

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 July 2015

Public Authority: City of Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has requested a log of correspondence regarding the progress of a specific development. The Commissioner's decision is that, on the balance of probabilities, the City of Bradford Metropolitan District Council does not hold the requested information. He has also decided that there has been a breach of section 10(1) of the FOIA by failing to provide the information it does hold within the statutory time limit of 20 working days. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. In March 2014 the complainant wrote to City of Bradford Metropolitan District Council ('the council') and requested information in the following terms:

"The log of e-mails/texts/phone calls/letters requesting information or complaints about the progress of the development at [specific address] (Planning ref. 14/00530/FUL) particularly contacts from [8 specific addresses] since construction work started."

3. The complainant was in correspondence with the council's Strategic Support Manger who confirmed in letters dated 18 June 2014 and 23 December 2014 that the information request would be transferred to the appropriate team to deal with.

4. The council responded on 22 April 2015 after intervention by the Information Commissioner. The response contained a log of emails and

telephone calls after construction work had commenced on the site. The council also offered to provide copies of emails and objection letters.

Scope of the case

5. The complainant contacted the Commissioner on 12 March 2015 to complain that he had not received a response to his request.
6. As indicated above, the Commissioner wrote to the council on 24 March 2015 asking it to respond within 10 working days. The council responded on 22 April 2015.
7. The complainant informed the Commissioner on 1 May 2015 that is he is not satisfied with the response of 22 April 2015.
8. The Commissioner has therefore considered whether the council holds any further information within the scope of the request.
9. He has also considered whether there has been a breach of the statutory time for compliance at section 10(1) of the FOIA.

Reasons for decision

Section 1 – information held

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but

deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind the following comments made by the complainant about its response of 22 April 2015:

"As to the actual 'log' you provide, it's sadly lacking I'm afraid. For a start you can't even get the addresses of the local residents right. The information I requested was for calls coming from [8 specific addresses] and others nearby complaining about the development - not as your heading sets out. As to the calls themselves there's a lot missing.

No mention of any call regarding the actual demolition of the property [specific property] when the digger moved in to demolish, apparently without the correct paperwork. No mention of the calls from my wife regarding the non-appearance of the methane membrane and the information from the builders that there wasn't one. No record of any calls from ourselves, [specified individuals] about the lack of action on the Coal Authority's worries on the site. Or the calls made by any number of us regarding the piling on the site - and the fact that most of the piles were not fully inserted but simply sawn off.

Or the calls from the neighbour whose ceiling fell down because of the way the piling was undertaken. No record either of repeated calls from myself to speak to you which were met with 'He's on the other line' 'He'll ring you straight back' 'He's off work today', 'He's on leave' and so on. And when [specified individual] was speaking with you and asked if you had answered my call you told him 'I'll ring him straight away'. You didn't - and never have done. Where is the mention in the log of all these and many, many more?"

13. The council explained that all calls are routed through the central contact centre and if the query is specific to a case, a call back is requested from the case officer to contact the customer. Such call backs are recorded as case notes on the uniform planning system and also as direct emails to the officer concerned. It said that officers involved in this case were required to carry out personal searches for information by trawling through their own emails and using the uniform system and confirmed that the search was not restricted to the officer who provided the response.
14. The council also said that it was unable to categorically confirm that it has never held any other information which would apply to the complainant's request. It said that, because much of the information in question concerns individual officer emails, it is unable to specify when it ceased to retain information that may previously have been held. It explained that its policy on good email management is to delete at

regular intervals, and an electronic prompt is sent when an officer's mailbox is full and that because of the nature of the work of the planning officers in question (in that they receive many large files via email), the general policy is to use the prompts to clear mailboxes of emails/discussion threads that have run their course. However, the council did confirm that no information had been deliberately deleted or destroyed since the request was made.

15. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the requested information. The council said that some of the requested information would be held as a record of what would have been discussed to inform the planning decision but there are no statutory requirements to hold this information.
16. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
17. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. He appreciates the complainant's position that more contact was made from local residents than has been disclosed but acknowledges that there can be a difference between what a complainant believes should be held and what is actually held. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Section 10 – Time for compliance

18. Section 1(1) of FOIA requires a public authority in receipt of a request to confirm whether it holds the requested information, and if so, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request.
19. The request was submitted in March 2014. The council provided its response on 22 April 2015, more than a year after the statutory time for compliance. The Commissioner therefore finds that the council did not make the information available within 20 working days and consequently finds a breach of section 10(1) of FOIA.

Right of appeal

20. 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@hmcts.gsi.gov.uk

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

21. 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.
22. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF