

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2016

Public Authority: Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has made a request to Bradford Metropolitan District Council ("the council") for quarterly data about private equity investments. The council refused the request under section 21(1) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has incorrectly applied section 21(1).
3. The Commissioner requires the authority to issue a new response to the request that addresses the specific information requested. This new response must comply with the requirements of the FOIA. The public authority must take these steps within 35 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

4. On 30 June 2015 the complainant wrote to the council and requested the following:

"Your fund provides an excellent reporting service for your investments in private equity. This service is available via your website and discloses information to international standards. I am conducting research into the long term performance of the asset class. This is research that I would be happy to share with WYPF and other major

limited partners once completed. However, for now, I have the following request:

*The latest data available that I can find is on your website at:
<http://www.wypf.org.uk/Member/Investments/PrivateEquityPortfolio/PrivateEquityPortfolio.aspx>*

However, this only provides data as at March 2015. Please can I request the same data for all your private equity investments on a quarterly basis going back as far as possible. This will allow me to create a time series of data for each of your fund's investments."

5. The council responded on 9 July 2015 and refused the request under section 21.
6. The complainant requested an internal review on 9 July 2015.
7. The council provided the outcome of its internal review on 15 June 2015. It maintained its position that section 21 was engaged.

Scope of the case

8. The complainant contacted the Commissioner on 16 July 2015 to contest the council's response. The Commissioner wrote to the council on 25 August 2015 to request its submission on the application of section 21(1). The council was also provided with the opportunity at this stage to revisit the request and revise its position if appropriate. The council provided its submission on 23 September 2015 and maintained that section 21 was engaged.
9. The Commissioner therefore considers the scope of this case is the determination of whether the council has correctly refused the request under section 21(1).

Reasons for decision

Section 21 – Information accessible to the applicant by other means

10. Section 21 provides an exemption for information that is already reasonably accessible to the applicant. It is an absolute exemption and as such no public interest test needs to be applied.
11. The complainant has advised the Commissioner that the information he has requested is historic data on a quarterly basis relating to private

equity investments, and that this information is not available on the council's webpages.

12. The council has advised the Commissioner that the data about its private equity investment is publically available on its pension fund webpages¹. On the basis that the annual data for 2013, 2014, and 2015 is publically available, the council considers that section 21 is engaged in respect of the whole request.
13. The Commissioner has reviewed the submissions of both the complainant and the council, in addition to the publically available data on the pension fund webpages. It has become evident to the Commissioner that the publically available information only represents three years of annual data about private equity investments, and there is no option to access quarterly data; nor has the council confirmed whether there is any means to extract this from the annual data.
14. On further enquiry to the council by telephone on 30 November 2015, it has been confirmed that further information is held by the council that would fall within the scope of the request, but which is not reasonably accessible to the requester. The council has subsequently advised the Commissioner that it considers both section 12 and section 43 may be applicable to this information.
15. The Commissioner has therefore identified that the council's response under section 21(1) fails to address the specific information sought by the request. It is also evident that further information is held which the council considers would fall within the scope of the request but is not publically accessible. However this position was not relayed until late in the Commissioner's investigation and after the council had already submitted its final position in which it maintained its application of section 21. On this basis the Commissioner must conclude that the council has failed to appropriately consider the request and has incorrectly applied section 21(1) to refuse it.

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<http://www.wypf.org.uk/Member/Investments/PrivateEquityPortfolio/PrivateEquityPortfolio.aspx>

Other matters

16. The Commissioner would draw the council's attention to the importance of carefully reviewing an information request before formulating a response under the FOIA. In the circumstances of this case, the council appears to have misread the request, and has subsequently applied section 21(1) in error. Ensuring that requests are carefully considered and responded to in full can help prevent the unnecessary escalation of complaints, and ensure that requests are complied with without unnecessary delay.

Right of appeal

17. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Andrew White
Group Manager
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