

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2019

Public Authority: Worcestershire County Council

Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has made a seven part request about transport arrangements for children and young people with Special Educational Needs and Disability ("SEND"). Worcestershire County Council ("the Council") denied that information was held in respect of parts 1, 2 and 4, and did not treat parts 3, 5 and 6 as being valid requests for information. The Council asked the complainant to provide clarification in respect of part 7.
2. The Commissioner's decision is as follows. In respect of parts 1, 2 and 4, no recorded information is held. In respect of parts 3, 5 and 6, these are not valid requests for information under the FOIA. In respect of part 7, the Council has failed to provide appropriate advice and assistance to enable the complainant to provide clarification, and as such breached section 16 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - In respect of part 7, provide advice and assistance to the complainant to enable them to clarify what information is sought.
4. 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

5. On 12 February 2019, the complainant wrote to the Council and requested information in the form of seven bullet points contained within a letter (for ease of reference, the Commissioner has numbered the bullet points 1-7, and will refer to each part separately):
- 1) *"A copy of the minutes or decision regarding SEN children boarding at bus stops for bespoke transport. While I appreciate your answer that no minutes or reports are held, this seems like a contradiction to your comment later in the reply, I quote –
Due to the savings provided by a combination of factors it is not possible to estimate the exact proportions achieved directly by the introduction of boarding points.
There must therefore be a copy of indication of when and who introduced these measures. There must have been a business case or plan on how this measure was going to be introduced and consultation advice to parents / schools etc.*
 - 2) *I would like confirmation again that no element of the policy has changed since 2011. Thank you for acknowledging and quoting the DFE Home to School Guidance information from 2014. It is interesting to note that the Local Authority has confidence that all elements of that guidance were already present in its policy and did not feel the requirement to make any changes. The guidance does expect that eligibility should be assessed on an individual basis and the use of EHC Plan to assess eligibility. As there was no policy change on the incumbent policy would like to request copies of the previous policy documents, to try and discover when this measure was introduced. I appreciate that this is a new request and I will have to wait for this information. I would be grateful if you could confirm the timescale again for the provision of requested information from your department.*
 - 3) *Do most SEND parents take their children to the bus stop? Why is it for parents to say they cannot, when each individual child's case should have been assessed by caseworkers familiar with the case? While I appreciate that savings have to be made as indicated in the guidance, this should not be done at the failure of policy and procedure and putting children at risk.*
 - 4) *Regarding my request for associated savings made, I specifically request the cost savings relating to my [redacted identifier] route, i.e. the savings the Local Authority was making by challenging us to walk to a bus stop with my [redacted identifier] each morning. I*

would like confirmation that this is going to be provided by your colleagues in the associated Personal Data Team.

- 5) I find it disappointing in the first instance that the Local Authority does not know how many SEND child they are requiring to board bespoke transport from bus stops. When their ability to do so should have been assessed and recorded. In the second instance I find it disappointing that you are unable to obtain this information without it would appear an annual check. In my opinion this information should be easily available from a competent system that should facilitate this without some kind of manual checking.*
 - 6) I would also like clarity that 5 SEND children you have identified using the [redacted street name] bus stop are SEND bespoke transport arrangements. The only children we have witnessed using this bus stop use public transport. If you can identify how many SEND children re using this stop it must be possible to identify how many in total are using bus stops across the county.*
 - 7) Finally I would request a copy of the risk assessment used to assess safety at school bus stops. I have requested the personalised one for my [redacted identifier], however there must be a form or assessment tool used which appears to have been overlooked in this reply."*
6. The Council responded on 20 March 2019. It confirmed that the majority of the information sought was not held, and requested clarification in respect of part 7.

Scope of the case

7. The complainant contacted the Commissioner on 20 June 2019 to complain about the way his request for information had been handled, and specifically that further recorded information was held.
8. Due to the complexity of the wider matter, and the Council's indication that it would maintain its position in an internal review, the Commissioner accepted the case without requiring an internal review to be undertaken.
9. The Commissioner considers the scope of the case to be the determination of whether the Council has complied with section 1 and section 16 of the FOIA.

Reasons for decision

Section 1 – General right of access to information

Section 16 – Duty to provide advice and assistance

10. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. Section 16 of the FOIA states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
12. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
13. The Commissioner emphasises that the FOIA is an access regime for official information that is held in recorded form. Whilst requesters may phrase a request as a 'question', there is no obligation for a public authority to create 'new' information in order to answer it.

The Council's position

14. The Council has explained that it considers the request, as submitted, is composed of both valid requests for recorded information, and statements and complaints in respect of the Council's responses to previous requests. The Council has maintained that, for the majority of those valid requests, no recorded information is held.
15. The Council has stated the following in respect of the 7 parts:
 - 1) This part seeks information that has been previously requested (i.e. specific minutes or a decision about SEN children using bus stops). This is a repeat request, and the Council has previously stated the information is not held, which it maintains.
 - 2) This part seeks a copy of previous policies (relating to Home to School Transport and Travel). The Council has stated no such information is held.
 - 3) The Council does not consider this to be a valid request for information under the FOIA.

- 4) This part seeks information about the cost savings made on a specific route used by the complainant's child. The Council has stated that the information is not held at this granular level, but that wider savings made by a review of SEND transport has been disclosed in respect of previous information requests that the complainant has made (given the Council references 626431 and 598228).
 - 5) The Council does not consider this to be a valid request for information under the FOIA.
 - 6) The Council does not consider this to be a valid request for information under the FOIA, but rather a comment about the Council's handling of information request 626431 (which the Council partly refused under section 12 of the FOIA).
 - 7) This part seeks information about risk assessments. The Council considers that it would need to establish what type of risk assessments the request seeks, as such assessments may span topics from vehicle mechanics to interactions between staff and SEND pupils. However, the Council acknowledges that it failed to provide appropriate advice and assistance to the complainant to enable this.
16. In respect of parts 1, 2 and 4, the Council has explained that the relevant team's network folders have been reviewed, and consultations undertaken with involved officers (who will be aware of whether the specific information is held). The searches did not identify any relevant information, and the consulted officers confirmed that they were not aware of the information being held.

The Commissioner's conclusion

17. The Commissioner has reviewed the request and recognises that it is composed of not only requests for recorded information under the FOIA, but also statements and questions relating to the subject matter. The Commissioner recognises that handling such a request presents significant challenge for a public authority, but is satisfied that the Council has correctly identified those parts of the request that seek recorded information under the FOIA.
18. In respect of parts 1, 2, and 4, the Commissioner has considered the steps undertaken by the Council to search for recorded information, and perceives that these steps are both proportionate and reasonable. As such, there is no evidence that the Council's searches have been deficient, or that the requested information is held.
19. In respect of parts 3, 5 and 6, the Commissioner has reviewed the phrasing of these parts, in conjunction with the Council's comments. Having done so, the Commissioner has concluded that these parts are

not valid requests for recorded information under section 8 of the FOIA, as they do not describe the information that is requested. In particular, the Commissioner notes that parts 3 and 5 appear to represent comments about the Council's position in respect of SEND transport, whilst part 6 appears to represent comments in respect of the Council's response to an earlier information request.

20. In respect of part 7, the Commissioner has considered the Council's position, and concurs that the Council has failed to provide appropriate advice and assistance to the complainant to allow them to clarify their request, therefore breaching the requirement of section 16 of the FOIA.

Other matters

21. The Commissioner notes, for the benefit of the complainant, that the terms of the FOIA relate only to recorded information, and that when submitting an information request under the FOIA, there is significant benefit in treating the process as being separate to any wider matters between the complainant and public authority.
22. The Commissioner has published guidance for requesters about how to most effectively utilise their rights under the FOIA, including how to phrase a request. This guidance can be accessed at:

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

Right of appeal

23. 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

24. 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.
25. 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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