

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

Date: 27 May 2025

Public Authority: Durham County Council
Address: County Hall
Durham
DH1 5UF

Decision (including any steps ordered)

1. The complainant requested the costs involved in dealing with nine specific complaints. Durham County Council (the Council) initially stated that the information requested was exempt under section 30 (investigations) of the FOIA. During its internal review the Council withdrew reliance on section 30 of the FOIA, and stated that it was now relying on section 22 (information intended for future publication) of the FOIA. During the course of the Commissioner's investigation the Council stated that it did not hold the specific information requested.
2. The Commissioner's decision is that section 22 of the FOIA is not engaged as, at the time of the request, the information requested was not held. In failing to confirm that the information requested was not held and for failing to confirm the information was not held within the statutory time period, the Commissioner finds that the Council breached sections 1 and 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the request which complies with section 1 of the FOIA and does not rely on section 22 of the FOIA.
4. The Council must take these steps within 30 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 24 October 2024, the complainant wrote to Council and requested information in the following terms:

"Under the Freedom of Information Act 2000 could you please tell me what it has cost Durham County Council to investigate the following complaints:

Complaint 1: 479253074 Complaint 2: 479484178 Complaint 3: 479665269 Complaint 4: 480006325 Complaint 5: 480451746 Complaint 6: 482384231 Complaint 7: COM 414 Complaint 8: 511652546 Complaint 9: 527404494

Costs should include all those accumulated between 20 January 2023 to 24 October 2024 which are attributable to the process".

6. The Council responded on 25 October 2024 and stated that the information was exempt under section 30 of the FOIA.
7. On 25 October 2024 the complainant requested an internal review of the Council's refusal to provide the information requested.
8. The Council provided the outcome of its internal review on 25 November 2024. It withdrew its reliance on section 30 of the FOIA but stated that it now considered section 22 of the FOIA to apply to the information requested.

Scope of the case

9. The complainant contacted the Commissioner on 25 November 2024 to complain about the way their request for information had been handled.
10. During the course of the Commissioner's investigation he asked the Council to provide him with a copy of the information that it had withheld relevant to the request. The Council advised that it was unable to do so as it had not identified and extracted the information held and some information was not held.
11. In light of the above, the Commissioner's investigation into this complaint is to determine whether the Council has complied with its obligations under section 1 of the FOIA.

Reasons for decision

Section 22 – information intended for future publication

12. Section 22 states that information is exempt from disclosure if –
- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
13. As stated in the Commissioner's guidance on section 22¹, for this exemption to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in the future.
14. During the course of the Commissioner's investigation, the Council advised the Commissioner that the costs associated with handling the complaints can be broken down into three parts:
- "Pre assessment costs - all time recorded in system which would need to be interrogated and extracted.
 - Investigation costs by Locum Governance Lawyer - not held, will be billed upon completion.
 - DCC staff support costs - all time recorded in system which would need to be interrogated and extracted".
15. The Council further advised the Commissioner that:
- "At present, although some of the information requested is held within the Council's time-recording system, we have not yet identified and extracted details of the relevant costs. In addition, a substantial proportion of these costs, the investigation costs of the Locum Governance Lawyer, is not yet held by the Council (please see below a description of categories of costs incurred). In addition, whilst the complaints have now been considered by a hearing of the Council's

¹ <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

Standards Committee, the formal written decision notice and appendices are yet to be issued and therefore the Council is still incurring costs in relation to these matters”.

16. The Council confirmed that the total costs of dealing with the complaints in question will be shared with the Standards Committee in June 2025, following which the report will be published on its website. However, the request in this case was for the costs incurred from 20 January 2023 to 24 October 2024. The Commissioner asked the Council to confirm that this was the specific information that would be published, however, it failed to respond to this specific point. It is not therefore clear to the Commissioner whether there was any intention to publish the specific information requested, ie the costs from January 2023 to October 2024.
17. Before a public authority applies an exemption within part II of the FOIA, it should first identify the information requested. It is clear to the Commissioner that this did not happen in this case.
18. As the Council did not hold all of the requested information at the time of the request and it has not provided any evidence to demonstrate that there was any intention to publish the specific information requested (ie the period covered by the request), the Commissioner has no option but to find that section 22 is not engaged in this case.
19. The Commissioner now requires the Council to issue a fresh response to the request which complies with section 1 of the FOIA and does not rely on section 22 of the FOIA.

Procedural matters

Section 1 – general right of access

Section 10 – time for compliance

20. Section 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 of the description specified in the request”.
21. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event no later than the twentieth working day following the date of receipt of a request for information.
22. In this case the request was submitted on 25 October 2024 and the Council issued a refusal notice on 25 October 2024 confirming that some of the information requested was held but considered exempt under section 30 of the FOIA.

23. As the Commissioner has determined that the information requested was not held at the time of the request, he finds that the Council breached section 1(1)(a) of the FOIA in failing to confirm the information was not held by the completion of its internal review. In addition, in failing to advise the complainant that the requested information was not held within the statutory time limit the Commissioner also finds that the Council breached section 10(1) of the FOIA.

Other matters

24. The Commissioner notes that the Council initially relied on section 30 of the FOIA to withhold the information requested and in its internal review it relied on section 22 of the FOIA. However, the Council later confirmed that it did not hold all of the information requested. It therefore appears that the Council had not properly identified the information held relevant to the request prior to citing any exemptions. The Council should ensure in future that its first step upon receiving an information request is to identify all relevant information held. Only then should it consider to what extent this information may be covered by an exemption. A failure to obtain or consider the actual information requested could, as in this case, result in an incorrect or inaccurate response being issued. The Commissioner considers that this is very poor practice.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF