

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2023

Public Authority: Sheffield City Council

Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested specific business cases for ten approved projects in Stocksbridge. Sheffield City Council (the 'Council') disclosed the requested information with some redactions under section 40(2) of FOIA for personal information. The complainant did not raise any concerns about the disclosed material, but argued that further information was held, specifically in relation to two projects (namely "The Cycling and Walking Trails" and the "Improved Accessibility and Wayfinding" projects).
2. The Commissioner's decision is that, on the balance of probabilities, no further information is held by the Council.
3. No steps are required as a result of this notice.

Background

4. The Council has explained that the Towns Fund (see request below) is a central government initiative as part of the levelling up programme.¹ Stocksbridge, in Sheffield, is one of 100 towns which have been selected

¹Towns Fund - GOV.UK (www.gov.uk)

to bid for a share of the £3.6bn funding which is available and develop proposals for a Towns Deal.²

Request and response

5. On 16 December 2022, the complainant wrote to the Council and requested information in the following terms:

“An item on the Welcome to Stocksbridge website dated 23 August 2022 says that ‘Major plans to regenerate and invest in Stocksbridge took a step closer this week as the business cases for the £4.1 million Town Deal projects were submitted to the Government. The Stocksbridge Towns Fund Board gave final approval to the ten projects when they met in July. The detailed documents outlining the strategic and economic cases for the investment have now been delivered to the Department for Levelling Up, Housing and Communities [‘DLUHC’].’ More recently at Strategy and Resources Committee on December 5th it was reported that these Business Cases had been approved by DLUHC. Can these business cases therefore be made available?”

6. The Council acknowledged receipt of the request on 9 December 2022. On 17 January 2023, the Council notified the complainant that it was extending the time period by an additional 20 days in accordance with FOIA to consider the public interest test.
7. The Council provided its substantive response, late, on 5 April 2023. It provided ten summary business case documents with some information redacted under section 40(2) – personal information.
8. On 17 April 2023, the complainant submitted the following request for an internal review:

“At the Strategy and Resources Committee on December 5th it was reported that these Business Cases had been approved by DLUHC. Specifically, I want to receive the full set of documents submitted for approval and signed off by DLUHC including the SCC [Sheffield City Council] Outline Business Case referred to in the Annex C.

My specific interest is for two projects: The Cycling and Walking Trails and the Improved Accessibility and Wayfinding projects. I am happy just to receive these documents but would point out

² Welcome to Stocksbridge - Home of the Stocksbridge Towns Fund Bid

that ALL business cases should have been made available under the terms and conditions of the Stocksbridge Towns Fund Board governance.

Therefore I do not accept that you have supplied the full information requested and that this correspondence will be added to my Ombudsman Complaint. I am unhappy with your response and ask that you either supply the information requested by return or I will request an internal review."

9. The Council acknowledged receipt of the internal review request on 21 April 2023 but failed to provide any outcome.

Scope of the case

10. The complainant contacted the Commissioner on 23 June 2023 to complain about the way her request for information had been handled, specifically that the internal review outcome remained outstanding.
11. In view of the delay, the Commissioner exercised his discretion and accepted the complaint without the internal review having been completed.
12. On 27 June 2023, the Commissioner wrote to the Council reiterating the complainant's concerns raised in her internal review request.
13. In 11 July 2023, the Council wrote to the complainant (copied to the Commissioner) stating that no further information was held. It explained that:

'Due to these project values being under a value threshold set by DLUHC, the "full 5 Cases" Business Cases were not required. The Business Case "summary document" provided for all the projects previously were the documents that were approved by DLUHC that the Strategy and Resources Policy Committee refers too [sic]. These are the Business Cases that were deemed acceptable by DLUHC to secure the programme's funding. And no SCC Outline Business Cases were either completed / approved for the projects in question as they are under development. The response previously provided to you on 5 April 2023 contains all the Summary Documents, which represent summaries of the "5 Cases" HM Treasure Business Cases (they are a summary of) and were the documents that were approved by DLUHC.'

14. On 24 July 2023, the complainant advised the Commissioner that she remained dissatisfied with the Council's response. Her grounds of complaint included the following:

"SCC took a further 13 weeks to respond, ignoring followup emails, now they respond with a totally different explanation that the '*full 5 cases Business Cases were not required.*' Not what was reflected in the statements nor the minutes of SRP [Strategy and Resources Policy] meeting on 05.12.22.

I find it hard to believe that a bid for £2.75 million pounds, plus others for a further over £20m warranted such little detail and scrutiny, but that if true would seriously call into question the role of the Board and Council officers advising them."

15. On 7 August 2023, the complainant made further submissions in support of her view that further information must be held by the Council, as follows:

'Further to my outstanding complaint with regards to access to specific Business cases and the response from SCC to say they do not exist; I would like to draw to your attention to the Stocksbridge Town Deal Board ['STDB'] web site and the following excerpt from the website³.

"A plan was assessed and approved to go through to the next stage. The Board then developed the agreed projects and business cases in detail, which the government is assessing before releasing funding for implementation".

Also, I attach the STDB minutes from 2022 which on Page 11 explicitly refer to these documents.

This, in addition to the sources previously referred to in my original request, it is not clear how these business cases do not exist. The minutes of further STFB meeting held in 2023 also refer to the projects being 'over budget'. How can they be over budget or indeed can the participants know that [sic] are over budget if the business cases and costings do not exist.'

16. As the complainant has not raised any concerns about the disclosed partially redacted information, the Commissioner has not considered the application of section 40 any further.
17. The Commissioner relayed the complainant's arguments set out above to the Council and has investigated whether, on the balance of

³ <https://www.sheffield.gov.uk/your-city-council/stocksbridge-town-deal-board>

probabilities, the Council holds any further information in scope of the request.

18. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA.
19. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 1 – general right of access

20. Section 1(1) of 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.”

21. The Commissioner is mindful that when he receives a complaint alleging that a public authority has stated incorrectly that it does not hold any further requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether more information is held.
22. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether any further information is held and any other reasons offered by the public authority to explain why no further information is held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether any further information is held; he is only required to make a judgement on whether further information is held on the civil standard of proof of the balance of probabilities.

23. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any further recorded information within the scope of the request. Accordingly, he asked the Council to explain what enquiries it had made in order to reach the view that it did not hold any further information.
24. The Council referred the Commissioner to the following online bid guidance.⁴ It highlighted that at (2.3), Towns bids were expected to develop full business cases for each project in line with the Treasury's Green Book. However, central government stipulated that the Council did not have to produce business cases for projects with values under £25 million.
25. The Council also provided the Commissioner with a copy of an email from BEIS (the former Department for Business, Energy and Industrial Strategy) dated 16 June 2022. The Commissioner is not at liberty to quote directly from this email as the Council has not assessed it for public release; however it is clearly set out that DLUHC reserves the right to "call in" business cases over £25 million. It also sets out details of when a full business case is required as opposed to a summary business case.
26. The Commissioner notes that the Council has provided the complainant with an unredacted version of its email of 24 August 2022 used to submit the required summary business cases to DLUHC, together with copies of the attachments to that email.
27. The Council told the Commissioner that it has not needed to carry out any searches for any further recorded information because it was not required to make full business cases (in accordance with the BEIS email of 16 June 2022).
28. In addition, the Council said:

"[The complainant's] reference to the Town Board Minutes does not affect our response. We previously referred to our "looseness" in terminology in reference to business cases; and the subsequent reference to "over budget" does not change the facts that the only documentation we hold are those documents we provide to you [the Commissioner] today, and we previously did the applicant."

⁴ <http://townsfund.org.uk/resources-collection/dluhc-business-case-guidance>

Conclusion

29. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it must hold, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs above, the Commissioner is required to make a finding on the balance of probabilities.
30. Having considered the explanation provided by the Council, whilst taking account of the points raised by the complainant, the Commissioner is satisfied, on the civil standard of the balance of probabilities, that no further recorded information within the scope of the request is held.

Other matters

31. The Commissioner has made a record of the Council's failure to provide its substantive response to the request within 40 working days of receipt, following its extension to consider the public interest test, although no exemption was ultimately relied on which would require a public interest test. The Council said:

"We erred when we applied section 10 to carry out the public interest test for information, we thought was [sic] commercially sensitive. We thought the provisional costs if published would give potential bidders a guide 'price' for their bids, thereby lowering the potential for value for money we are required to obtain under the Local Government Act 1999. In the event, our disclosure on 5 April 2023 was of those costs and did not withhold information from [the complainant]."

32. The Commissioner has also logged the Council's late provision of its internal review result, which was only issued following his intervention.
33. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual⁵.

⁵ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.

36. 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

**Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**