

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2024

Public Authority: High Peak Borough Council
Address: Town Hall
Market Place
Buxton
Derbyshire
SK17 6RL

Decision (including any steps ordered)

1. The complainant requested information relating to a proposed Asylum Dispersal Centre in Buxton from High Peak Borough Council (the Council). The Council stated it did not hold information falling within the scope of the request.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council does not hold information falling within the scope of the request and that it has complied with its obligations under section 1(1) of FOIA.
3. However, in failing to respond to the request within 20 working days, the Commissioner has found a breach of section 10(1) of FOIA.
4. The Commissioner does not require further steps.

Request and response

5. On 7 June 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide all Officer and Member communications relating to the timing, content and means of releasing information to the public and to Members about the proposal to establish an Asylum Dispersal Centre in Buxton.”
6. The Council responded on 19 July 2023, stating that it did not hold any information falling within the scope of the request.
7. The Council responded further on 17 August 2023, treating this as its internal review, upholding its original response.

Scope of the case

8. The complainant contacted the Commissioner on 19 September 2023, to complain about the way their request for information had been handled, stating that they believed that the Council did hold information falling within the scope of the request.
9. The scope of the following analysis is to determine if, on the balance of probabilities, the Council holds information falling within the scope of the request.

Reasons for decision

Section 1(1) – general right of access to information

10. 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.”
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The position of the Council

13. The Council confirmed that, in relation to the proposed asylum dispersal centre mentioned in the request, its functions were limited only to the consideration of a planning application.
14. It explained that the Home Office have commissioned Serco to identify and procure dispersed accommodation for asylum seekers whilst their applications are considered.
15. The Council confirmed that it had, with other relevant parties such as the Police, been invited to engage with Serco in discussions about the suitability of the site, but that it was not the originator of the proposal.
16. In order to determine if the Council held communications relating to the release of information to the public about the proposed asylum centre, the Council asked its Heads of Service and Senior Leadership Team to consider the request on two occasions, once following the initial request, and again as part of the internal review.
17. The Council's opinion is that this coordinated approach, led by its senior staff on two occasions, along with the fact that it was not the council who were proposing the development of the asylum dispersal centre, is likely to have retrieved any relevant information.
18. Following these searches the Council confirmed that it did not hold any information falling within the scope of the request.

Commissioner's decision

19. It is the Commissioner's view that, on the civil standard of the balance of probabilities, the Council does not hold any information within the scope of the request.
20. This is because, the proposal for an asylum dispersal centre in Buxton did not originate with the Council, as such, there would have been no reason for it to consider when to release any information about it.
21. It is therefore unlikely that it holds any communications between officers and members relating to the timing, content and means of releasing information about the proposal to the public.

22. The Commissioner considers that the searches undertaken by the Council to locate the requested information were proportionate, reasonable and would have been likely to return any relevant information were it held.
23. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council does not hold any information falling within the scope of the request, and that it has complied with its obligations under section 1(1) of FOIA.

Procedural matters

24. Section 10(1) obliges a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
25. In this case the request was made on 7 June 2023, and the Council sent its response on 19 July 2023, outside of the 20 working days allowed.
26. As the Council failed to respond to the request within 20 working days, the Commissioner finds that it has breached section 10(1) of FOIA.

Right of appeal

27. 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

28. 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.
29. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF