

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 1 September 2020

Public Authority: North Tyneside Council
Address: Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside
NE27 0BY

Decision (including any steps ordered)

1. The complainant has requested recorded information from North Tyneside Council which concerns the completed Links Road Project at Whitley Bay.
2. The Commissioner's decision is that North Tyneside Council has complied with section 1 of the FOIA by providing the complainant with the information it holds relevant to his request. She has also decided that the Council breached section 10 of the FOIA by failing to provide the complainant with its response within twenty working days.
3. No further action is required in this matter.

Request and response

4. On 16 April 2019, the complainant wrote to the Council to ask for the following information related to the completed Links Road Project Whitley Bay:
 1. How many persons objected to this project?
 2. Were their objections logged?
 3. Were they informed that their objection had been accepted?
 4. What is the total cost of this project – to include all costs, Project Management including Capita costs for [a named Client Manager] and

others, drawings, signs and electricals, painting and any other costs involved.

5. The complainant told the Council that an estimate of the costs is not acceptable as the actual costs should be known at this time.
6. The Council acknowledged its receipt of the complainant's request on 23 April 2019 and informed him that it would be dealt with under the FOIA.
7. On 28 May, the Council wrote to the complainant to apologise for the delay in "getting the information to you" and to inform him that it would contact him as soon as possible when the information has been gathered.
8. On 11 June, the complainant wrote to the Council to complain about its failure to respond to his request.
9. The Council responded to the complainant's email later the same day, acknowledging that it had provided poor service in respect of his request. The Council advised the complainant that the delay in answering the second part of his request was down to the Council's Engineering Department, which had provided information as to the costs, but all of that information required checking by the Finance Department and this required evidence.
10. The Council made its substantive response to the complainant's request on 26 June by advising him of the following:

There were no official objections received to the project and the traffic regulation notice that was created for the works.

The confirmed breakdown of costs for the project is:

| | |
|----------------------|------------|
| Staff / labour costs | £30,331.20 |
| Material costs | £36,976.41 |
| Plant costs | £18,287.60 |
| Total Costs | £85,595.21 |

11. The complainant wrote to the Council on 27 July to complain about its response. He asserted that the Council's response was "rubbish" because he had objected to this scheme on two occasions and that the reported costs of the scheme of £85,000 was too low. The complainant therefore asked the Council to carry out an internal review.

12. On 8 July, the complainant wrote to the Council to complain about its failure to acknowledge his request for an internal review.
13. Also, on 8 July, the Council responded to the complainant's email by advising him that it would respond to his request for internal review "no later than 20 working days after receipt", i.e. by 25 July.
14. Having not received the Council's internal review by 30 July, the complainant sent the Council a chase-up email asking when this would be available.
15. On 31 July, the Council apologised for its failure to meet its 20-working day deadline.
16. Again, having received no internal review decision, the complainant wrote to the Council on 13 August to ask when he would receive a reply.
17. On 21 August, the Council sent the complainant its internal review decision. The Council confirmed that it had received no objections to the Scheme but advised the complainant that it had received one complaint which was 'outside the statutory process'.
18. The Council told the complainant that the costs of the scheme previously disclosed to him were correct at that time. However, since that disclosure, the accounts for the scheme have been closed and some accountancy adjustments had been made to reflect the final costs as follows:

Final Account

| | |
|----------------------|------------|
| Staff / labour costs | £30,331.20 |
| Material costs | £37,141.28 |
| Plant costs | £16,856.10 |
| Total Costs | £84,328.58 |

19. The Council asked the complainant to note that the final account figures outline the quantifiable costs of the Scheme delivered by Capita and that the Council holds no cost information concerning the time spent by its Client Manager in respect of his client role in overseeing and directing Capita on behalf of the Council.
20. Finally, the Council informed the complainant that, at the time he made his request, the Council did not hold the information he had asked for and that it had been obtained from Capita.

21. On 12 September the complainant wrote to the Information Commissioner to complain about the Council's handling of his request and particularly about its repeated apologies in respect of it not having responded to his request for an internal review.

Scope of the case

22. The complainant contacted the Commissioner on 17 September 2019 to complain about the way his request for information had been handled.
23. The Commissioner advised the complainant that the focus of her investigation would be to determine whether North Tyneside Council has handled his request in accordance with the FOIA, and specifically, whether the Council has complied with its duty under sections 1 and 10 of the FOIA.
24. Additionally, the Commissioner advised the complainant that she would investigate the Council's failure to carry out its internal review within an acceptable timescale.

Reasons for decision

Section 1 of the FOIA

25. 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.
26. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of the balance of probability. This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
27. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council

questions about the searches it has made to locate the information and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

28. The Council has advised the Commissioner that the project was delivered on its behalf by Capita, its Technical Services delivery partner. As a result, most of the information which the complainant has asked for was held by Capita. The Council considers that Capita is exempt from the requirements of the FOIA because it is not a public authority.
29. The Commissioner does not agree with the Council's position and she considers that the information held by Capita is held on behalf of the Council. That information is therefore subject to the provisions of the FOIA by virtue of section 3 of the FOIA.
30. Section 3(2)(b) of the FOIA states:

"For the purposes of this Act, information is held by a public authority if it is held by another person on behalf of the authority."
31. Notwithstanding this, the Council said it discharged its duty under section 16(1) of the FOIA by providing to the complainant with a reply to his request by obtaining further information from Capita.
32. This process took longer than the Council expected and resulted in the Council failing to respond to the complainant's request outside of the twenty working day compliance period provided by section 10 of the FOIA.
33. The Commissioner asked the Council to explain the disparity between the complainant's assertion that he has objected to the scheme on two occasions, and the Council's position that it received no objections and only one complaint about the Scheme, which was 'outside the statutory process'.
34. The Council advised the Commissioner of the following:
35. "Local authorities have a statutory obligation under Section 23 of the Road Traffic Regulation Act 1984 to give public notice of their intention to introduce pedestrian crossings on the public highway. This involves notices advertising the proposal being displayed 'on-street' and on the council's website for a period of 21 days. A notice is also advertised in the local press. This provides members of the public with an opportunity to make representation (including objections)."
36. "These representations are then formally considered by the council. This formal process involves a final decision being made by the Cabinet Member for Environment and Transport on whether the proposed

scheme should proceed. These decisions are published on the council's website to comply with local government transparency requirements."

37. "With reference to the scheme here, the notice of intention for the scheme was advertised between 22 November 2018 and 14 December 2018 but no representations to the scheme were received during this time."
38. "Prior to this statutory consultation exercise, a public meeting was held to explain the scheme to residents and address any queries/concerns. Whilst there was no statutory requirement to hold this meeting, it was considered best practice to do so and is in line with the council's commitment to conduct an "informal" consultation process (typically involving letters being sent to affected residents) prior to the statutory notices being advertised."
39. The Council has informed the Commissioner that the complainant sent an email to the Council on 12 November 2018, a date which followed the meeting referred to above. The complainant expressed his concerns about the proposal and a response was sent to him on 15 November 2018. The Council says it did not receive any correspondence from the complainant regarding its response.
40. The points raised in the complainant's email were not specific to the introduction of the scheme. Instead, his concerns related to the effectiveness of road markings, the acceptable level of road casualties and the risk of collisions between turning vehicles and overtaking vehicles. The Council told the Commissioner that these points were addressed in its response.
41. The complainant also raised concerns about the scheme via his FOIA requests and through his local councillors. These concerns were addressed through the established channels, which included a telephone conversation between a council officer and the complainant.
42. The Council strongly asserts that the complainant did not make a representation about the scheme. The Council's position is that, whilst he may have believed that he did, this simply was not the case. The Council suggests that the complainant is confusing his other contacts with the Council with him having lodged an objection.
43. In the Council's internal review, the Council informed the complainant that it did not hold the cost information which he had requested.
44. The Council explain this by advising the Commissioner that engineering schemes of this nature are delivered by the Council's Technical Services partner Capita. The costs provided to the complainant at the time of the response to the FOIA were accurate insofar as they were the figures

reported by Capita. By the time of the internal review, the scheme had been completed and the final account had been agreed between Capita and the Council.

45. The Council said the figures changed because there was an 'under' (reduction) in plant costs allocated to the scheme and 'over' (increase) in material cost.
46. The Council officer referred to in the complainant's request is one of a team of Client Managers who direct services delivered by Capita under its contracting arrangements. These Client Managers do not record their time against specific schemes which therefore explains why no information is held on the matter.
47. In relation to the Council's contractual delivery arrangements with Capita all the costs associated with the scheme are directly incurred and managed by them.
48. To ensure that the Council holds no further information relevant to the complainant's request, the Council carried out searched of both paper and electronic records held by its Client Manager.
49. Searches were also made of the Council's and Capita's complaints and enquiry systems to establish contacts made with the complainant.
50. The Traffic Regulation Order process was also reviewed and the officers who oversaw that process were also consulted.
51. Where searches were made of electronic records, the Council's search terms included [the complainant's name] and 'The Links', however the Council's searches primarily involved looking for information within the timeframes from the early development of this scheme to the point when the decision was made. This included the challenges being made by or on behalf of the complainant at that time, including reference numbers of enquiries logged on to the Council's systems.
52. The Council assures the Commissioner that it has not deleted or destroyed any information which would have fallen within the scope of the complainant's request. It says, "In relation to all records subject to this request the retention policy is 6 years in addition to the current financial year". This retention policy is built around compliance with the requirements necessary for financial audits and local government transparency.
53. The Commissioner has carefully considered the Council's representations in this matter. The Commissioner believes those representations have been made in good faith and she finds them to be credible.

54. The Commissioner's decision is that the Council has, on the balance of probability, complied with section 1 of the FOIA. This is because the Council provided the complainant with information which was held by Capita at the time the request was received and with updated information when the final account had been agreed.
55. The Commissioner has also decided that the Council has breached section 10 of the FOIA by failing to respond to the complainant's request within the statutory twenty-working day compliance period.
56. The Council accepts that it exceeded a reasonable timescale in which to carry out an internal review. Both the Commissioner and the Council note that this was due to the Council's reliance on receiving financial information from Capita where that information was not directly held. The Commissioner would impress on the Council its need to carry out its internal reviews within twenty working days and that this should only be exceeded where the matters under consideration are exceptionally complicated.

Right of appeal

57. 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

58. 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.
59. 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
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Wycliffe House
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