

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2024

Public Authority: Bristol City Council
Address: City Hall
PO Box 3399
Bristol
BS1 9NE

Decision (including any steps ordered)

1. The complainant has requested all held information relating to board meetings for Bristol Holdings Limited during the 2019 and 2020 calendar years. Bristol City Council ("the Council") initially withheld the information under sections 43(2) (commercial interests) and 36(2)(c) (prejudice to effective conduct of public affairs). During the course of investigation, the Council informed the Commissioner that it should have refused to comply with the request under section 14(1) (vexatious requests) on the grounds of burden.
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the request under section 14(1). However, in failing to respond to the request and issue a refusal notice, within the statutory timescale, the Council breached sections 10(1) and 17(5).
3. The Commissioner does not require further steps.

Request and response

4. On 26 April 2023, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act 2000 I wish to see full copies of all minutes, agendas, action logs and briefing materials for the Bristol Holdings Limited board meetings held during 2019 and 2020.

Please also include any other materials that were handed out or received during the meetings, such as presentations, reports, etc..”

5. The Council responded on 28 June 2023. It stated that the information was withheld under section 43(2).
6. Following an internal review, the Council wrote to the complainant on 21 August 2023. It maintained the application of section 43(2) and stated that the information was also withheld under section 36(2)(c).

Scope of the case

7. The complainant contacted the Commissioner on 22 August 2023 to complain about the way their request for information had been handled, and specifically that the Council was not entitled to withhold the information under sections 43(2) and 36(2)(c).
8. During the course of investigation, the Council provided a copy of the withheld information to the Commissioner. The Commissioner noted the volume of information, being in excess of 3000 pages. The Council advised that, on review, it should have applied section 14(1) to the request at the outset, on the grounds of the grossly oppressive burden that compliance would cause, and that it now sought to apply this provision.
9. The Commissioner therefore considers that the scope of his investigation is whether the Council is entitled to apply section 14(1).

Reasons for decision

Section 14 – vexatious requests

10. Section 14(1) of FOIA provides that a public authority is not obliged to comply with a request for information if the request is vexatious.

11. The word “vexatious” is not defined in FOIA. However, as the Commissioner’s guidance on section 14(1)¹ explains, it is established that section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress¹ .
12. In the circumstances of this case the Council applied section 14(1) on the basis of the grossly oppressive burden that it considers compliance with the request would impose upon it.
13. Ordinarily, where the concern of a public authority is about the burden of a request, the relevant provision of the FOIA would be section 12(1). This section provides that a public authority is not obliged to comply with a request where the cost of doing so would exceed a limit. However, a public authority cannot claim section 12(1) for the cost and effort associated with considering exemptions or redacting exempt information.
14. A public authority may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden upon it. This can include time spent on considering exemptions and making redactions.
15. However, the Commissioner considers there to be a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
 - The requester has asked for a substantial volume of information **and**
 - The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **and**
 - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
16. In this case the request seeks all recorded information deriving, or used in, the board meetings for Bristol Holdings Limited for the 2019 and 2020 calendar years. The Commissioner has reviewed the withheld

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

information, and notes that it represents over 3000 pages of information spanning meeting agendas, minutes, and extraneous documents.

17. The Council has acknowledged to the Commissioner that it should have considered the volume of information at an early stage and refused the request under section 14(1). The Council considers that full compliance with the request would require an officer to manually review the entirety of the information – on a line-by-line basis if necessary – to determine whether exemptions should be applied. The Council has argued that, even allowing for a cursory 1-5 minutes per page, this would consume significant resources.
18. The exemptions that the Council considers most likely to apply to the information are sections 43(2) and 36(2)(c). This is because the information relates to the management and operation of Bristol Holdings Limited, which is a company solely owned by the Council, and which operates in a commercial environment. The Council considers that the information will likely contain detail that would be beneficial to competitors; this would commercially prejudice the company, and the Council as owner. The Council has also sought to withhold the same information under section 36(2)(c), on the basis that the information would prejudice the effective conduct of public affairs.
19. Having considered the nature of this information, and the Council's submissions on sections 43(2) and 36(2)(c), the Commissioner is satisfied that the Council would likely need to consider these exemptions in the event that it complied with the request.
20. The Commissioner is further satisfied that, due to the information being contained across over 3000 pages, the potentially exempt information cannot be easily isolated, and that the information would need to be manually reviewed by officers familiar with its content to consider the application of exemptions. Even allowing for one to five minutes per page for the review of 3000 pages, this would require 50-250 hours of officer time. This is far in excess of the appropriate limit of 18 hours that would apply to the Council in situations where it is relying upon section 12(1) of FOIA. The Commissioner accepts that compliance with the request would require the diversion of considerable resources, and impact upon the Council's ability to provide services. The Commissioner does not consider that this would be in the public interest.
21. Having considered the above factors, the Commissioner is satisfied that the Council is entitled to refuse the request on the basis of grossly oppressive burden.

Procedural matters

22. Under section 10(1) of FOIA a public authority is obliged to respond to a FOIA request within twenty working days. Section 17(5) of FOIA requires a public authority, relying on section 14(1), to issue a response refusing the request within twenty working days.
23. In this case the Council breached both sections 10(1) and 17(5) of FOIA in the handling of this request.

Other matters

24. The Commissioner reminds the Council of the importance of fully considering the scope of a request (or requests) before seeking to respond.
25. In the circumstances of this case the Council failed to identify the breadth and complexity of the requested information, and consequently issued a deficient response under the legislation.
26. Had the Council informed the complainant of the volume of information, and the application of section 14(1) in its original response, this may have prevented this matter being escalated, and therefore saved resources.

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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF