

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2024

Public Authority: Wirral Metropolitan Borough Council

Address: Town Hall

Brighton Street

Wallasey

CH44 8ED

Decision (including any steps ordered)

1. The complainant requested information about market stalls in Birkenhead. Wirral Metropolitan Borough Council (the "Council") confirmed that it did not hold the requested information. The complainant disputes this.
2. The Commissioner's decision is that the Council correctly confirmed that it did not hold the requested information and complied with section 1.
3. The Commissioner does not require further steps.

Request and response

4. On 4 June 2024, the complainant wrote to the Council and requested the following information:

“....all documents related to the selection criteria used to determine the amount of rentable stall area Market Traders would require in the proposed Argos Market Birkenhead. This should include, but not be limited to, Market Trader selection criteria discussion documents and calculations created by and between [redacted], and [redacted].”
5. The Council responded on 15 July 2024 and confirmed that the information was not held.
6. Following an internal review the Council wrote to the complainant on 14 August 2024 and confirmed that it was maintaining its position.

Scope of the case

7. On 15 August 2024 the complainant contacted the Commissioner on to complain about the way their request for information had been handled.
8. Subsequent to the complaint being received the Council sent a further response to the complainant on 8 November 2024 which confirmed that it did not hold the requested information.
9. On 20 November 2024 the complainant confirmed to the Commissioner that they considered the Council had wrongly confirmed that the information was not held.
10. The Commissioner considers that the scope of his investigation is to determine whether the Council has correctly confirmed that it does not hold the requested information.

Reasons for decision

Section 1(1) – does the Council hold the requested information

11. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.

12. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is 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.
13. 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). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
14. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held

The complainant's position

15. The request asks for information which explains how the Council reached a decision about proposals for rentable stall area for market traders.
16. In the complainant's view it is not plausible that the Council could have made this decision without there being supporting evidence, criteria for calculations or "workings out" which explain how the decision was reached.

The Council's position

17. The Council has explained to the Commissioner that it has consulted with the department responsible for decisions regarding the proposed market and it has explicitly confirmed that the information is not held.
18. The Council has confirmed that it has categorically not carried out calculations or commissioned anyone to specifically determine rentable stall calculations in relation to the proposed new location of the market.
19. In relation to the complainant's request for Market Trader selection criteria discussion documents and calculations created by and between the parties identified, the Council has stated that it does not hold any information for the reasons outlined in paragraph 18 above.

The Commissioner's conclusions

20. The Commissioner has considered the arguments and evidence of both parties.
21. The complainant's view in this case is predicated on the understanding that the Council has carried out specific calculations and reached a decision regarding rentable stall areas. If this were the case, the Commissioner recognises why the complainant might reasonably believe that information relating to such calculations would be held.
22. However, according to the Council, the complainant's understanding is incorrect and no such calculations have been made. It follows, therefore, that the requested information is not held.
23. The Commissioner appreciates that the complainant might dispute the Council's depiction of work it has carried out in relation to the proposed market. However, the Commissioner's role is to determine whether the Council held the specific recorded information identified at the time of the request. So, whilst there may be an unresolved dispute between the two parties about the factual background to the request, the Commissioner's focus is on the facts regarding what information is held.
24. In this case the Council has explicitly confirmed that it does not hold the requested information and explained that this conclusion is based on its consultation with officers at the relevant department. The Commissioner recognises that such a consultation should enable the Council to establish whether any recorded information was held.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, the Council does not hold the requested information for the purposes of section 1 of FOIA.

Right of appeal

26. 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

27. 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.
28. 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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Wycliffe House
Water Lane
Wilmslow
Cheshire
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