

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2018

Public Authority: Barnsley Metropolitan Borough Council

Address: West Gate Plaza
1 West Street
Barnsley
S70 2DR

Decision (including any steps ordered)

1. The complainant has requested information with regards to a decision to close a resource centre that provides a day service to people with a learning disability. The council provided some information, however, the complainant considered that more would be held. Some further information was later provided during the Commissioner's investigation.
2. The Commissioner's decision is that the council has now provided all the information it holds falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 3 January 2018 the complainant requested the following information from the council:

"Request for Freedom of Information. Barnsley Council meetings also meetings with SWYFT regarding closure of Keresforth resource centre, Keresforth Close, Barnsley. Minutes of any meetings regarding the closure of Keresforth, papers and any correspondence pertaining to the closure of Keresforth."

5. The council responded on the 25 January 2018. It advised that meetings with SWYFT (South West Yorkshire Foundation Trust) are more concerned with operational matters and cover a wide range of property issues and as such are not minuted.

6. The council further explained that it is working towards the closure of the Keresforth site resulting from the SWYFT Asset Strategy and its service review.
7. The council suggested that the complainant contact SWYFT directly to request a copy of their Asset Strategy. The council did provide slides form a presentation given to families in 2016 called 'Day Opportunities Review'.
8. In a related exchange, following a telephone conversation that the complainant had with the council on 30 January 2018, the council wrote to the complainant on the 6 February 2018 responding to two questions she asked on the phone call. The two questions were recorded as:
 1. *"Where is the report for the meeting held at Keresforth on 20 September 2016*
 2. *What other meetings were held?"*
9. The council's response to these two questions stated that the meetings with families, carers and people who use the service, which took place during 2016, across all the Day Opportunities centres were part of an operational review of the service. They were an opportunity to engage and discuss the existing service and consider ideas for the future.
10. The council confirmed that no formal report was produced and these sessions were not minuted. It explained that the slides provided were used at each day centre and the notes were collated form all the discussions.
11. The council concluded by saying that following an internal restructure, once it became clear to the service that Keresforth building would close, letters were sent to each family and reviews of each person's individual needs were arranged.
12. The council received the complainant's request for an internal review of the response to the request made on 3 January on 12 February 2018.
13. After having not received a review, the complainant then contacted the Commissioner on 15 March 2018, resulting in the Commissioner approaching the council; asking it to conduct an internal review.
14. The council responded to the Commissioner on this stating that it posted its internal review to the complainant on the 13 March 2018 and that the complainant also came to its offices to collect the internal review response on the 14 March 2018.

15. In the internal review it was acknowledged that the complainant had been provided, on the 13 February 2018, with a copy of a letter sent to the Chief Executive - Diana Terris, from Robert Webster (SWYFT) on 20 December 2017, regarding the closure of the Keresforth Centre, following an FOI request she had submitted to SWYFT. The council therefore determined as the complainant has already been supplied with a copy of this letter, it does not need to be provided by the Council.
16. The council concluded that it holds no further information reiterating that there were no minutes of reports produced at the meetings and the slides provided were the only records retained from the meetings.

Scope of the case

17. The complainant contacted the Commissioner further to complain that the information she had been provided by SWYFT (as mentioned in the internal review) should have also been provided to her by the council.
18. The complainant has also stated to the Commissioner that her request is not just for the meeting on the 20 September 2016 (which was for the parents and carers etc), it is the information created during and following any meetings that the council has had to discuss and decide the future of Keresforth Specialist Resource Centre.
19. During the Commissioner's investigations, the council determined it should have provided the complainant, in its initial response, with the information that SWYFT had provided her. It then provided the complainant with this information on 14 November 2018.
20. The Commissioner considers that the scope of the case is to determine whether the council holds any further information falling within the scope of the request.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

21. 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.
22. 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

on a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request.

23. In this case, the complainant advised the Commissioner that her request is not just for the meeting on the 20 September 2016 (which was for the parents and carers etc), but also for information created during and following any meeting that the council has had to discuss and decide the future of Keresforth Specialist Resource Centre.
24. The council has responded to the Commissioner's enquiries, stating that the centre is not actually owned by the council and it was not the council's decision to close it and had no involvement in its closure decision. Had it owned the centre, then the council considers it would be reasonable to expect the decisions to be recorded by the council.
25. The council has expanded further on this advising the Commissioner that prior to SWYFT, the council had a partnership with the local health care provider at the time with regards to the service operating on the Keresforth site.
26. Under that partnership, the council states that it acted as the lead provider for people with a learning disability, but these arrangements no longer exist. However, the day service that met health and social care needs continued to be managed by the council within what became the SWYFT owned premises at Keresforth. The council managed the day service, effectively becoming a 'tenant' of the site.
27. As a 'tenant' of the site and a provider of a day service for people with a learning disability, the council's service managers wanted to ensure that timely plans could be in place for the continuity of their care and any safe transition to other services to meet the needs of those affected.
28. The council has told the Commissioner that the meetings held between itself and SWYFT mostly concerned operational matters and discussions centred on a wide range of property related issues. However, the service who were involved with those meetings have confirmed that no minutes were taken for those meetings.
29. The council has advised that no searches were carried out for meetings with SWYFT as it was confirmed by its Corporate Asset Manager that no records existed to search and that the decisions over the future of the site were included in SWYFT's 'Trust Energy Estate Strategy 2012-2022' which was approved by SWYFT's Trust Board.
30. The council did carry out a search on its website for 'Keresforth' but no minutes of council committees (Cabinet, Full Council etc) were discovered. This search was performed because there are requirements

to minute formal council meetings. In the absence of any minutes it was deduced that no meetings of this type had occurred.

31. The officers within the council that were contacted in order to establish whether any further information was held by it, were its Service Director of Customer Services, Head of Service Community Enablement and Community Enablement, and its Corporate Asset Manager.
32. The council has explained to the Commissioner that these three officers would be most likely to hold information relevant to the request.
33. The council has also told the Commissioner that if any further information were held, then it would be held electronically and anything recorded manually would be converted to an electronic version.
34. The council has confirmed to the Commissioner that no information has been deleted or destroyed.
35. With regards to whether there are any statutory requirements for the council to record information relevant to the request, it has advised the Commissioner that The Local Government Act 1972 sets out the main requirements for recording and minuting of meetings. The council points out though, that these requirements only relate to formal meetings/decisions (Full Council, Cabinet, Regulatory Boards etc), so there will be many more meetings where formal decisions are made but not under the terms of the Local Government Act 1972, and therefore there is no requirement to record discussions or minutes. It is into this category that the information requested by the complainant falls.
36. On review of the above, the council has provided the Commissioner with plausible reasons as to why it does not hold any further information falling within the scope of the request. The fact that it does not own the site and it was not its decision to close it, also in addition to which, the council states that it is not required to record minutes to meetings that fall outside of 'formal' meetings and decisions. The Commissioner is also satisfied that the council has contacted the most relevant officers in order to determine whether the information is held.
37. The Commissioner understands why the complainant would take the view that more information should be held, as the council provided the day service for people with a learning disability at the centre and therefore would have had contact with SWYFT. However, the amount of information recorded appears to be less than what might be expected by the complainant. In the Commissioner's experience, the expectation of what may or should be held can be significantly different to what is or is required to be held, as appears to be the case in this request.

38. On consideration of the above, the Commissioner is satisfied that the council holds no further information falling within the scope of the request.

Right of appeal

39. 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

40. 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.
41. 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