

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

### **Decision notice**

**Date:** 14 December 2016

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

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

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1. The complainant has requested information from Birmingham City Council (the council) regarding telephone calls placed by a housing officer to Solihull Mental Health NHS Foundation Trust (the trust). The council's position is that it does not hold the information requested.
2. The Commissioner's decision is that the council was correct when it said that the requested information was not held. Therefore the Commissioner does not require the council to take any steps.

#### **Request and response**

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3. On 19 May 2016 the complainant made the following request for information under the FOIA:

*"[1] The time and date [named] Housing Officer, based at College Road Housing Office with Birmingham City Council contacted the Birmingham and Solihull Mental Health Trust during 2015 to extract personnel [sic] information about me in breach of the data protection act, as [named*

*housing officer] claims in his "failed" witness statement to the Court dated 16/10/15.*

*[2] Also please provide the telephone number that [named housing officer]*

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*Phoned from*

*Phoned to at the trust*

*All of this information is obtainable from the Birmingham City Council telephone call record*

*[3] Any other calls that [named housing officer] made to the Birmingham and Solihull Mental Health Trust during 2015 including times and dates and call number from and to."*

4. The council responded on 2 June 2016 and advised that none of the requested information was held. It referred the complainant to letters sent to him on 22 April 2016 and 13 May 2016 from the Place Manager and the Acting Senior Service Manager.
5. The complainant requested an internal review on 10 June 2016. The council responded on 27 June 2016, maintaining the position that the requested information is not held.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 19 June 2016 to complain about the way his request for information had been handled. The investigation focussed on the council's position that the requested information is not held.
7. The complainant then requested a formal decision notice to record the outcome of the Commissioner's investigation.

### **Reasons for decision**

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8. 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 information within the scope of the request, and if so, to have that information communicated to him.
  9. 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, applies the civil standard of the balance of probabilities.
  10. The Commissioner considers that it is useful to set out that the call referred to in questions 1 and 2 is a call that was made by the named housing officer to the trust in which information was sought about the complainant in relation to a court case. This call was referred to by the named housing officer in his witness statement to the court. The complainant complained to the council about this matter in April 2016 and received the outcome of this stage 2 complaint on 21 April 2016. The council explained that the named housing officer has no notes regarding the call, and he does not recall to whom he spoke, or when. The council also acknowledged the fact that it is not accepted practice for a note or record of the call not to have been made. The council also advised that the trust have admitted and apologised for a data breach in relation to this incident, and accept what the named officer said in his witness statement regarding the call.

### **The council's position**

11. The council has confirmed that its final position is that it does not hold the information requested relating to named housing officer's call to the trust. This relates to parts 1 and 2 of the request.
12. It has explained to the Commissioner that whilst there is no specific policy covering the way in which housing officers should record telephone calls, it is accepted practice to make an electronic record of any relevant information following a telephone call. The council has stated that it does not hold any record of the telephone call in question and as mentioned in the letter of 21

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April 2016, it advised that the fact that no note was made is not accepted practice. The council explained that as part of the outcome of his complaint it informed the complainant that all relevant staff members have since been given clear instructions regarding the need to electronically record salient information from telephone calls.

13. With regard to accessing the dates, times and number called, the council has stated that it is possible to obtain records of calls made on the council's land line telephones. However, in this case, it would not be possible to find details of the specific call in question. This is because the named housing officer contacts the trust in the normal course of his work, and as there are no records of the call in question, the council is unable to attribute a single call record to the incident to which the request relates. In addition to this, the council also explained that named housing officer has access to other telephones both inside and outside of the College Road office. Therefore, due to the fact that there are no records of the call, and named housing officer cannot recall when or from which telephone it was made, there is no way of identifying the correct call. The council's position therefore is that it does not hold any information in respect of the time and date of the call made by the named council officer or number called at the trust.
14. Turning to part 3 of the request, which was for the times, dates and numbers of any other calls made by named housing officer to the trust in 2015, the council has explained that whilst it is able to access the numbers called from the land line telephone on the desk used by named housing officer, there is no way of determining which of these calls were made by named housing officer. This is because the council uses a "hot desk" system which means that council officers do not have a fixed desk of their own, rather they may use any desk which is free when they need it. The council advised that in a department such as Housing, many officers work off site for a portion of their time. In named housing officer's case, the council has explained that he also works from a police station in relation to his Antisocial Behaviour Team work. As such, he, like other team members, is not fixed to a specific desk at the council.
15. The land line telephones at the council do record the time, duration and number of phone calls made. However, they do not record the individual who made the call. As the land line phone most often used by named

housing officer is also used by a number of other officers, there is no way of selecting only the calls made by named housing officer. As such, the council's position is that it does not hold the information in respect of the times, dates and numbers of any other calls made by named housing officer to the trust in 2015.

### **The Commissioner's position**

16. In this case, from the information available, it appears that there is no way for the council to determine which calls were made specifically by the named housing officer to the trust. This applies both to the specific call the complainant is seeking relating to him, and also the general calls made by named housing officer to the trust in 2015.
17. This is because there are a number of telephones from which calls to the trust may have been made, and as has been established in the council's internal complaint procedure, there are no records of when the specific call relating to the complainant was made, so there is no way of identifying the call that was made about the complainant. This also means that there is no way of knowing which calls from the various telephones which may be used by named housing officer were calls made by him to the trust. The flexible working arrangements whereby council housing officers can work from various "hot desks" within the council offices, as well as offices at other sites such as at a police station means that the council is unable to determine which calls have been made by named housing officer.

### **Conclusion**

18. The Commissioner's decision is that on the balance of probabilities, the council does not hold the information requested. Therefore, it is her view that the council was correct when it responded to the request stating that the information was not held.

## Right of Appeal

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19. 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 123 4504

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)

20. 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.
21. 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**