

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 January 2015

**Public Authority:** Buckinghamshire County Council

**Address:** County Hall  
Walton Street  
Aylesbury  
Buckinghamshire  
HP20 1UA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding the 2014 11+ transfer test results. The Commissioner's decision is that the requested information is not held by Buckinghamshire County Council under section 1(1)(a) of the FOIA as under section 3(2)(a) the information is only held on behalf of another person. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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2. On 15 February 2014, the complainant wrote to Buckinghamshire County Council ('the council') and requested information in the following terms:

"In respect of the 2014 11+ transfer test results, please could you send me your records on:

- all 2014 results (nos who sat the tests and passed broken down by school type) including the outcomes of appeals

- the breakdown of 'out of county' between private schools and state schools

I appreciate that there will still be changes in the figures over the coming months and am happy to receive the data that you have at this stage.”

3. The council responded on 10 March 2014 and said that it does not hold the information for the purposes of the FOIA.
4. The complainant first expressed dissatisfaction with this response on 11 March 2014. Following several emails between the complainant and the council, and the intervention of the Information Commissioner, the council provided an internal review response on 4 July 2014. It maintained its original position that the requested information is not held by the council for the purposes of the FOIA

### **Scope of the case**

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5. The complainant initially contacted the Commissioner on 8 May 2014 to complain about the way her request for information had been handled. She wrote to the Commissioner again on 8 July 2014 once an internal review had been carried out.
  6. The Commissioner has dealt with a complaint about a request for the same information made to The Buckinghamshire Grammar Schools ('TBGS'). During the course of that investigation (case reference number FS50541014), TBGS released an anonymised version of the full dataset requested.
  7. During the course of this investigation, the Commissioner suggested to the complainant that this complaint could be resolved on the basis that the requested information had now been provided, albeit by TBGS. The complainant did not wish to withdraw this complaint as she wants a decision to be made as to whether the council holds the information for the purposes of the FOIA because of its wider relevance.
  8. Therefore, the Commissioner has considered whether any of the information within the scope of the request is held by the council as a public authority for the purposes of the FOIA.
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## Reasons for decision

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### Section 1(1) and 3(2)

9. Section 1(1) of the Act 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."

10. Section 3(2) states that –

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

11. The Commissioner's guidance, 'Information held by a public authority for the purposes of the Freedom of Information Act'<sup>1</sup>, states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.

12. In correspondence to the Commissioner, the complainant has asserted that the information is held by the council for the following reasons:

"- School admissions and school places are a significant area of responsibility for BCC - as evidenced by its prominence on their Home Page. In terms of the relevance of the specific data that I have requested, if more children from out of county attend Bucks secondary schools the consequential squeeze on school places is an issue that BCC must address. BCC will therefore have an active interest in data that monitors the numbers of applicants for Bucks school places

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[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

coming from out of county. As an example of BCC's various responsibilities in respect of admissions, they must submit data relating to school admissions and school places annually to the Secretary of State, as set out in The Information as to Provision of Education (England) (Amendment) (No.2) Regulations 2013.

- BCC took an active interest in the development of the new 11+ test and even undertook their own due diligence report on the test developer. Elected members have repeatedly made clear their interest in the results of the new test in terms of their wider responsibilities relating to fair access and protecting the interests of all children. A key question here is whether BCC officers have or plan to brief BCC elected members (such as those on the Education, Skills and Children's Service Select Committee) on the data that I am requesting, to help them deliver their responsibilities.

- The Strategic Plan 2013-17 of BCC's Cabinet Member for Education and Skills includes the following risk control measures:

'Liaise closely with grammar schools on the trail of the 11+, ensuring that BCC priorities are reflected within the trial'

'Commission a longitudinal study, commencing from 2014 admission, evaluating any changing impact of the new test'

Both of these actions would need to make use of the data that I am requesting."

13. The complainant also believes that the requested information is held by the council for the following reasons:

- The council discussed the requested data at a full meeting on 18 September 2014 and the Cabinet Member for Education had to respond to questions on it.
- The council's Education Select Committee will be examining the data.
- The council has published a range of data on its website<sup>2</sup> which she believes includes the data she has requested<sup>3</sup>.

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<sup>2</sup> <http://www.bucksccl.gov.uk/education/schools/admissions-and-moving-school/policy-hub/>

- The council responded to a previous information request for the same data from a different requestor.
14. The Commissioner asked the council to provide a detailed explanation as to on what basis it has concluded that, although it physically holds the information of the nature requested, it does not hold this information for the purposes of the FOIA, bearing in mind the complainant's reasons why she believes the information is held for the purposes of the FOIA. He also asked the council questions relating to the support provided to TBGS, access to and ownership of the requested information, how enquiries about the information are dealt with, and whether costs arising from holding the information are included in the council's budget.
  15. The council explained that since 2012, it is no longer the admission authority for any of the grammar schools. It said that historically it would have held such information but responsibility for the testing and selection process has reverted to the grammar schools. It explained that, for efficiency, the council has been contracted by TBGS to undertake administration of the testing/selection review process but the information is held wholly on behalf of TBGS in order to perform its contractual obligations. It said that the contract provides that the schools are the relevant public authority for information disclosure requirements and that TBGS could choose a private company to administer the testing/selection process in which case the council would not have possession of the requested information or indeed need it for its own purposes.
  16. The council said that it does hold information, for its own purposes, relating to school allocations (which it needs for its statutory roles such as ensuring fair access to education and school transport) but explained that the 'allocation data' is different to the 'test data' which is impractical for admissions use. As an example of how the information requested (i.e. 'test data') is different to that which it does hold (i.e. 'allocations data') it said that the 'test data' includes children who have been 'selected' under the test but who will not be admitted to a Buckinghamshire grammar school. It also said that as the data requested is in advance of allocations, because the request predated national allocations day, and is specific to the test ("In respect of 2014 11+ transfer **test** results..." (Commissioner's highlighting)), it can only be responded to by reference to TBGS. It said that it is of course open

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<sup>3</sup> [www.buckscc.gov.uk/media/2651991/2014-Grammar-School-Allocations-by-Location.pdf](http://www.buckscc.gov.uk/media/2651991/2014-Grammar-School-Allocations-by-Location.pdf)

to the complainant to submit requests about the council's allocation work, and informed the Commissioner that the complainant has done so in the past, but any response the council would provide would not include 11+ test data fields.

17. The council confirmed that it provides clerical and administrative support to TBGS as a contractor under contract but it does not itself decide what information is created, retained, altered or deleted. It said that TBGS controls access to the information and that it has no control over the test and is not the decision making body as TBGS has responsibility for decisions relating to the test. It said that any enquiries about the information are generally pointed to TBGS. The council clarified that costs arising from holding the information are not included in the council's overall budget but are part of the consideration under the contract which would be recorded as income.
18. In addition, the council explained that it does not receive any funding in relation to the grammar schools' admissions policies (which utilise the 11+ test) directly from the public purse. This funding attaches directly to the schools. It quoted from a blog post by one of the Commissioner's staff<sup>4</sup>;

"At the ICO, we've often talked about the importance of transparency following the public pound"

and said that this is key to the whole matter. It said that the relevant 'public pound' in this case, as a matter of Governmental policy, was taken from the council and directed to each grammar school individually and therefore the responsibility for responding to information requests must follow.

19. In relation to the complainant's assertion that the council must hold the requested data due to its responsibilities in respect of admissions, the council said that it has access to sufficient information, which it holds, to carry out its statutory duties. It said that it does not deny its responsibilities in terms of allocating places and, indeed, have provided the complainant with information sets in this regard. In relation to it having an active interest in data that monitors the numbers of applicants for Buckinghamshire school places coming from out of county, the council said that its primary interest is in allocations data rather than test data.

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<sup>4</sup> <http://iconewsblog.wordpress.com/2014/03/05/ensuring-transparency-isnt-the-cost-of-outsourcing-05032014/>

20. In response to the assertion that the council took an active interest in the development of the new 11+ test and undertook its own due diligence report on the test developer, the council said that the grammar schools are responsible for determining their own admissions policies and arrangements including the choice of test and test provider and they have put in place a contract with the council to undertake the general administration of the test process on their behalf and, separately, a contract with a test provider. It explained that the due diligence exercise referred to took place in 2012 and pre-dates the current contract that the council operates under, therefore, it is not relevant to a request from 2014, where the question is what does the council 'hold' at the time of the request, not what did it hold in 2012.
21. In relation to Elected Members having an interest in the results of the test and whether council officers have or plan to brief Elected Members, the council said that Elected Members have every right to be interested in the new test but it does not follow that the council holds the information. It said that it is not aware that the information has ever been presented to Elected Members in the format requested by the complainant and that similar information could not be made available to Elected Members, even though some had requested it, without the permission of TBGS.
23. In relation to the risk control measures in The Strategic Plan 2013-17, the council said that it does hold information that allows it to perform these activities and emphasised that the specific 11+ test data requested is of limited value and, in any event, is not the council's data to use.
24. The council's response to the complainant stating that it discussed the requested data at a full meeting on 18 September 2014 and the Cabinet Member for Education had to respond to questions on it is that, having viewed the 'webcast', it would appear that the complainant circulated her own report to all Members and this, along with a Guardian article, was the basis of a number of questions rather than a pre-determined discussion. It said that if a Member should ask a question (based on public information) of the Cabinet Member for Education and Skills you would expect the Cabinet Member to respond, and that does not equate to the council 'holding' the information requested.
25. In response to the complainant suggesting that the council hold the information because it's Education Select Committee will be examining the data, the council said that the information in question will not equate directly to that requested by the complainant. It will be a different information set and will be presented by the grammar schools, not council officers, which it believes supports its position that it is the grammar schools that hold this information only.

26. The complainant also believes that because the council has published a range of data on its website, which she believes includes the data she has requested, that this implies that the council has a responsibility to publish it and therefore it must be held for the council's own purposes. The Commissioner notes that the data the complainant specifically refers to<sup>5</sup> is 'allocation' data rather than 'test' data and that in any case, it does not necessarily follow that publication of data amounts to holding such data for the purpose of the FOIA. It is not a determining factor as to whether information is held.
27. Finally, the complainant has argued that because the council collated the requested information in December 2013 for its own purposes of responding to a separate information request, it therefore holds the information. The council explained that this refers to a query submitted by another requester who has submitted a large number of requests/questions to a number of officers and has had a consistent response (that 11+ test data is not held by the council) from the FOI Officer and the Admissions Manager but on one occasion one of the Admissions Managers staff, in a misguided attempt to be helpful (and not appreciating the mistake), provided 11+ test data to that requester. It was not through the council's FOIA processes and was a mistake.
28. The Commissioner has taken all of the above into account in making a decision in this case. He acknowledges that the council does have responsibilities in relation to school admissions but accepts that it uses separate datasets, i.e. 'allocations' data as opposed to 'test' data, in order to fulfil those duties. He notes that the council, under contract with TBGS, performs administrative functions in relation to the test data but considers that this is for the sole purpose of delivering its contractual obligations. He notes that ownership and control of the requested information lies with TBGS, enquiries relating to the information are referred to TBGS, and all costs are covered separately from the council's budget. In addition, the council has provided adequate explanations for why it does not hold the requested information for the purpose of the FOIA in response to each of the arguments submitted by the complainant. The Commissioner concludes that the information is not held under section 1(1)(a) of the FOIA as under section 3(2)(a) the information is only held on behalf of another person, that being TBGS.

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<sup>5</sup> [www.buckscc.gov.uk/media/2651991/2014-Grammar-School-Allocations-by-Location.pdf](http://www.buckscc.gov.uk/media/2651991/2014-Grammar-School-Allocations-by-Location.pdf)



## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**