

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2016

Public Authority: Derby City Council
Address: The Council House
Corporation Street
Derby
DE1 2FS

Decision (including any steps ordered)

1. The complainant has requested recorded information about the sizes of enterprises and the make-up of their workforces in the area of Derby City Council and nationally.
2. The Commissioner has decided is that the Council has breached section 1 of the FOIA in respect of a list of Derby companies which it found during the course of the Commissioner's investigation.
3. In respect of all the other pieces of information which the complainant seeks, the Commissioner's has decided that the Council has complied with section 1. She has also decided that the Council has breached section 10 of the FOIA for its late compliance to the complainant's request in respect of the list of Derby companies.
4. The Commissioner does not require the Council to take any further action in this matter.

Request and response

5. On 4 December 2015, the complainant wrote to Derby City Council and requested information in the following terms:

"I am interested in obtaining information about the relative size of enterprises within your area in terms of numbers employed.

Can you please supply the following information in re-usable csv or excel format as it relates to your area. Please supply the latest data held. It

would be helpful if the age of the dataset as a whole could be indicated, if known. If this is not held by you but you know where it may be held as a collection, please advise. Please indicate if the information held elsewhere is publicly available."

Fields Requested

Name of enterprise	Address	Tel No	Contact email	Website URL
Nature of Business	Number of employees in area	Number of employees nationally	Number of Full Time Equivalents in area	Number of Full Time Equivalents Nationally

6. The Council made its response to the complainant on 5 January 2016. It issued a refusal notice citing section 21 of the FOIA and advising him that the information is accessible from other sources. Attached to the Council's response was the Council's suggestion of where the information can be obtained.
7. The complainant wrote to the Council on receipt of its response. He asked the Council to conduct an internal review on the grounds that:
 - (1) the Council did not say what information it holds, and
 - (2) the sources of information provided by the Council do not provide the requested information.
8. The complainant pointed out that ONS provides statistical data only and the data provided by Companies House does not include all the data fields requested and cannot be matched to the other source.
9. On 8 February 2016, the Council provided the complainant with the results of its internal review. The Council stated that:

"Our officers have now confirmed that under the license agreement with Bureau Van Dijk Editions Electroniques, the Council cannot (sic) neither sell nor pass on any information from the database to which it subscribes, without taking out a further license and paying a further subscription fee. At present we do not have this extra licence. Therefore the Council cannot provide the information as we do not hold it. We have already supplied links for you to get some of the information you have asked for from other publicly available sources."

Scope of the case

10. The complainant contacted the Commissioner on 24 February 2016 to complain about the way his request for information had been handled.
11. The Commissioner has investigated whether the Council holds information which falls within the terms of the complainant's request. This notice sets out her decision.

Reasons for decision

Section 1(1)

12. Section 1(1) of the FOIA states 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."

13. The Council has advised the Commissioner that previously it had incorrectly applied section 21 of the FOIA to the complainant's request and provided him with possible sources of the requested information as a means of being helpful to him. The Council has now clarified its position to; the Council does not hold the requested information.

The Council's representations

14. The Council asserts that it does not hold the information which the complainant described in his request. The Council has advised the Commissioner that it is able to access the requested information from Bureau Van Dijk Editions Electroniques ("BVD") using that company's web-based tools – Mint and Fame Data.
15. The information can be downloaded from BVD databases. These databases are proprietary and their contents are sold commercially, by way of subscription, to organisations which purchase an appropriate licence for that purpose.
16. The databases are known as a definitive source of information on companies in the UK and Ireland.

17. The Council has purchased a licence (subscription) which allows it to occasionally download data from BVD under the terms of its licence. On those occasions, data is downloaded in Excel spreadsheet format.
18. The Council uses its subscription to access BVD's databases for the Council's own purposes. These purposes include the following:
 - Understanding its business demography: Here the Council may access a variety of information which includes the names of businesses; trading address; appropriate contact details; sector details and employee numbers.
 - Financial details: including details of sales; profit and loss and turn over.
 - Provision of ownership and corporate tree information.
 - Due diligence for Derby Enterprise Growth Fund.
 - Identification of exporters.
 - News information in respect of mergers and acquisitions.
 - News information on potential inward investors.
19. Notwithstanding these purposes, the Council has assured the Commissioner that it is able to view the information online and that it does not necessarily mean that information has been downloaded.
20. The Council has provided the Commissioner with a copy of its licence agreement with BVD in order that she can examine the terms and conditions which attach to the supply of products under licence.
21. The licence sets out the following terms and conditions:
 - 2.1 "...the licensee shall not and shall procure that none of its employees or consultants or any of its Affiliates or the employees or consultants of any such Affiliates shall use or otherwise exploit the product outside the Permitted Sites unless such persons have first entered into a separate agreement with the Licensor for use of the Product outside the Permitted Sites. The Licensee shall promptly notify the Licensor of any breach of the terms of this clause 2."
 - 5.1 "The product is solely for the internal use of the Licensee at the Permitted Sites and the Licensee may not permit third parties to use the Product without the Licensor's prior written consent and the Licensee acknowledges that such consent may be conditional upon the payment of additional licence or subscription fees."

5.2 "The Product may not be supplied, sold, rented, sublicensed leased, used, downloaded, accessed, copied, disseminated, distributed, circulated, published, displayed, reproduced or otherwise exploited whether for profit or otherwise except as set out in this agreement."

The Commissioner's considerations

22. In the first instance, the obligation of a public authority under section 1 of the FIOA is to state whether or not it holds the information which has been requested: In the second instance, the public authority is obliged to disclose that information unless it is subject to one or more of the exemptions which the Act provides.
23. In this case, the information is contained in databases which are owned by BVD. Access to the databases is provided only when an individual or organisation enters into a contract with BVD for that purpose.
24. Where information has been identified, selected and downloaded from the databases onto the subscriber's own computer system or printed directly from a computer screen, the information is held by the subscriber for the purpose of section 1 of the FOIA.
25. This clearly does not mean that the Council holds the contents of BVD's databases. The terms of the contract between the Council and BVD makes clear where ownership of the information lies and it sets out how the subscriber may or may not use that information.
26. There is a clear parallel between this case and one which the Information Tribunal considered in August 2006; *Glen Marlow v The Information Commissioner*, EA/2005/0031.
27. In that case, the Tribunal had no difficulty in determining that information held on a third party's database, where it is capable of being accessed by a public authority under a particular set of subscriber rights, should not be characterised as having been "held" by the public authority.
28. In view of the Tribunal's decision, the Commissioner must find that the requested information is not held by the Council unless it has been downloaded and is held by the Council for its own purposes, at the time the complainant submitted his information request.
29. During the course of the Commissioner's investigation, the Council carried out a search for information which would fall within the scope to the complainant's request and which was held at the time of his request.

30. The Council's searches revealed that one of its departments had downloaded a list of Derby companies from BVD's databases in December 2013.
31. Having discovered this information the Council decided that it should be disclosed to the complainant without the need to consider whether that information is subject to any exemption provided by the Act.

The Commissioner's decision

32. Whilst it is possible for the Council to access the requested information from BVD's website, the Commissioner is in no doubt that the Council is not obliged to do this in order to satisfy the complainant's request.
33. The information contained in BVD's databases cannot, in any sense, be said to be held by the Council, unless it has already downloaded information for its own purposes.
34. In view of the Council's late discovery of information relevant to the complainant's request – the list of Derby companies and the Council's action of providing that information to the complainant, the Commissioner has decided that the Council has breached section 1 of the FOIA. She is obliged to make clear that this breach is solely in respect of the list of companies.
35. The Commissioner has also decided that the Council has breached section 10 of the FOIA as a consequence of its compliance with the complainant's request after the twenty day compliance period had expired.

Right of appeal

36. 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

37. 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.
38. 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
Group Manager
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Water Lane
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