requested an internal review on 6 November 2017, stating that he had not been provided with the information he had requested. In particular, he had not been informed whether the correspondence he had asked for in the second part of his request was held.
7. Following the internal review, the Council wrote to the complainant on 5 December 2017. It stated that it did not hold any communications relevant to the second part of his request, and stated that in its previous response, it had already provided "*the guidance that [it] applied... determined by the Care and Support Statutory Guidance issued under the Care Act 2014*".

Background to the request

8. The Commissioner understands that an individual in need of support from social services may be entitled to receive the support by way of direct payments, to enable greater flexibility in arranging care. In some circumstances, which are known as 'exceptional circumstances', a local authority may agree to the individual then arranging to use the payments to pay for support from a third party who is also connected to them on a personal level.
9. The relevant legislation governing this is the Care Act 2014 and the Care and Support (Direct Payments) Regulations 2014¹; the Council has also explained that relevant provisions from the 2009 Guidance, as provided to the complainant, are maintained in this more recent legislation.
10. The Council has explained what is meant by 'exceptional circumstances', as follows: "*where the relationship between the two people is primarily personal rather than contractual, for example, if the people concerned would be living together in any event, ...under the Care & Support Statutory Guidance, this [would] not be allowed, however, [if] all other options for the delivery of the care and support have been explored and have been ruled out, an exception [may] be allowed.*"

¹ [The Care and Support \(Direct Payments\) Regulations 2014](#)

Scope of the case

11. The complainant contacted the Commissioner on 20 December 2017 to complain about the way his request for information had been handled. In particular the complainant disputed whether the Council had disclosed to him all the information is held that fell within the scope of the request.
12. The following analysis considers whether the Council has provided the complainant with all of the information which it holds that is within the scope of his request.

Reasons for decision

Section 1 – what information is held?

13. Section 1 of the FOIA states that:

"(1) 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."

14. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided) in cases which it has considered in the past.
15. The Commissioner asked the Council to explain what searches were carried out for relevant information.
16. The Council explained that it carried out searches of records held by the Head of Client Financial Services, who is responsible for the team that manage payments including direct payments, and the Interim Director of Adult Social Care and Health, who was identified in the request. It explained that a search was also undertaken with the Policy and Procedure writer for Adult Social Care.

17. The Council stated that the relevant teams were asked to search for correspondence by the Interim Director of Adult Social Care that related to determinations regarding, and applicability of, exceptional circumstances for Birmingham residents. No correspondence was found.
18. The Council also explained that each case is considered on an individual basis as to whether exceptional circumstances may be found to apply. It has explained that "*there is no list of exceptional circumstances, each case must be considered on an individual basis*".
19. The Commissioner understands therefore that the Council considers each application for exceptional circumstances on its own merits and in accordance with the 2009 Guidance.
20. She notes that the extracts from the 2009 Guidance which were provided to the complainant explain the circumstances in which the Assistant Director for Assessment & Support Planning may consent to an adult in receipt of direct payments paying a 'personal assistant' who is also a 'close relative', which is not normally permitted under the relevant Regulations.
21. The Commissioner is also aware that the Council ascertained that the complainant was not asking for an explanation of how a determination may have been reached in any specific case, nor for his own personal data.
22. She therefore accepts that the Council's searches were adequate and were targeted appropriately in order to determine whether any further information falling within the scope of the request was held.
23. In this case, she is satisfied that the Council's normal procedure is to consult its guidance, as provided to the complainant, in order to make determinations as to exceptional circumstances on a case by case basis, and that, on the balance of probabilities, no further information of the type requested by the complainant is held.
24. She is therefore satisfied that the Council has complied with its obligations under section 1 of the FOIA, and does not require it to take any steps.

Right of appeal

25. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**