

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2018

Public Authority: Bassetlaw District Council
Address: Queen's Buildings
Potter Street
Worksop
Nottingham
S80 2AH

Decision (including any steps ordered)

1. The complainant has requested from Bassetlaw District Council (the Council) information regarding the intention of British Telecom (BT) to remove a number of payphone booths from villages within the Bassetlaw area. The Council provided the complainant with copies of two letters sent to the Council by BT. However, the complainant was of the opinion that the Council should be in possession of further information relevant to his request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has provided the complainant with all of the information which it holds falling within the scope of the request. However, it did not issue a response within 20 working days and therefore breached section 10 of the FOIA.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 20 November 2017, the complainant wrote to the Council and requested information in the following terms:

"I have been informed that BT intend to remove the only remaining payphone in Elkesley village, following "... consultation with Bassetlaw District Council [during which] they did not object to the removal."

Please provide all Council material and correspondence in matters dealing with payphones in the District, and particularly Elkesley, since January 2016."

5. The Council responded on 22 December 2017. It provided the complainant with the copies of two letters sent to the Council by a BT Payphone Planning Officer. The first letter was dated 12 September 2016, and the second one was dated 6 October 2016.
6. On 23 December 2016, the complainant informed the Council that he was not satisfied with the amount of information provided. On 18 January 2018 he formally requested the Council to conduct an internal review.
7. The Council sent him the outcome of its internal review on 11 April 2018. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 20 April 2018 to complain about the way his request for information had been handled.
9. In the course of the investigation, the Council identified some more information, consisting of three additional emails which were subsequently disclosed to the complainant.
10. Nevertheless, the complainant was not satisfied claiming that there should be more information held.
11. The following analysis covers whether, on the balance of probabilities, the Council held further information to that already disclosed.
12. The Commissioner also examined whether the response was provided in a timely manner as required by section 10 of the FOIA.

Reasons for decision

Section 1(1) – General right of access

13. Section 1 of FOIA provides that:

"Any person making a request for information to a public authority is entitled –

a. to be informed in writing by the public authority whether it holds information of the description specified in the request, and

b. if that is the case, to have that information communicated to him."

14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. Further to this she will also consider any reason why it is inherently likely or unlikely that the requested information is held.
15. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.

The complainant's position

16. The complainant maintains that the Council must be in possession of information beyond what was already provided and states that he is entitled to have access to this information.
17. In the course of the Commissioner's investigation, the complainant raised questions related to the disclosure of the information identified during the investigation and expressed his disappointment about the delayed disclosure of that information.
18. The complainant also complained that the documents provided by the Council, stating that they *"do not indicate any decision making process by Bassetlaw District Council's staff"*

The Council's position

19. The Council explained that in its endeavour to identify the relevant information within the scope of the request *"A search was made of the 'notifications' database on the network (which contains the files for any notifications received from statutory undertakers/telecommunications etc), the Development team manager's files on the network and e-mail records of the Planning Support manager."* The Council stated that these searches resulted in locating the information which was disclosed to the complainant.

20. The Council asserted that in addition to the above searches it also consulted with the *"Council's Planning Department staff in the Council's Democratic Service Department."*
21. The Council stated that *"A comprehensive range of search terms were used, including 'Elkesley', 'BT', 'notification', 'consultation', 'street name'".* These searches did not identify any information within the scope of the request.
22. In the course of her investigation, the Commissioner invited the Council to contact specifically the head of corporate services within the Council, to inquire whether they are in possession of information falling within the scope of the request. This resulted in additional information within the scope of the information request being identified. The information consisted of two letters from the Chair of Elkesley Parish Council to the head of corporate services of the Council and subsequent correspondence with the relevant council officials in relation to one of these letters.
23. Upon the Commissioner's instruction, the Council provided the above information to the complainant.
24. The Council also stated that it was not aware of any information relevant to the complainant's request having been previously held but since deleted.

The Commissioner's view

25. The Commissioner has examined the submissions of both parties.
26. The Commissioner has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
27. Having considered the scope of the request and on an objective reading, the Commissioner is satisfied that the Council carried out adequate searches to identify the requested information that was held at the time of the request.
28. In the absence of evidence to the contrary, the Commissioner is satisfied that the Council has provided the complainant with all of the relevant information which it holds falling within the scope of the request.
29. Therefore, on the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided and, therefore, concludes that the Council complied with section 1(1) of the FOIA.

30. In light of the above finding, the Commissioner does not require the Council to take any steps.

Section 10(1) – Time for compliance with request

31. Section 10(1) of the FOIA provides that "*Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.*"
32. The complainant made his request for information on 20 November 2017. The Council responded to the complainant on 22 December 2017. This falls slightly outside of the 20 working day period required by the Act.
33. The Commissioner's decision is therefore that the Council did not comply with the requirements of section 10(1) in this instance.

Right of appeal

34. 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

35. 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.
36. 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

Ben Tomes
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