

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2019

Public Authority: City of Bradford Metropolitan District Council

Address: 4th Floor Britannia House

Hall Ings

Bradford

West Yorkshire

BD1 1HX

Decision (including any steps ordered)

1. The complainant has requested information from the City of Bradford Metropolitan District Council ("the Council") regarding investigations into school placements over two academic years. The Council refused the request, stating that it did not hold the information.
2. The Commissioner's decision is that the Council has failed to demonstrate, on the balance of probabilities, that it does not hold the requested information and as such, has failed to comply with section 1 of the FOIA. In addition, the Council did not engage sufficiently with the complainant to establish whether a refined request could be submitted, and therefore the Commissioner finds that the Council breached its section 16 duty to provide advice and assistance.
3. The Council also failed to respond to the request within 20 working days, and therefore breached section 10 of the FOIA.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant, which does not rely on the information not being held.
 - Engage with the complainant to explain the address check procedure more fully, to establish whether a more refined request could be submitted.

5. The Council 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

6. On 3 January 2019, the complainant wrote to the Council and requested information in the following terms:

"The request is for how many investigations the specific council department have carried out in relation to school placements. I would like to know how many have occurred across the past two years in each academic year."

7. The Council responded on 21 February 2019. It stated that it did not hold the requested information.
8. Following an internal review, which was carried out after the Commissioner had contacted the Council about the delay in responding, the Council wrote to the complainant on 26 April 2019. It stated that it upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 25 March 2019 to complain about the way her request for information had been handled.
10. The Commissioner considers that the scope of this decision is to determine if the Council correctly refused the request, relying on section 1 of the FOIA. She has also considered the time taken to respond to the request.

Reasons for decision

Section 1 of the FOIA – information held by public authorities

11. Section 1 of the FOIA states that:

"(1) 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."

12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request).
13. The complainant explained that she considers that the Council would hold information relating to the amount of investigations that it has completed regarding school placements over a two year period. Specifically, her request related to checks which have been carried out into the possible use of fraudulent addresses when a child applies for a school place.
14. The Council explained to the Commissioner that it does not hold the requested information.
15. The Council advised the Commissioner that if it held the requested information, it would have provided it. It stated that it does not hold "*data on how many address checks [it had] made*" since it has no use for it, nor is there any legal requirement to keep it.
16. However, the Council has advised the Commissioner that address checks are carried out. It informed the Commissioner that its Admissions Team deal with 15-16,000 applications for admission to Reception and Year 7 each year, and address checks are undertaken as part of the process. The Council also explained that its In Year Team deal with approximately 7000 applications each year and address checks are carried out for these.
17. It explained that, if there was an issue, it would be noted on each child's record as a "free hand record", but that it was only able to search records by name, date of birth or postcode.
18. The Council advised that address checks are part of the admissions and appeals process and are not recorded on a list. Its position is therefore that it does not hold the information that has been requested.
19. The Commissioner has considered the Council's arguments. She notes that it explained, as set out above, that address checks are carried out and that these may be noted on an individual child's record.
20. The Commissioner is aware that the Council does not hold specific data such as a list setting out the relevant information. However, its position appears to be that the information may be held, but cannot easily be searched for.

21. The Commissioner notes that the Council has explained that the system does not allow notes to be searched. She acknowledges that the information may be difficult to retrieve. However, the Council has failed to demonstrate that it does not, as such, hold the requested information. Rather, it would appear that it considers that the information may be held.
22. From the evidence that the Council has provided, the Commissioner is not satisfied that the requested information is not held for the purposes of the FOIA.
23. The Commissioner has therefore determined that the Council has not complied with its duty under section 1(1) of the FOIA and requires the Council to make a fresh response to the complainant.

Section 16 – Advice and assistance

24. The Commissioner is mindful of the potential for the request to have been interpreted in an overly simplistic way. Whilst the Council has provided information to the Commissioner about the checks made as part of the admissions process, very little information is provided about the process associated with cases which are deemed to require further enquiries. Even less detail of these processes has actually been communicated to the complainant.
25. Given the potential for alternative interpretations of what is being sought, where the focus of the response has been on the standard checks made on every admissions form, the Commissioner is of the view that more information should have been provided to the requestor to allow for a better understanding of what is actually collated. This may, in turn, allow for a more refined request to be submitted if more than just the initial checks are of interest.
26. As a result, the Commissioner requires the Council to engage with the complainant to explain the address check procedure more fully. Whilst recognising that the potential for the full range of information to be provided is limited, as the Council has made reference to the possible cost implication, the Commissioner considers that there may be scope for a refinement on the areas of interest.

Section 10 – time for compliance

27. Section 1 of FOIA states that

"(1) 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."

28. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council breached section 10 of the FOIA in responding to the request. Since a response was subsequently issued, the Commissioner does not require the Council to take any remedial steps in respect of this.

Right of appeal

29. 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@justice.gov.uk

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

30. 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.
31. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF