

30 January 2024

## **IC-282563-L5B8**

### **Request**

You asked us:

*"I am asking for disclosure of all information held by ICO on which basis ICO has concluded that " As far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA and a data controller for the purposes of data protection legislation." I am asking for disclosure of all information held at ICO relating to ICO's authority for assessing or make finding of which entities are or are not a public authority, or who qualifies as a data controller. A list of legal duties and responsibilities on part of ICO for purposes of assessment and determination of status of any entity whose legal capacity or status as a public authority is materially affected by legal measures, such as in BCC case. Absent any affirmative resolution procedure in place reinstating BCC's former status, what authorities ICO relies on to identify which entities constitute a " public authority" in real time . which part of ICO is responsible for monitoring and adapting ICO terms of operation with developments in law. Which part of ICO is responsible for overseeing , safeguarding and securing effective enforceability of ICO decisions. What disinformation ICO has to show for mitigating legal liability arising from any ICO's decision which proves not enforceable for lack of preparatory work to alien ICO services with the state of the law as it is in real time( i.e. if ICO issue a fine or court issues a compensation or cost order on DPA or FOI matters following an ICO decision concerning BCC post 5.9.23, what disregarded information are to be noted by ICO in justification)."*

We received your request on 16 January.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

I am refusing the Freedom of Information request you have made because it is vexatious, as per Section 14 (1) of the FOIA.

Section 14 (1) FOIA states that:

*'14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.'*

The ICO's guidance explains that when deciding on whether or not a request is vexatious, the key question to be asked is, *'...whether the request is likely to cause a **disproportionate** or **unjustified** level of disruption, irritation or distress'*.

Our guidance states that when assessing whether a request is vexatious, the Act permits a public authority to take into account the context and history of a request, including the identity of the requester and our previous contact with them.

We received this request from you after we responded to a previous request which we received from you on 8 January in which you asked the following questions:

*"As such I appreciate if you may transfer this query to ICO disclosure team colleagues whom may be able to clarify following points on behalf of the Information Commissioner pursuant to provisions of FOIA 2000 , by releasing information on*

*1- whether ICO has considered the question of legal capacity of BCC for purposes of standing as a public authority for related statutory purposes.*

*2- ICO understanding of the constitutional position of BCC for purposes of regulating rules governing powers of acquisition and processing of personal data.*

*3- Any ICO assessment on the capabilities, capacities and status or authority of BCC corporation after government intervention*

*4- if so within the remit of ICO and related statutory purposes what Information Commission considers the position is in terms of legality of the BCC any longer standing for functions of a public authority for ICO related jurisdiction, such as legal status of data controller and other safeguarding measures , or like issues affected following BCC having lost its legal persona.*

*5- Any ICO risk assessment on risk posed to data processing run at BCC or data otherwise at risk of compromise upon the Commissioners intervention."*

We responded under the reference IC-279881-D2B5 on 15 January, advising that we held no information within the scope of the request, and that as far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA and a data controller for the purposes of data protection legislation.

We then received this further request from you, which appears to be aimed more at arguing with our position regarding Birmingham City Council than any genuine attempt to obtain information.

We have made it clear that we have not carried out any evaluation of Birmingham City Council's status under FOI and data protection legislation, because there is no credible question over this, and therefore we clearly do not hold the information that you have asked for.

You appear to have become fixated on this point, which is based on a misunderstanding of the relevant legal frameworks and the ICO's role, and we do not consider it an appropriate use of the ICO's resources to continue to debate this with you, nor is it within the spirit of the FOIA.

As such, we should inform you that as we are relying on section 14 (1) in response to this request and we will not, in reliance on section 17 (6), provide any further acknowledgements or refusal notices in response to any similarly themed requests in the future.

### **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint](#) through our website.

## Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
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