

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2019

Public Authority: Gateshead Council
Address: Civic Centre
Regent Street
Gateshead
Tyne and Wear
NE8 1HH

Decision (including any steps ordered)

1. The complainant has requested from Gateshead Council (the Council) information in relation to usage of experimental 5G¹ technology. The Council stated that it did not hold any recorded information.
2. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any recorded information falling within the scope of the request.
3. The Commissioner does not require any steps to be taken.

¹ 5G is generally regarded as the fifth generation mobile network technology that provides internet access.

Request and response

4. On 5 April 2018, the complainant wrote to the Council and requested information in the following terms:

"1 Is 5G experimental technology being used in Gateshead?

1a What is meant by a control Management system when experimenting with this technology?

1b Who is the telecoms supplier or supplier of this experimental technology?

1c Is this new 5g technology is it safe to be near for people and birds?

1d Can you 100 percent this will never kill a animal or human?

1e Can this technology be used to spy or listen to peoples private conversations or video their actions with in their own homes?

1f What is the cost to the tax payer for using this 5g experimental technology per population or per person or per budget.

1g Can this technology cause mental health issues in the area?"

5. The Council responded on 23 April 2018. In relation to the first question it responded negatively, whilst for the rest of the questions it responded with an identical answer: *"We are not experimenting with 5G technology"*.
6. Remaining dissatisfied with the response received, on 17 May 2018 the complainant requested the Council to conduct an internal review.
7. On 19 June 2018 the Council provided a second response to the complainant, which stated:
- "Gateshead Council's Litigation and Information Governances Manager has reviewed your request and the response provided.*
- Gateshead is not using experimental 5G technology.*
- You may apply to the Strategic Director of Corporate Services and Governances ...for an internal review of the decision."*
8. On 29 September 2018 the complainant submitted a request for an internal review for the second time.

9. On 23 October 2018, the Council provided the complainant with the outcome of its second internal review. The Council upheld its original position and advised the complainant that if he remained dissatisfied he could raise a complaint with the Commissioner.
10. On 25 October 2018, the complainant submitted a request for an internal review for a third time.
11. The Council stated that it had already provided the outcome of its internal review and would not provide an additional one.

Scope of the case

12. The complainant contacted the Commissioner on 26 October 2018 to complain about the way his request for information had been handled.
13. The scope of the Commissioner's investigation into this complaint is to establish whether the Council holds any recorded information relevant to the request of 5 April 2018.

Reasons for decision

Section 1 – information held/not held

14. Section 1 of the 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 him."*

15. The complainant considered that the Council would hold information regarding experimentation with 5G technology due to this having been mentioned in a number of media reports.
16. The Council's position is that it does not hold any information relevant to the request because it was never involved in such an experiment.
17. 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 will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check whether the information was held and any other reasons offered

by the public authority to explain why the information was not held. Further to this she will also consider any reason why it is inherently likely or unlikely that the requested information was held.

18. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
19. The Commissioner notes that the information request contains one question followed by seven other sub-questions. However, the fashion in which these sub-questions are formulated are contingent to the response to the main question, marked as question 1 in the information request. Information would only have been held in relation to questions 1a to 1g where the Council responded in the affirmative to question 1.
20. Since the Council's response to the main question "*Is 5G experimental technology being used in Gateshead?*" was negative, the following sub-questions become redundant.
21. The Council explained that had experienced a wave of similar information requests focusing on the issue of 5G experimental technology in Gateshead. This has resulted with concerns raised in local media, to which the Council was compelled to respond that no such technology is being implemented in Gateshead.
22. The Council has consistently stated that it is not experimenting with 5G technology, hence it does not hold any information falling within the scope of the complainant's request.
23. The Commissioner is aware of no evidence that calls into question the Council's position that it has not been involved in experiments of 5G technology. Given this absence on evidence, the Commissioner accepts the Council's response on this matter and is satisfied that, on the balance of probabilities, the Council does not hold the requested information.
24. Therefore, the Commissioner does not require the Council to take any further action.

Other matters

25. Although not forming part of the formal decision notice the Commissioner uses 'Others matters' to address issues that have become apparent as a result of a complaint or her investigation of that complaint and which are causes for concern.

26. The Commissioner is disappointed with the Council's engagement in the course of her investigation. Whilst she understands that certain information requests can cause frustration and disruption, the Commissioner reiterates that it is her responsibility, in exercising her role of the regulator, to pose any question she deems necessary in order to reach a conclusion on the complaints submitted to her office.
27. The Commissioner reminds the Council that responding to her investigation questions is necessary in order for the Council to present its position clearly and that preparing responses to the Commissioner's enquiries is not an internal review for the purpose of the FOIA.
28. The Commissioner regrets that she had to warn the Council that she may be compelled to issue an information notice under section 51 of the FOIA in order to get a response from the Council.
29. The Commissioner remains hopeful that in the future, when the Council receives investigation enquiries from the Commissioner, it will respond in full and in a timely manner.

Right of appeal

30. 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@justice.gov.uk

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

31. 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.
32. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF