

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2019

Public Authority: City of Bradford Metropolitan District Council
Address: Britannia House
Hall Ings
Bradford
West Yorkshire
BD1 1HX

Decision (including any steps ordered)

1. The complainant made a 14-part request for a range of information about the awarding of an IT contract. City of Bradford Metropolitan District Council ("the Council") responded to 13 of those parts, but refused to respond to the remaining part because it did not consider that part of the request to be valid.
2. The Commissioner's decision is that the request was valid, but it was unclear. The Council was therefore under a duty to seek clarification, but did not discharge that duty. The Commissioner therefore considers that the Council has breached its section 16 duty to provide advice and assistance when responding to this request. The Council also provided its response after the 20 working day deadline and thus breached section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Contact the complainant to seek clarification of his request.
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 10 June 2019, the complainant wrote to the Council and, referring to two specific organisations which had been awarded an IT contract, requested information in the following terms:

- "[1] How much money has been spent on the two organisations for the following periods 2014, 2015, 2016, 2017, 2018 and 2019, please provide separately for each year.*
- [2] What was the terms of reference for the engagement for the above organisations*
- [3] What procurement framework was used to choose the organisations above*
- [4] Can you provide a copy of the tender specification that went out for the organisations to tender against*
- [5] Can you provide the list of supplier names that were short listed under the procurement, where the two above organisations were awarded the contract*
- [6] Can you provide what information and guidance was provided by the organisations to help shape the proposed IT Services Restructure that is currently under consultation*
- [7] What benefits has the organisations named above provided to IT Services*
- [8a] What have they achieved giving a list of these with brief description and what work or service has been carried out*
- [8b] also how has this work contributed to the overall savings that the council need to make, so can you provide what savings have been made by giving contracts to these two organisations and what the return on investment has been.*
- [9] Are there any additional work or services that the above organisations carried out which was not part of the initial engagement if so what was the cost of the additional work or service and what was the work or service was carried out*
- [10] Which officers were involved in the tender process and what were their role on the panel, please provide names and job titles*

[11] Did these organisations tenders/awards go to any committees for authorisation and/or approval to proceed if not why not

[12] Where did these funds for these organisations come from ie which service area paid for it was it capital or from revenue funds

[13] Are IT Services looking to provide more work to these organisations if yes what is the additional work or service and what is the cost and what would be the benefit."

6. The Council responded on 12 July 2019. It refused to respond to part [1] because the information was already reasonably accessible and so exempt from disclosure under section 21 of the FOIA. It provided information in respect of 12 of the remaining parts of the request, but refused part [7] because it claimed that the request was not one which was valid under the FOIA.

7. The complainant sought an internal review on 15 July 2019 in the following terms:

"It would be absolutely absurd that the council contracted out work using tax payers money but were unable to provide and quantify the benefit that the service has gained with the huge amount of money spent on these two organisations."

8. Following an internal review the Council wrote to the complainant on 16 July 2019. It upheld its original position because:

"The Council have considered the information presented and can confirm that the above question falls outside the legislation. For clarification, under the Act the Council can only respond if it holds information in the form of documentation or electronic data i.e. a concrete piece of information and not an opinion, explanation or view. The Council does not hold the information that you are requesting."

Scope of the case

9. The complainant contacted the Commissioner on 19 July 2019 to complain that the Council had not responded to part [7] of the request.

10. The complainant did not raise any objection to the Council's use of section 21 or that the Council had provided all the information it held within the scope of the remaining parts of his request and thus the

Commissioner considers that he is content with the Council's responses to those parts.

11. At the outset of her investigation, the Commissioner invited the complainant to set out, in his own words, what information he was seeking in response to his request. Upon receiving the complainant's response, the Commissioner accepted that the complainant was attempting to seek information held in recorded form, however she considered that his interpretation was broad and, in some places, beyond an objective reading of the request.
12. The Commissioner therefore considers that her investigation must start with an analysis of whether the Council identified the correct objective reading of the request.

Reasons for decision

13. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

14. Section 84 of the FOIA states that "information" in this context refers to information "recorded in any form."
15. The FOIA does not require a public authority to create information it doesn't already hold in order to satisfy an information request. As the Commissioner's guidance explains, a public authority is not under a duty to explain or justify its actions (or inactions) unless that information already existed in recorded form at the time the request was made.¹
16. Questions can be valid requests for information, so long as they "describe" the information requested (and thus fulfil the criteria under section 8(1)(c) of the FOIA). The Commissioner's guidance states that where a request "describes" information, but is unclear or ambiguous, a

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/#2>

public authority has a duty to clarify the information which the complainant is seeking.²

17. As described above, the Commissioner contacted the complainant to ask him to set out, in his own words, the information he was seeking. The complainant responded to say:

"There would be written statements of work or even an outcome of what the council would hope to achieve and the benefits to the council.

"How can a council use public money yet not have any schedule of work to be completed or even the outcome of such work.

"There would be some level of scrutiny on the performance of such third party such as project or programme update reports that would be going to a committee meeting or internal meeting.

"As there was a tender for this, there would be some level of reporting on the schedule of work and outcomes to show value for money.

"Surely with the level of money paid to these third parties there would be document about their performance against a list of objectives, schedule or work or outcomes."

18. The exact wording of the original request was:

"What benefits has the organisations named above provided to IT Services" [sic]

19. The Commissioner considers that the term "benefits" in this context could have multiple meanings. The Cambridge English Dictionary defines the term benefit as *"a helpful or good effect, or something intended to help."* In the Commissioner's view that could include both financial and non-financial effects upon the Council.
20. It is clear from the complainant's correspondence that, whilst he seems focused predominantly on financial benefits or savings from this IT contract, he has interpreted the term broadly. The Commissioner also notes that enquiring about *"what the council would hope to achieve"*

² <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

would not be an objective interpretation of the request – which sought benefits which the organisations had “provided.”

21. On that basis, the Commissioner is thus satisfied that some of the complainant’s multiple interpretations would be objective readings of the request and that these “describe” information which the Council might hold in recorded form. The request was therefore one which was valid.

Section 16 Advice and Assistance

22. Section 16 of the FOIA requires a public authority to provide “reasonable advice and assistance” to those making or wishing to make a request.
23. Where a request is unclear or potentially has more than one objective reading, the Commissioner considers that this duty extends to making reasonable attempts to seek clarification of the request.
24. The Council did not make any effort to seek clarification of the request, nor did it appear to recognise that the request was capable of more than one interpretation.
25. The Commissioner therefore considers that the Council failed to discharge its section 16 duty in responding to this request.

Section 10 – Timeliness

26. Section 10 of the FOIA states that responses to requests made under the Act must be provided “*promptly and in any event not later than the twentieth working day following the date of receipt.*”
27. 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 has breached section 10 of the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF