

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2019

Public Authority: Halton Borough Council
Address: Municipal Building
Kingsway
Widnes
Cheshire
WA8 7QF

Decision (including any steps ordered)

1. The complainant has requested traffic information with regards to the tolls over the Mersey River. Halton Borough Council (the council) refused the request under section 22 of the FOIA as it stated the information was intended for future publication.
2. The Commissioner's decision is that the council is able to rely on section 22 of the FOIA.
3. The Commissioner does not require the council to take any steps.

Background information

4. The 'Mersey Gateway' is a new tolled crossing of the River Mersey that opened in October 2017. As part of the scheme, the previously free Silver Jubilee Bridge will also be tolled.

Request and response

5. On 13 August 2018 the complainant requested the following information from the council with regards to the Mersey Gateway Project:

"Can we have the latest traffic figures split as per our previous requests and your last answer which was on the 26th July from [name redacted] which covered the period up to end of June."

6. The council responded on the 15 August 2018 stating that the statistics are intended for future publication and will be published on a quarterly basis. It stated that the figures to the end of June have been published and the additional analysis required was undertaken as part of this work.
7. The council informed the complainant that the next set of statistics will be released in October to cover the period of July to September and as part of this exercise, the council will prepare the analysis he requires.
8. The complainant requested an internal review on the 17 August 2018. He stated to the council that the information refused has previously been provided with regards to earlier periods.
9. He also pointed out to the council that it has not provided an exemption for refusal, but assumed it was relying on section 22 of the FOIA – information intended for future publication.
10. The complainant states that the figures requested are more detailed than what the council publishes, and what the council publishes only started after he had requested the figures. The complainant considers that it is appropriate that the information requested is available at frequent intervals and provides the details requested.
11. The complainant also argued that as the information that the council publishes is not in the detail being requested, then section 22 of the FOIA should not apply.
12. The council carried out its internal review on the 24 August 2018. It confirmed that all of the information requested is recorded by Merseyflow and that this has previously been provided to him for the periods previously requested.
13. The council acknowledged that it used to publish only some of the information being requested, but confirmed that all the information is now going to be published through the Merseyflow website and it confirmed that it was relying on section 22(1) of the FOIA to refuse the request.

Scope of the case

14. The complainant contacted the Commissioner on the 6 October 2018 disagreeing with the council's reliance of section 22 of the FOIA.
15. Since bringing the complaint to the Commissioner, the complainant has informed her that he followed up with the council on the 1 November 2018 and that the council responded on the 13 November 2018 to confirm the information was now published on the website¹, stating it was put there on the 22 October 2018.
16. However the complainant disputes this because he noted there was a time stamp on the page of 12 November 2018. The council told the complainant that this is because there was a typo on the web page and this was corrected on the 12 November 2018. The complainant states that the typo appears to be an incorrect address for the page where the statistics were
17. The complainant is not satisfied with the time it took to get the information as his request was made on the 13 August 2018 and the information was not provided until 13 November 2018.
18. Even though the information has now been published, the Commissioner considers the scope of the case is to determine whether section 22 of the FOIA was engaged because the complainant considers it should have been provided to him within 20 working days following receipt of his request.

Reasons for decision

Section 22 of the FOIA – Information intended for future publication

19. Section 22(1) of the FOIA states that information is exempt if –
 - a) The information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

¹

<http://www.merseygateway.co.uk/mersey-gateway-statistics-dashboard/>

- b) The information was already held with a view to such publication at the time when the request for information was made, and
 - c) It is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph a).
20. It is important to note that a public authority must hold the information with a view to its publication at the time of the request, the exemption does not require a set publication date to be in place. The date of publication does not need to be definite for the exemption to apply.
21. The council has confirmed to the Commissioner that there was a settled intention to publish the information prior to the complainant's request being received by the council in August, as this information had been the subject of prior requests.
22. The council evidenced this intention by providing the Commissioner with an extract of an email between the Company Secretary of the Mersey Gateway Crossing Board and the council officer who has dealt with various requests for information about the Mersey Gateway Crossing.

Part of this email (dated 26 June 2018) states:

"as the Mersey Gateway Project receives many requests for data, the decision has been taken to publish the key data on a quarterly basis.... This information will be updated on a quarterly basis"

23. The council states that this email was the result of a number of discussions in response to the requests being received. It also acknowledges that its approach to release information has been iterative and that further information has been added to what has previously been published in light of the requests being received.
24. With regards to the availability of the information on the Merseyflow website, the council has confirmed to the Commissioner that the summary statistics were published at 07:13 on 22 October 2018 with more detailed information being uploaded five minutes later at 07:18 the same day. The council has told the Commissioner that the reason for the update on the 12 November 2018, is that a typographical error was noted on the webpage and corrected and amended at 09:37 that day. The council maintain that this is not, as the complainant believes, when the information was made available.
25. The Commissioner finds this to be a reasonable explanation and even if this typographical error resulted in broken links to the information, it does not mean the council did not have an intention to publish the information. Also the council has provided the Commissioner with details

from its system showing the uploads that were made in October. Making corrections to this upload, upon realising errors, would seem a reasonable step for the council to take. The Commissioner does not see it to be sufficient evidence that the council was trying to avoid publishing the information.

26. It is clear that the previous requests that the council has received for the updated information has spurred the council in to now making this information available every quarter. The website shows that this information has been published.
27. The Commissioner is satisfied that at the time of this request, the council did have a settled intention to publish the requested information.
28. However, before concluding the exemption is engaged, the Commissioner must consider whether it is reasonable in all the circumstances that the information should be withheld until it is published.
29. The council has told the Commissioner that the specific information requested has to be extracted and collated from the operator's computer system and is not prepared in this format for any other purpose, such as routine internal reporting purposes.
30. At present this process is undertaken as a single exercise for the purposes of publication, usually within four weeks of a quarter period end and information is then uploaded to the website. The council considers that making the information available on a quarterly basis is therefore reasonable and proportionate.
31. The Commissioner accepts that releasing this information on a quarterly basis seems a reasonable approach to take and therefore is satisfied with the application of section 22 of the FOIA.

Public interest test

32. Section 22 is subject to the public interest test. Therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest factors in releasing the information

33. The complainant has told the Commissioner that the group he is requesting the information on behalf of are the only people that are interested in this management information and the council's claim that it was ever intended for future publication is nonsense.

34. The Commissioner notes that the complainant has also stated that there are over 5000 group members on Facebook. This is a sizable amount of members for which the information may be of interest to.
35. The complainant has stated that it is in the public interest that the information on this scheme is released on a frequent and timely basis.

Public factors for maintaining the exemption.

36. The council has stated that whilst it recognises that the complainant and group has an interest in the detailed information, the general public interest has to be balanced with the council's use of resources in dealing with other enquiries as a public authority.
37. The council considers that releasing the information periodically on a quarterly basis adds more to the public interest with regards to ensuring effective and efficient management of limited available resources and the use of public funds.

Conclusion

38. The Commissioner acknowledges that readily available information would hold a strong public interest, however this needs to be balanced with the time and resources required by a public authority to provide it.
39. The Commissioner appreciates that the complaint has had to make information requests in order to obtain this information from the council, but this in turn has spurred the council into taking steps so this information is now being periodically made available.
40. Providing the data every quarter, in the Commissioner's view, seems a balanced way of providing the information to keep the public informed whilst allowing it to be able to use its time and resources to carry out its other duties as a public authority.
41. The Commissioner finds the public interest in favour of maintaining the exemption.

Right of appeal

42. 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

43. 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.
44. 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
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