

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2019

Public Authority: Reading Borough Council
Address: Civic Office
Bridge Street
Reading
RG1 2LU

Decision (including any steps ordered)

1. The complainant has requested information with regards to the number of recorded deaths of people who were sleeping rough or of no fixed address. Reading Borough Council (the council) initially refused the request under section 40 of the FOIA as it considered the information to be third party personal data. During the internal review, the council changed its response to 'information not held'.
2. The Commissioner's decision is that the council does not hold the requested information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 April 2018 the complainant made the following information request to the council:

"Under the Freedom of Information Act, please could you provide me with the following information: how many deaths in the local authority area were recorded in each of the following calendar years, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017, where the person who died was sleeping rough or recorded as having no address or no fixed abode?"

Please provide a breakdown for each of the years of the number of deaths by gender, age, whether the person was sleeping

rough at the time of their death, cause of death if known, and whether the person was in contact with housing and homelessness services at the time of their death."

5. The council responded on the 11 April 2018 refusing the request relying on section 40(2) of the FOIA as it determined that releasing the information would reveal third party personal data.
6. The complainant requested an internal review on the 11 April 2018 disputing the council's reliance on section 40(2) of the FOIA, because this exemption applies to living individuals.
7. On 3 August 2018 the complainant followed up on her internal review request as she had not received a response.
8. The council provided its internal review response on the 9 August 2018. The council amended its response stating that the requested information is not recorded or held, no longer relying on section 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 10 August 2018 dissatisfied with the council's response and considers it should provide the information, questioning the council's 'not held' response.
10. As the council amended its response to 'information not held', the Commissioner considers the scope of the case is to determine whether the council holds the requested information.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).

13. The Commissioner has asked the council to explain how it has determined the information is not held and if the information is not held, why had it applied section 40(2) of the FOIA initially to refuse the request.
14. The council has responded to the Commissioner stating that the officer who initially responded to the request is currently on extended leave and therefore not able to provide an explanation to the response initially given, applying section 40(2) of the FOIA.
15. The council has gone on to explain that at the time of the initial response, it was known that there have been a small number of deaths over the last ten years in the local authority area, where the person who died was sleeping rough or had no address or no fixed abode. However, the officer who initially responded had not accounted for the fact that this information is not formally recorded by the council and this may explain why it was initially refused under section 40(2) of the FOIA.
16. It was following the internal review request that the council realised its error in applying section 40(2) of the FOIA and so the amended response to 'information not held' was issued to the complainant.
17. The council has told the Commissioner that it has two teams within its Housing Department that either have contact with and/or commission services for people who sleep rough and have no fixed address.
18. It is the team manager and commissioner for the borough's rough sleeper outreach service and floating support service that responded to the complainant's internal review request. The council has explained that if this data was collated and recorded then it would be known by one of them.
19. The council has told the Commissioner that neither of the managers collate or records this and have confirmed that they have never collated or recorded it since being in post, and neither did their predecessors. The council has stated that recording deaths is not part of the officer case management process at this time.
20. The council has explained that target lists of those who sleep rough are received each week and these do not contain details of those who have passed away; only those that have been verified as rough sleeping. Its Officers do not record on the database and case management system reasons why names might fall from the register, even when someone passes away.
21. The council has advised that the only other team that may have recorded this information is its Homelessness Prevention Team but after making checks it was confirmed that they do not record it.

22. The council has stated to the Commissioner that if the information were held, it would most likely be held electronically as it operates paperless wherever possible and no information relevant to the request has been deleted or destroyed.
23. The council told the Commissioner that it is aware that the Ministry for Housing, Communities and Local Government has established in their 2018 Rough Sleeping Strategy that deaths should be recorded.
24. The council states that it is expecting that this may be a mandate/ submission required of public authorities at some point in the near future. But currently there is not a statutory requirement for this information to be collated.
25. The council has confirmed that it's response that the information is not held, is their position for this request.
26. On review of the above the Commissioner can see how the council's initial response to refuse to provide information would cause question marks after changing it to 'not held'. The explanations given as to why this happened are plausible, but it may serve the council better in future, to firstly ensure any information they are applying exemptions too, is actually held.
27. As the council has contacted the relevant departments and managers to confirm the information is not held, it is difficult for the Commissioner to find any other conclusion.
28. On this basis, the Commissioner is satisfied that, on the balance of probabilities, the requested information is not held by the council.

Right of appeal

29. 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

30. 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.
31. 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

Andrew White
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF