

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 December 2024

Public Authority: Coventry City Council
Address: The Council House
Earl Street
Coventry
CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested copies of documentation relating to Coventry City Council's (the Council) management of IT assets. The Council provided some information, stated that other information was not held, which the complainant did not challenge, and relied on section 31(3) of FOIA (law enforcement) to neither confirm nor deny whether it held any further information.
2. The Commissioner's decision is that section 31(3) is not engaged.
3. The Commissioner therefore requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to questions one, two, three, five, six, eight, 10, 11, and 14 to 18 of the request which confirms or denies whether the requested information is held.
 - If the requested information is held, it should either be disclosed, or the Council should issue a refusal notice explaining why it is exempt from disclosure
4. The Council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 April 2024, the complainant wrote to the Council and requested information in the following terms:

“Please supply the following information within 20 working days, and supply electronic copies of policy, procedures, guidance and associated documentation relating to management of Laptops and Tablet assets:

1. Procedure defining separation of duties and responsibilities for ordering Laptops/tablets from the supplier and authorizing payments to the supplier during 2021, 2022 and 2023.

2. Process defining segregation of duties and responsibilities with regards to receipt/intake and recording of new Laptops/Tablets and their serial numbers during 2021, 2022 and 2023.

3. Procedure to ensure separation of duties to ensure the person who should be maintaining inventory records does not physically control or distribute the inventory or hold responsibility for undertaking monthly Audit of stock during 2021, 2022 and 2023.

4. The process for assigning asset numbers (equipment tracking numbers) to Laptops /Tablets.

5. Process/procedure for monitoring and ongoing tracking of existing Laptops/Tablets and stock levels during 2021, 2022 and 2023.

6. Process relating to storage of Laptops/Tablets in Storeroom 18 in Council House during 2021, 2022 and 2023 (Note: storeroom no longer used for storage of ICT equipment)

7. Number of recorded Audits and stock checks completed of IT Storeroom 18 in Council House during 2021, 2022 and 2023

8. Processes related to disposal of Laptops/Tablets Assets that have been in place during 2021, 2022, 2023 and 2024

As per 'Local Government Transparency Code' and 'Local Audit & Accountability Act 2014', please confirm and quantify:

9. The supplier/s of laptops/tablets to the Council ICT department during 2021, 2022 and 2023?

10. Number of new Laptops/tablets (over the value of £500) ordered by Council in 2021/22, 2022/23 & 2023/24 (3 separate Totals requested: 1 total for each year)?

11. Value of new Laptops/tablets ordered by Council in 2021/22, 2022/23 & 2023/24 (3 separate Totals requested: 1 total for each year)?
 12. Number of Council employees who were issued a brand-new laptop/tablet in 2021/22, 2022/23 & 2023/24 (3 separate Totals requested: 1 total for each year)?
 13. Provide the value of VAT the Council has paid, and not recovered, on new Laptops/tablets in 2021/22, 2022/23 & 2023/24 (3 Totals requested: 1 total cost for each year)?
 14. Number of used laptops/tablets returned by staff and booked back into the inventory system and recirculated for use by other staff?
 15. Provide the process (or link) related to disposal of ICT equipment in accordance with recognised Council Waste Policy and WEEE Waste Electrical and Electronic Equipment recycling (WEEE) Regulations?
 16. Number of returned laptops/tablets recorded as disposed of? and the means of disposal?
 17. How many laptops/tablets do the Council estimate have gone missing/unaccounted for from the council in each of the last 4 years?
 18. What is the value of missing laptops/tablets the Council can not account for in each of the last 4 years? and how have these costs been calculated?."
6. The Council responded to the request on 29 April 2024, providing some information, stating that some was not held, and that it was relying on section 31(3) by virtue of section 31(1)(a) of FOIA to neither confirm nor deny (NCND) whether it held the rest of the information.
 7. Following an internal review, the Council wrote to the complainant on 20 May 2024, upholding its application of section 31(3) and stating that it was also applying section 14(1) (vexatious) to the request.

Scope of the case

8. The complainant contacted the Commissioner on 10 June 2024, to complain about the way their request for information had been handled.
9. Within their complaint to the Commissioner they have not challenged the Council's statement that some information was not held. However, it is clear that they are unhappy with the application of section 31(3) to the request.

10. As part of his investigation the Commissioner contacted the Council asking that it confirm if it was applying section 14(1) or 31(3) to the request. The Council responded and confirmed that it was withdrawing its application of section 14(1).
11. Therefore the following analysis is to determine whether the Council was entitled to rely on section 31(3) of FOIA to neither confirm nor deny whether it held some of the requested information.
12. The Council applied NCND to the questions listed below.
 - One, two, three, five, six and eight
 - 10, 11, and 14 to 18.

Reasons for decision

Section 31(3) – law enforcement

13. Section 31(3) of FOIA states that:

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

14. The Council has issued an NCND response to some of the requested information because, in its opinion, confirming or denying whether it holds the requested information would be likely to result in prejudice relevant to sections 31(1)(a), (b) and (h).
 - (a) the prevention or detection of crime
 - (b) the apprehension or prosecution of offenders,
 - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty’s prerogative or by virtue of powers conferred by or under an enactment.
15. The first question for the Commissioner here is whether giving the confirmation or denial in response to the complainant’s information request would or would be likely to result in prejudice relevant to the above subsections of section 31(1).

16. For section 31(3) to be engaged the following criteria must be met:

- first, the actual harm which the Council alleges would, or would be likely to occur if the confirmation or denial was disclosed has to relate to the applicable interests within the relevant exemption, in this case, sections 31(1)(a) (b) or (h);
- secondly, the Council must be able to demonstrate that some causal relationship exists between the potential disclosure of the confirmation or denial and the prejudice described in any of sections 31(1)(a), (b) or (h).
- thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the Council is met – either disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

17. In relation to the lower threshold (would be likely), the chance of prejudice occurring must be more than a hypothetical possibility. Rather, there must be a real and significant risk. For 'would' prejudice the chances of the prejudice occurring should be more probable than not.

18. Within its submissions to the Commissioner, the Council has stated that disclosure of the confirmation or denial 'would' compromise its information security strategies. Therefore, the Commissioner has considered whether disclosure of the confirmation or denial would be more probable than not to result in prejudice relevant to any of sections 31(1)(a), (b) or (h).

19. It is the Council's opinion that confirming or denying if the information being requested is held, would place the Council at risk as this could highlight any potential weaknesses within its ICT processes.

20. It believed that disclosure of the confirmation or denial may give an indication as to which individuals might be responsible for particular duties. This could potentially open them to direct targeting by those wishing to try and penetrate the Council's security strategies.

21. In considering the first part of the test laid out at paragraph 16, the Commissioner has considered if the actual harm which the Council alleges would occur if the withheld information was disclosed, relates to the applicable interests within the relevant exemption, in this case, sections 31(1)(a), (b) and (h).

22. From the reasoning provided by the Council, the Commissioner accepts that the information being requested relates to the relevant exemptions, particularly sections 31(1)(a) and (b). The Commissioner also accepts that, according to the reasoning given by the Council, there would be a causal link between giving the confirmation or denial and the predicted prejudice.
23. The next step is to consider whether the prejudice predicted by the Council would be more probable than not to come about as a result of disclosure of the confirmation or denial.
24. The reasoning given by the Council as to why an NCND response is necessary was weak. The case set out by the Council and referred to at paragraphs 19 and 20 above was not supported by significant further detail to explain how the Council believed that outcome would occur as a result of giving the confirmation or denial. This has left the Commissioner himself to consider what the wording of the request suggests about the possible impacts of confirmation or denial.
25. Having done so, the Commissioner is not of the view that the likelihood of prejudice relevant to sections 31(1)(a), (b) or (h) resulting from disclosure of the confirmation or denial is more probable than not. Following his usual approach when finding the higher test not met, the Commissioner has gone on to also consider whether prejudice would be likely. On this point his view is that there is not a real and significant chance of prejudice occurring as a result of giving the confirmation or denial.
26. This means that the Commissioner's conclusion is that the exemption provided by section 31(3) is not engaged. As at paragraph 3 above the Council is now required to issue a fresh response to the relevant parts of the request that confirms or denies whether the requested information is held. Where information is held, this should either be disclosed or a refusal notice should be sent to the complainant specifying under which section of FOIA it will not be disclosed.

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.

Ben Tomes
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