

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 October 2024

Public Authority: City of Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant requested information relating to Additional Restrictions Grants. City of Bradford Metropolitan District Council (the "Council") disclosed some information and confirmed that other information was not held.
2. The Commissioner's decision is that the Council disclosed the information that it holds and complied with section 1(1) but that it failed to do this in time and breached section 10(1).
3. The Commissioner does not require further steps.

Request and response

4. On 26 February 2024, the complainant wrote to City of Bradford Metropolitan District Council (the "Council") and requested the following information:

"The Head of Economic Development stated in a stage 1 complaint regarding my allegations of mis-management of the COVID Additional Restrictions Grant....that with regard to over a third of a million pounds being given to Keighley BID that;

"Legal advice and approval from Government was sought before the arrangement was agreed".

My question is specifically was legal advice and approval sought and gained from the Government? If so please produce evidence of this Government approval."

5. The Council responded on 28 March 2024. The response did not confirm or deny whether the specific information was held but provided a narrative about its administration of the Additional Restrictions Grant programme.
6. Following an internal review the Council wrote to the complainant on 29 April 2024. This stated that, whilst the approval identified in the request was sought and obtained it was "unlikely" that there was evidence of this because of the verbal nature of interaction between the Council and the Government on this matter.

Scope of the case

7. On 9 May 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. During the Commissioner's investigation the Council issued a new response to the requester which disclosed information falling within the scope of the request. The Council also identified internal legal advice regarding the matters in the request and confirmed it was withholding this under the exemption for legal professional privilege (section 42). The Commissioner advised the Council that he considered this information did not fall within the scope of the request as it was not legal advice sought and obtained from the Government. He has, therefore, not given the withheld information further consideration.

9. In further correspondence the Council identified other information which it initially withheld under section 42 but, on the Commissioner's direction, it subsequently provided to the complainant.
10. The Commissioner has considered whether the Council has complied with the request and, specifically, whether it has disclosed all the relevant information that it holds.

Reasons for decision

Section 1 – duty to provide information held

11. Under section 1(1) of the FOIA, public authorities have a duty to confirm or deny whether requested information is held and, where it is, to provide it to a requester.
12. Under section 10(1) of the FOIA, authorities should comply with the duty under section 1(1) within 20 working days.
13. In this case the Council failed to properly confirm or deny whether information falling within the scope of the request was held and failed to provide the information to the complainant until the Commissioner's investigation was underway.
14. In relation to the scope of information held, the Council has explained that its engagement with the former Government department, the Department for Business, Energy & Industrial Strategy ("BEIS"), in relation to these matters was largely through meetings and phone calls, stating:

"Due to pace and volume of work at that time, delivering multiple programmes of Government support to assist businesses, record keeping was not perfect."
15. On the basis of the submissions the Council has provided the Commissioner is satisfied that, on the balance of probabilities, it has correctly confirmed that all recorded information falling within the scope of the request has been disclosed to the complainant. Whilst the Commissioner accepts, therefore, that the Council has complied with section 1(1), in failing to do this within the 20 working day statutory time limit, it breached section 10(1).

Other matters

16. Although they do not form part of this notice the Commissioner would like to note the following matters of concern.

General request handling

17. In this case the Council's initial response and internal review failed to provide a proper confirmation or denial of the extent of information held.

18. The Commissioner considers that these are basic requirements of the FOIA which the Council should be aware of. Had the Council complied with these duties in this case it might not have been necessary for the complainant to submit their complaint to the Commissioner.

19. In future the Commissioner expects that the Council's responses will comply with the duty imposed by section 1(1).

Engagement with the Commissioner's investigations

20. In investigating complaints the Commissioner is reliant on public authorities providing timely and accurate responses to his enquiries. In this case the Commissioner considers that his investigation was unnecessarily prolonged due to the Council wrongly identifying information in the scope of the request and, initially, attempting to withhold information under inappropriate exemptions.

21. In future he expects the Council to ensure that it provides accurate responses to his enquiries.

Section 46 – record keeping

22. The code of practice issued under section 46 of the FOIA (The "section 46 Code") contains recommendations for public authorities in relation to the creation of and keeping of records.

23. Part 2.1.1. of the section 46 Code states:

"There are many good reasons to keep information and those reasons may change over time. These include, but are not limited to, the following:

- for accountability and audit;
- to comply with regulatory requirements, including the provisions of FOIA;
- to protect legal and other rights and interests;

- as a historical record.”¹
24. Whilst it is up to individual authorities to decide what records are kept the Commissioner considers that the Council should reflect on the recommendations of the section 46 Code and ensure that, going forward, it is satisfied that adequate records are being kept.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf

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.

Christopher Williams
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