

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 December 2018

**Public Authority:** Sunderland City Council  
**Address:** PO Box 100  
Civic Centre  
Sunderland  
Tyne and Wear  
SR2 7DN

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Sunderland City Council (the Council) relating to how it manages health and safety and to the conduct of risk assessments by the Council.
2. The Council provided information within the scope of the request. The complainant disputed that the information provided the answers he was seeking.
3. The Commissioner investigated the Council's handling of parts (5), (6), (10) and (11) of the request.
4. The Commissioner's decision is that the Council complied with its obligations under section 1(1)(a) and (b) (general right of access to information) of the FOIA in relation to those parts of the request.
5. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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6. The complainant wrote to the Council on 26 December 2017 (parts 1-4 of the request), 17 January 2018 (part 5-6 of the request) and 20 January 2018 (parts 7-12 of the request) making a multi-part request for information regarding how it manages health and safety and the conduct of risk assessments.

7. His requests were made using the 'whatdotheyknow' website. The full wording of the requests are contained in the annex to this decision notice.
8. The Council responded to parts (3) and (4) of the request on 27 December 2017. With respect to those parts of the request it advised the complainant that they would be dealt with outside of the FOIA on the basis that the focus of the information requested would involve processing of personal data.
9. The Council responded to parts (1) and (2) of the request on 11 January 2018, providing relevant information.
10. The Council responded to parts (5-12) of the request on 1 February 2018. It provided some information within the scope of the requests. It refused to provide some of the information requested at part (8) of the request, citing section 12 (cost of compliance) as its basis for doing so.
11. The complainant wrote to the Council on 24 March 2018 to request an internal review: he told the Council that he did not require a review of its handling of parts 3 and 4 of the request.
12. Following an internal review the Council wrote to the complainant on 20 April 2018. The response was sent directly to the complainant rather than using the 'whatdotheyknow' website.
13. With respect to questions 1, 2, 5, 6, 7, 8, 9, 10, 11 and 12, the Council upheld its original position, namely that it had responded to his questions and provided relevant documentation. The Council also upheld its application of section 12 of the FOIA in response to one aspect of question 8.
14. For the purposes of this decision notice, the relevant parts of the request are:

*"Question 5: Does the council have a plan to manage health and safety as per its commitments described in "Part 1: Background information" of this request? Management Framework" [link redacted].*

*Question 6: If a plan such as that described in question 5 exists, then please provide a copy of it.*

*Question 9: How many jobs' descriptions were changed in the course of the council's "Workforce transformation" (during 2015/16)? How many formal risk assessments were revised or created in response?*

*Question 10: Do the council's governance arrangements identify and govern "informal risk assessments"? Please provide evidence.*

*Question 11: Are the council's arrangements for governing the way in which it discharges its responsibilities related to health and safety consistent with the CIPFA/Solace document "Delivering Good Governance in Local Government: Framework" (which is outlined here [link redacted])? Please provide evidence".*

## Scope of the case

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15. The complainant contacted the Commissioner on 8 May 2018 to complain about the way his request for information had been handled.
16. He provided the Commissioner with a review of his requests and the Council's responses, indicating which aspects of which requests he was unhappy about, and why.
17. While he acknowledged that he had been provided with information in response to his requests, he disputed that the information provided answered all of his questions.
18. In relation to the requests he remained dissatisfied about - parts (5), (6), (9), (10) and (11) - he told the Commissioner:
  - *This response does not answer the question [Question 5]*
  - *(Question 5. was null because Q6 did not address whether a plan exists) [sic] [Question 6]*
  - *Q9 is a two-part question, which is unanswered.*
  - *Question 10 is not answered. Note that the term "informal risk assessments" was defined in the question – see Appendix: Section 2.1 preface to questions 7 to 11 below*
  - *Q11 has not been answered.*
19. The complainant provided further clarification about the nature of his complaint in subsequent correspondence.
20. With respect to part (9) of the request, the complainant considered the Council's response was unclear. He told the Commissioner:

*"The question has two parts, and it is unclear which part or parts [the response] refers to..."*

21. Having received the complainant's clarification regarding the nature of his complaint, the Commissioner wrote to him setting out the scope of her investigation – namely, the Council's handling of parts (5), (6), (9), (10) and (11) of his multi-part request.
22. During the course of the Commissioner's investigation, the Council confirmed:

*"In terms of those Questions which are being challenged by [the complainant] ...no sections of the 2000 Act were cited as to his Questions. This was because it was believed that [the complainant's] questions had been answered by the Council, with no reliance being placed on specified parts of the Act".*
23. In correspondence with the Commissioner, the Council clarified its response to part (9) of the request. The Council also wrote to the complainant to provide him with that clarification. The complainant did not contact the Commissioner in relation to the clarification provided and so the Commissioner has proceeded on the basis that he was satisfied by the clarification provided by the Council.
24. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part I of the FOIA. The FOIA is to do with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
25. The analysis below considers the Council's handling of parts (5), (6), (10) and (11) of the complainant's multi-part request.

## **Reasons for decision**

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### *Section 1 general right of access to information*

26. Section 1 of the FOIA states 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."*

*The complainant's view*

27. When requesting an internal review, the complainant told the Council:

*"Please review the council's answers as, in my opinion, many of them do not answer the relevant question".*

28. In relation to part (5) of his request, the complainant told the Commissioner:

*"My question is about a "plan", but the response refers to a "Policy-Statement of Intent"; these are not synonyms and so the response is not a meaningful answer to my question..."*

29. He explained that he considered that part (5) requires a 'yes' or 'no' answer:

*"... but the response does not provide one".*

30. In relation to the document the Council provided in response to part (6) of his request, he told the Commissioner:

*"Again the response is based on the false premise that a "Policy-Statement of Intent" is synonymous with a "plan", so it does not address the question properly".*

31. Regarding parts (10) and (11) of the request, the complainant told the Council:

*"Question 10 is not answered .... Q11 has not been answered".*

32. Similarly, in respect of those parts of the request, he told the Commissioner:

*"... this response does not really address the question, and it does not provide a yes or no answer." [Part 10]*

and

*"...the response may seem to answer the question, but it does not actually do so". [Part 11]*

33. In correspondence with the Commissioner, the complainant accepted that the CIPFA/Solace document does not refer specifically to health and safety. However, he told the Commissioner:

*"... this is a non sequitur as the document describes a framework to govern all activities carried out by and for public bodies including that of governing arrangements relating to health and safety".*

*The Council's view*

34. In correspondence with the complainant, the Council told him:

*"Whilst Responses and documents have been provided to you in reply to your submitted Questions, it would appear that your dissatisfaction with the received Responses is due to the fact that the provided Responses do not, in your opinion, provide the answers that you hoped to receive".*

35. Acknowledging that the complainant may be dissatisfied with the answers and documents it provided, the Council told him that it considered that it had complied with the requirements of the FOIA.

36. In correspondence with the Commissioner, the Council confirmed:

*"... that the Council does hold relevant information in respect of [the complainant]'s requests. The information provided to [the complainant] comprises the information held by the Council relevant to his requests".*

37. The Council explained that the above statement was based on checks made in the records held by its Health and Safety Team. It also explained to the Commissioner the process it had undertaken in order to identify the information it held that it considered fell within the scope of the request.

38. In relation to parts (5) and (6) and parts (10) and (11) of the request, the Council told the Commissioner that it had sought to provide an answer and a document which it believed to be relevant to the complainant's questions.

39. In that respect, the Council told the complainant that Health and Safety is managed through the 'Health and Safety Policy – Statement of Intent', and provided him with a copy of that document.

40. Similarly, it told him that in undertaking its health and safety obligations, it conforms with the Health and Safety Executive Management of Health and Safety Guidance (HSG65) and provided him with a link to that document.

41. In correspondence with the Commissioner, the Council confirmed that it seeks to manage health and safety matters via the Health and Safety Policy – Statement of Intent. It explained that that document:

*"... sets out the Council's policy for protecting the health and safety of its employees and other persons who may be affected by the way that the Council conducts its activities and services. ... The said*

*policy includes, amongst other things, the undertaking of risk assessments”.*

42. It also confirmed what it had told the complainant about HSG65, adding:

*“... This includes the undertaking of risk assessments”.*

*The Commissioner’s view*

43. The Commissioner has considered the wording of the parts of the request under consideration in this case. The Commissioner accepts that the requests were phrased as questions that could be answered with a ‘yes’ or ‘no’ response.
44. The Commissioner has also considered the reasons put forward by the complainant when requesting an internal review. In this case, the Commissioner considers that, although expressing dissatisfaction with its response, the complainant did not explain why he considered that the Council had failed to provide him with the information he had requested.
45. The Commissioner recognises that a requester cannot reasonably be expected to have a detailed knowledge of the way in which an authority organises and structures its records, or the terminology it uses to describe and classify information internally. Authorities must therefore make allowances for this when reading requests<sup>1</sup>.
46. Under the FOIA, if a public authority has information in its records that answers the question it should provide it in response to the request. Public authorities are not required to answer a question if they do not already have the relevant information in recorded form.
47. Having considered the views put forward both by the complainant and the Council in this case, the Commissioner is satisfied, from the evidence she has seen, that the Council complied with the FOIA by providing the complainant with the relevant information which it holds to satisfy parts (5), (6), (10) and (11) of the request.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

## Other matters

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48. During the course of the Commissioner's investigation, the Council confirmed that no specific advice and assistance was given to the complainant at the time of the initial request or at the internal review:

*"... because the Council believed that [the complainant]'s questions had been dealt with and that he had received the information that he was entitled to receive in full".*

49. It also confirmed, in correspondence with the Commissioner, that if the complainant wished to re-phrase questions (5), (10) and (11), the Council would have no objection to considering them.

50. The Commissioner's website includes a section entitled '*How to access information from a public body*'. She recommends this quick reference tool<sup>2</sup> to requesters who are considering making a request for information.

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<sup>2</sup> <https://ico.org.uk/your-data-matters/official-information/>



## Right of appeal

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51. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.
53. 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 .....**

**Deborah Clarke  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex

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1. The complainant included the following as background to his multi-part request:

*"It has been council policy since at least 2008 [link redacted] to "Implement the Health and Safety Executive's Stress Management Standards and supporting approach". In 2016 the council produced a document entitled "Health & Safety Policy - Statement of Intent" [link redacted] which contains the words "We will implement a management system based on the HSE's model of 'Managing for Health & Safety' which is Plan, Do, Act, Check [sic]" (this refers to <http://www.hse.gov.uk/managing/plan-do-c...> ) .*

2. The first part of the multi-part request that followed was made on 26 December 2017:

*"1. What is the council's policy regarding the conduct (e.g. creation and review) of risk assessments of individual jobs?"*

*2. As at 29th November 2017: How many jobs in the council's ICT unit had been individually risk assessed? How many had not been individually risk assessed? How many workers do the jobs in each group?"*

*On 29th November 2017 [redacted] submitted a whistleblowing complaint about the apparent fact that the job of supporting business processes supported by SAP technology (job title initially "business support officer" and subsequently changed to "technical support officer") had apparently never been individually risk assessed despite having existed for around 15 years during which time many events occurred which might be expected to lead to an individual risk assessment; after a preliminary investigation the council determined not to investigate the complaint under its whistleblowing policy.*

*3. What preliminary investigation was carried out and who by?"*

*4. How do the findings of the preliminary investigation justify the decision not to investigate the complaint under the council's whistleblowing policy?"*

3. On 17 January 2018 the complaint added two more questions:

*"Question 5: Does the council have a plan to manage health and safety as per its commitments described in "Part 1: Background information" of this request? By a "plan" I mean something which*

*describes "specific, measurable, achievable and realistic actions with appropriate timescales and measures" and which is consistent with the statement that "accountability for performance must exist at all levels of the organisation" (these are quotations from a document produced by Sunderland City Council entitled "Corporate Planning And Performance Management Framework" [link redacted]).*

*Question 6: If a plan such as that described in question 5 exists, then please provide a copy of it".*

4. On 20 January 2018 he added further questions, namely:

*"I would like to add more questions. I am distinguishing between what I am now calling "formal risk assessments" and "informal risk assessments" which are defined here [link redacted].*

*\*Question 7: How many complaints of bullying have been made within the council during 2015 and 2016? How many formal risk assessments were revised or created in response?*

*\*Question 8: How many individuals working for the council have been off work for stress-related reasons during 2015 and 2016? How many formal risk assessments were revised or created in response?*

*\*Question 9: How many jobs' descriptions were changed in the course of the council's "Workforce transformation" (during 2015/16)? How many formal risk assessments were revised or created in response?*

*\*Question 10: Do the council's governance arrangements identify and govern "informal risk assessments"? Please provide evidence.*

*\*Question 11: Are the council's arrangements for governing the way in which it discharges its responsibilities related to health and safety consistent with the CIPFA/Solace document "Delivering Good Governance in Local Government: Framework" (which is outlined here [link redacted])? Please provide evidence.*

*Question 12. No council policy positively governs the following: performance reviews of employees / "1 to 1" meetings between employees and their managers. Please confirm that this statement is true".*

5. Also on 20 January 2018, he told the Council:

*"I would like to rephrase question 12 above*

*Question 12. Proposition: No council policy positively governs the following: performance reviews of employees / "1 to 1" meetings between employees and their managers i.e "There is not a specific Council policy relating to 1-2-1's. It would be for both the individual employees and line managers to have a dialogue in the most*

*appropriate circumstances for them both, to ensure all training and development needs were being met."  
Please confirm whether this proposition is true".*