

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2024

Public Authority: Royal Borough of Greenwich
Address: 35 Wellington Street
Woolwich
London
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested the model of all Metrocount devices used to record traffic in September 2022. The Royal Borough of Greenwich (the Council) stated the information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held by the Council.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 30 August 2023, the complainant wrote to the Council and requested information in the following terms:

“Please advise the model of all Metrocount devices you used to record traffic across the borough in September 2022.

If different models were used, please advise the location of each model.”

5. The Council responded on 29 September 2023, stating it did not hold the information.
6. Following an internal review, the Council wrote to the complainant on 27 October 2023. It stated that it did not hold the information and upheld its original response.

Scope of the case

7. The complainant contacted the Commissioner on 27 October 2023. They stated that: “The council have paid to hire these traffic counters and should have received an invoice pertaining to them - they should know full well the type of traffic counter they have hired.”
8. The Commissioner considers that the scope of this case is to determine if, on the balance of probabilities, the Council holds any information in scope of the request.

Reasons for decision

Section 1 – information held/not held

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the Council whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. 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 Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

11. In other words, in order to determine such complaints, the Commissioner 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).
12. The Council has explained to the Commissioner that keyword searches for all records containing "Metrocount" in network files and email records were completed by officials across transport departments that procure traffic counts (and could, therefore, have commissioned Metrocount). Any records (emails, files etc) returned by these searches were manually checked for references to makes, models or other identifiers of traffic counters.
13. The Council further explained that all electronic files and emails are stored in networked files, rather than on local drives, so the search covered those networked drives. The search term used was Metrocount.
14. The complainant argued that he did not believe that the Council do not know the make and model of traffic counters it has used across a specific period.
15. They went on to say that the Council had previously advised the manufacturer of the traffic counters was Metrocount. Now it claims that it does not any hold information on the make and model of traffic counters used.
16. The Council has simply stated to the complainant that it does not hold the data. At internal review it stated it had responded to the questions asked and upheld its original decision, in line with the reasons given in response to the original request.

The Commissioner's findings

17. The Commissioner has considered the complainant's concerns, along with the Council's responses.
18. It is the Commissioner's view that although the Council has answered the request its responses were insubstantial and lacked any detailed explanation to the complainant about the searches it had carried out.
19. The Commissioner understands the complainant's concerns and frustration regarding the Council's responses for the information they have requested. However, FOIA only relates to information that is held by a public authority. There is no requirement for new information to be created to respond to a FOIA request. A public authority clearly cannot provide information that it does not hold.

20. The Commissioner is satisfied that the Council has carried out adequate searches for information that relates to the request, these included all records containing the search term "Metrocount" in network files and email records within the departments most relevant to the request, although it failed to clearly explain this in its responses.
21. The Commissioner is therefore satisfied that on the balance of probabilities, the Council does not hold any information within the scope of the request and as such, has complied with section 1 of FOIA.

Other matters

22. As noted above, when responding to a request for information, it is good practice to provide a clear explanation when that information is not held.
23. The Council failed to give any explanation to the complainant as to why it did not hold the requested information and simply gave a short one sentence answer followed by an equally short and ambiguous internal review response, fuelling the complainant's suspicion that the Council had not taken their request seriously.
24. The Commissioner recommends that the Council provides a full explanation when responding to a request for information, even if the response is that it does not hold it.

Right of appeal

25. 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

26. 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.
27. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF