

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2019

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 1BB

Decision (including any steps ordered)

1. The complainant has requested information about the Council's handling of a previous FoI request he had made.
2. The Commissioner's decision is that Birmingham City Council is entitled to rely on section 40(2) – third party personal data – for junior administrative staff involved in the handling of the request. It is not entitled to rely on the same exemption for senior staff or those with a decision making role in the handling of the request. The Commissioner also finds that the Council has correctly engaged section 42 – legal professional privilege – for the withheld information and that the public interest in maintaining the exemption outweighs the public interest in disclosure. The Council has breached section 1 of the FOIA by failing to disclose all information falling within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the bundles supplied to the Commissioner entitled-
Bundle 1 Pages 1-87 Redacted
Bundle 2 Pages 88-117 Redacted
Bundle 3 Pages 118 -147 Redacted
Include the personal data to which section 40(2) does not apply as detailed in the Confidential Appendix.
 - Disclose the bundle supplied to the Commissioner totalling 1120 pages entitled-

Appendix 1 FOI 3692570 Unredacted Document Bundle Re
FOI 1076136.pdf

Redact the personal data as detailed in the Confidential
Appendix.

4. The public authority 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 27 November 2018 the complainant wrote to Birmingham City Council and requested information in the following terms:

'I am requesting under the Freedom of Information Act all information and records held by the Birmingham City Council relating to the consideration and processing of the previous FOI request I submitted with reference number 1076136.

I submitted the aforementioned FOI on 3 April 2018; I received a response from the council 4 June 2018 acknowledging that you do hold some of the information I requested but placing a Section 30 exemption on it, thereby refusing my request. On 12 July 2018 I submitted a request for review of the council's decision, to which, as of 27 November 2018, I have yet to receive a response.

For easy reference, I'm including the text of my initial request below, and also attaching my correspondence with the council regarding it.

To be clear: this email is a NEW FOI request on my part. I am requesting all internal information and records regarding the City Council's deliberations and consideration of request 1076136, both the initial submission and my subsequent request for review. This includes but is not limited to emails, minutes of meetings, notes from discussions, memos, and internal recordkeeping about the request, as well as contact made with officials and authorities inside or outside of the City Council to discuss the FOI and the content of such contact, and interactions between the legal team considering the request and (redacted name), the Corporate Information Governance Team employee who's been liaising between the legal team and me about it. In case it is useful, [redacted name] oversees the legal team that has been processing this request.

I'm also requesting any record or material related to the consideration of request 1076136 that I have not explicitly named. Should any of the relevant information be held in non-work personal email accounts (e.g. Yahoo, Hotmail or Gmail) or on a mobile device as a text message or any other media, I would like a copy of those too as my right according to the ICO guideline on official information held in private email accounts.'

6. Before the Council responded to this request, it provided its internal review response to request reference 1076136. The complainant sent a follow-up email on 18 December 2018 stating

'I expect all information up to and including the sending of the below decision on 17 December 2018. This includes any information generated in the processing and consideration of FOI #1076136 between the date when I submitted request #3692570 (27 November 2018) and yesterday'

7. On 21 December the Council contacted the complainant to advise it needed more time to consider the PIT, and on 24 January 2019 responded to the request. It provided some information falling within the scope of the request but refused to provide all of it, citing section 42 (legal professional privilege - LPP) and section 40(2) (third party personal data) of the FOIA as its reasons for doing so.
8. The complainant requested an internal review on March 15 2019. The Council sent the outcome of its internal review on 15 April 2019. It upheld its application of section 42 but made no reference to section 40(2). It did not release the personal data it had redacted under this section.

Scope of the case

9. The complainant contacted the Commissioner on 7 June 2019 to complain about the way his request for information had been handled. He did not consider that the Council had properly considered the public interest test when applying section 42 to the withheld information, or that it had released all the information it held up until 18 December 2018. He also did not agree with the Council's withholding of personal data under section 40(2).
10. The Commissioner considers the scope of the case to be whether the Council is entitled to rely on section 40(2) and 42 of the FOIA, and whether it has released all relevant information held at 18 December 2018.

Reasons for decision

Context of the request

11. The request that is the subject of this decision notice concerns the Council's handling of previous request made to it by the complainant. This previous request related to the Trojan Horse affair, the alleged

conspiracy to introduce strict Islamist principles into a number of schools in Birmingham. For the sake of clarity, this previous request will be referred to as the Trojan Horse request.

12. The Trojan Horse request was subject to a decision notice issued by the Commissioner under FS50853594. The Council had applied section 30 to the withheld information, which the Commissioner determined was not engaged. She also found time for compliance breaches and general poor handling of the request.
13. The complainant had already made the request that is the subject of this decision notice before the decision notice under FS50853594 was issued.

Section 40 personal information

14. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
15. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
16. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
17. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

18. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
21. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
22. The Council has withheld the names, emails and other contact information of all Council staff. This includes junior and senior staff involved in the handling of the Trojan Horse request across a range of Council departments.
23. Having considered the withheld information, the Commissioner is satisfied that the information relates to Council staff. She is satisfied that this information both relates to and identifies those staff. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
24. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

25. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

26. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

28. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

29. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
30. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

31. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
32. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

33. The withheld personal data concerns a range of Council staff involved in various aspects of processing another request submitted by the complainant, the Trojan Horse request. As that request was handled so poorly, the complainant considers that the staff involved in that process should be held to account, particularly as information was withheld. He also considers that the Council should be transparent in its processing of the request in order to understand what went wrong.
34. The Commissioner accepts that, given the complainant's experience of the Council in relation to its handling of the Trojan Horse request, the complainant has a legitimate interest in understanding both how decisions were made and who made them, to shed light on the of Council's information handling systems and processes. This legitimate interest would be supported by disclosure of the withheld personal data.

Is disclosure necessary?

35. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
36. Having identified the legitimate interests in this case of transparency and staff accountability, the questions is whether these can be met without the release of the personal data. The Council has already released some information falling within the scope of the request, which provides details of how the request was processed, including various difficulties and problems encountered. However, information about the process does not hold people to account in terms of the poor handling of the Trojan Horse request, and particularly that of senior officers.
37. The Commissioner therefore accepts that disclosure of the personal data of all staff involved in the handling of the Trojan Horse request is the only way in which the legitimate interests of accountability and transparency can be met. However she considers that the names and job titles of staff only are sufficient for meeting the legitimate interests identified, and therefore the disclosure of other contact details including emails and telephone numbers would be unnecessarily intrusive.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

38. Having determined that disclosure is necessary, the Commissioner must now balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
39. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed consent to the disclosure; and
 - the reasonable expectations of the individual.
40. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
41. All of the withheld personal data relates to staff in their professional roles. The Council has stated that none of the staff involved in the processing of the Trojan Horse request have given consent for their personal data to be released. It argues that release of the information:
- could lead to junior officers being exposed to identity theft, fraud or harassment;
 - would be unfair due to the high profile nature of the Trojan Horse affair; and
 - would lead to targeted information requests to individuals rather than through the central FOI email account.
42. The Council has primarily focussed on the junior nature of staff in its arguments, and the Commissioner accepts that as a general rule, these staff would have no reasonable expectations that their personal details would be released to the world at large through a FOIA request. These staff are involved in administrative, rather than decision making, roles and therefore she does not consider that the legitimate interests of accountability and transparency outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

43. Turning to the more senior staff involved in processing the Trojan Horse request, the Commissioner must also undertake a balancing test. The Commissioner draws attention to her guidance 'Requests for Personal Data about public sector employees', where there is an expectation that the more senior, or public facing a role is, the more reasonable it would be to disclose personal data. However whether roles are senior or junior is a relative to both the nature of the withheld information and role itself. Some junior roles can be public facing, for example a receptionist, but their position is still junior. A solicitor maybe be junior in his or her team, but work in an advisory capacity and therefore play a role in making significant decisions.
44. In terms of the Council's arguments, there is no evidence of a real risk that any staff would be subject to identity fraud, theft or harassment. For senior staff, their identity is likely to already be public due to the nature of their role, and is not a reasonable expectation those occupying such roles would be immune from scrutiny and accountability through FOIA requests. The Commissioner cannot therefore see why the nature of how it handled the Trojan Horse request would be unfair to senior staff involved in the process. As she has already determined disclosure of the names and roles of staff and not emails, would be sufficient to meet the legitimate interests of accountability and transparency regarding the handling of the Trojan Horse request, there is no increased risk of FoI requests being sent to individuals. In any event the Council should have training and a process in place for how all its employees identify and handle requests for information received outside of its FOI mailbox.
45. There are some staff for whom the Council has withheld their personal data where their role is not clearly defined in terms of senior or junior. For these staff the Commissioner has considered whether these staff had a significant influence on how the Trojan Horse request was handled, and what distress might be caused by the disclosure of this information. As the Commissioner has already determined that only the names and job roles are required to meet the legitimate interests, she is not able to identify any harm or distress that would be caused by disclosure, and the Council's arguments regarding fraud, theft, harassment do not stand.
46. The Commissioner therefore concludes that for the names and job roles of senior staff and those more 'junior' staff who had a significant influence on the processing of the Trojan Horse request, there is sufficient legitimate interest in disclosure to outweigh the fundamental rights and freedoms of those staff. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

Fairness and transparency

47. Even though it has been demonstrated that disclosure of the requested information under the FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
48. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
49. The requirement for transparency is met because as a public authority, the Council is subject to the FOIA.

The Commissioner's view

50. The Commissioner has therefore decided that Birmingham City Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a) for junior staff acting in a purely administrative role in the processing of the Trojan Horse request. For senior staff, and those staff who had a significant influence on how with request was handled, the Council has failed to demonstrate that section 40(2) is engaged. A list of staff showing whether section 40(2) applies is detailed in the Confidential Appendix.

Section 42 - legal professional privilege

51. Section 42(1) of the FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege (LPP). LPP protects the confidentiality of communications between a lawyer and client, which is a cornerstone of the English legal system and.
52. It has been described by the Information Tribunal in the case of *Bellamy v The Information Commissioner and the DTA* (EA/2005/0023) (Bellamy)³ as:

" ... a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and

³http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i28/bellamy_v_information_commissioner1.pdf

their parties if such communications or exchanges come into being for the purposes of preparing for litigation.”

53. There are two categories of LPP – litigation privilege and advice privilege. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation. Advice privilege applies when no litigation is in progress or contemplated. In both cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice.
54. In this request, the Council has withheld communications between its in-house legal team (the adviser) to other Council staff (the client), regarding the application of FOIA exemptions. The Council maintains this information attracts advice privilege rather than litigation privilege. Having viewed with withheld information, the Commissioner is satisfied that it constitutes advice privilege.

The Public Interest Test

55. Section 42 is a qualified exemption, subject to the public interest test (PIT) as set out in section 2(2)(b) of the FOIA. In accordance with that section the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Council's View

56. The Council acknowledges that disclosure of the information would assist the public in understanding how the Council makes decisions, particularly given the continuing media and political interest in the Trojan Horse affair. It also considers that disclosure would *'uphold the presumption of openness and transparency which underpins the Freedom of Information Act'*
57. However, the Council recognises the very strong element of public interest inherent in this exemption of allowing clients to seek full and frank advice from their legal advisers in confidence and protecting that confidence.
58. In this case the legal advice was not sought or given with the prospect of litigation, but this does not mean it will never be used within this context. Moreover, the Council considers disclosure would lead to a more guarded approach to seeking and providing advice which would weaken the effectiveness of the process and undermine the whole notion of LPP and a client's ability to make fully informed and robust legal decisions.

The Complainant's View

59. The complainant considers that there is a very strong and compelling public interest in disclosure of the information withheld under section 42 due to the Council's overall poor handling of the Trojan Horse request. This includes the time taken to respond to the request and undertake a review; the lack of information disclosed; a refusal to talk to the complainant and keep him updated of progress; and incorrect application of exemptions. The complainant has serious concerns regarding the review process and the extent to which the legal team actively withheld information from it. He believes that disclosure would shed light on the inadequacy of the Council's FOI processes and therefore increase its accountability and transparency.
60. The complainant also considers that as the Commissioner determined that the exemptions applied by the Council were not engaged, the deference to the legal advice normally associated with LPP does not apply as the advice provided by legal services was wrong. Consequently the usual rules of LPP are not relevant in this case. Disclosure of the withheld information would provide insight into the inadequacy of Council systems and teams in managing FOI requests. He also
61. The complainant has made reference to a number of tribunal cases regarding LPP, and decision notices regarding the Council's poor FOI practices. Of particular note is that of Bellamy, referred to above. The tribunal stated

'there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest.'

The complainant maintains that the scrutiny of the Council's FOI processes and systems, and its continuing failure to adhere to statute exposed by this request, provide the necessary strength of public interest to override the exemption.

62. The complaint has drawn attention to the tribunal decision in Mersey Tunnel Users' Association (MTUA) v Information Commissioner and Merseytravel (EA/2007/0052, 15 February 2008). He considers that the lack of transparency in the handling of his request, similar to that below, supports the public interest in disclosure:

'We find, listing just the more important factors, that considering the amounts of money involved and numbers of people affected, the passage of time, the absence of litigation, and crucially the lack of transparency in the authority's actions and reasons, that the public interest in disclosing the

information clearly outweighs the strong public interest in maintaining the exemption,

63. Finally, the complainant has serious concerns about the conduct and competency of the Council's legal department. He considers that the public interest test is there not only to protect LPP but also to hold lawyers to account: *'there are times when lawyers (particularly ones who work for the public) need to be the focus of public accountability, to root out corruption, waste and poor decision making'*

The Commissioner's View

64. The Commissioner appreciates the complainant's frustrations regarding the Council's handling of his Trojan Horse request, and the Council's shortcomings have been identified in her corresponding decision notice. However, for the purposes of considering the public interest test, this should be done until the point at which Council completes its internal review process. For the request that is subject to this decision notice, that date is 15 April 2019. Consequently, although the poor handling of the Trojan Horse request is the reason for this request, the Commissioner can only consider the position up to and including 15 April 2019. As a result she is unable to take account of the complainant's arguments relating to the incorrect application of the exemptions to his Trojan Horse request when considering the public interest test here.
65. However, the complainant's experience of the Council's handling of his Trojan Horse request was clearly apparent at the time the Council undertook its review on 15 April 2019, and was the reason for the request being made in the first place. The Commissioner therefore accepts that the complainant's concerns about the Council's handling of the Trojan Horse request, including the transparency of processes, are real and genuine. The questions for the Commissioner is whether the public interest in transparency supported by disclosure of the withheld information outweighs the inherent public interest in maintaining the exemption that protects LPP.
66. The principle of LPP is fundamental to English law. It enables a client and their legal adviser to talk freely, openly and frankly in order to obtain appropriate legal advice. For the public interest in disclosure to override this principle, the arguments must be strong and persuasive. In the case of the MTUA case above, the public interest was weighted in favour of disclosure due to the large amount of public money at stake impacted by the legal advice received by the public authority:

'A public authority has pursued a settled course over a period of many years, involving tens of millions of pounds, and in effect preferring one sector of the public over another in circumstances where legitimate and serious questions can readily be asked

about both the power to make the payments and the obligation to do so. Our concern is in the public interest in transparency. It is striking that, when Merseytravel addressed that public concern, on their website in 2002, and stated "Merseytravel has though a legal duty to use toll income to repay district councils for financing the Tunnel losses which occurred between 1988 and 1992", they were unable to answer clearly Mr McGoldrick's simple question: "which act refers to this legal duty?" Their reply came down to counsel's opinion.'

67. Although doubt is sometimes cast on the strength of arguments that purport LPP would be weakened through a slow but continual disclosure of legal advice under FOI requests, the Commissioner takes the view that when legal advice is sought or given it is done on the basis that the communication is in confidence. She does not consider that the public interest in the MTUA request is comparable to that in this case because it is not of the same magnitude. Whilst the complainant has made arguments about the public interest in the transparency of the Council's FOI processes, the Commissioner notes that the Council has disclosed some information, and the application of exemptions (either correctly or not) do not in themselves indicate or prove a lack of transparency. Equally, parties are perfectly entitled to take opposing views on the relative merits of applying an exemption.
68. Additionally, the nature of the withheld information under section 42 relates to the Council's deliberations on exemptions – the Commissioner does not consider that disclosure of this detail is in itself concerned with *transparency of the request handling process*. It is already clear that the Council's legal department was involved in the handling of the request, and the Commissioner has already determined that she is unable to take account of the efficacy of the advice in relation to the PIT as the decision notice regarding this post-dates the internal review of the request.
69. The Commissioner therefore concludes that in all the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosure, and the Council is entitled to rely on section 42 of the FOIA for the withheld information attracting LPP.

Section 1

70. 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

71. When the Commissioner requested the Council to supply her with the withheld information, it responded with a document of 1120 pages and a separate document detailing the information withheld under section 42. The Commissioner expressed surprise at the remarkable, near tenfold, inflation of the quantity of the submission as the only information previously withheld, and now disclosed in the bundle, was personal data. The information already supplied to the complainant with the personal data redacted, totalled 147 pages. The Council explained that the increase in volume in comparison with the already disclosed information was a result of duplicate emails.
72. The Commissioner queried this with the Council, who then advised that the bundle provided to the Commissioner included everything that the complainant had provided to the Council during the processing of the request, as well as duplicate emails. It was impossible for the Commissioner to compare the bundle supplied to her with the information disclosed to the complainant, and she asked the Council to review its submissions, taking out any information not directly falling within the scope of the request and cross-referencing it to the previously disclosed information. As part of her investigation she has also pointed out that the Council needed to supply information held as of 18 December 2018 as per the complainant's follow-up email. The Council responded with three bundles totalling 147 pages, explaining that it had not kept an original copy of the information disclosed to the complainant so was unable to match its submissions exactly.
73. The complainant raised concerns about the adequacy of the Council's response to his request as it did not include the internal review document sent on 17 December 2018. It is not for the Commissioner to undertake the Council's responsibility and review the 1120 bundle against the 147 pages disclosed to the complainant, but having considered it, she has found that it does indeed include the internal review response. The Commissioner therefore finds that the Council has breached section 1 by failing to supply all the information held falling within the scope of the request. Aside from the section 40(2) redactions, the applicability of which has been determined above, the Council has applied no other exemption to the 1120 page document. Consequently the Commissioner directs that this entire document, subject to redactions according to the Confidential Appendix, is also disclosed to the complainant.

Other matters

74. The original 1120 document submitted to the Commissioner by the Council, and its re-submission, raises serious concerns about the Council's records management practices. The Council is reminded of its records management responsibilities and the Commissioner advises it takes full account of the Lord Chancellor's Code of Practice Guidance issued under section 46 of the Act⁴. The Commissioner will pass her concerns regarding the handling of this request to her Compliance and Monitoring Unit.

⁴ <https://ico.org.uk/media/for-organisations/research-and-reports/1432475/foi-section-46-code-of-practice-1.pdf>

Right of appeal

75. 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

76. 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.
77. 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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