

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2016

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

Decision (including any steps ordered)

1. A previous decision notice was issued that found Birmingham City Council (the council) would hold times recorded on CCTV footage with regards to part of the complainant's request. The decision notice ordered the council to provide these times to the complainant, which the council subsequently did.
2. The complainant was not satisfied with the times provided. The Commissioner's decision is that the council had provided the times.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 26 January 2016, the Commissioner issued a decision notice under reference FS50569974 which ordered the council to carry out the following steps:

"... the Commissioner's decision is that the council holds information that would allow it to be able to provide times to the complainant for parts 1 and 3 of the request and therefore needs to issue the complainant with a fresh response to parts 1 and 3 of his request providing the recorded times from the CCTV footage. The council needs to take these steps in the timeframe outlined in paragraph 5 of this decision notice."

5. Parts 1 and 3 of the request were:

"1. Time assailant enters Home Tower [CCTV bin room /fire exit camera] to time he is picked on [CCTV main lobby camera] main lobby (it take 5 seconds. Over that is the tirade/ threats/ abuse!)

3. How long did the Assailant remain on my landing swearing issuing threat whilst I was on the phone to the police #2 (approx. 70 seconds plus?)"

6. The council provided the complainant with its response on the 17 February 2016.
7. The complainant contacted the Commissioner on the 18 February 2016 as he was not satisfied with the response provided by the council. The Commissioner advised the complainant that he would firstly need to request the council to conduct an internal review before the complaint could be considered further.
8. The complainant requested the internal review on the 24 February 2016 and the council provided its internal review response on the 1 March 2016 upholding its 17 February 2016 response.

Scope of the case

9. The complainant was still not satisfied with the response he received so brought the complaint back to the Commissioner to consider.
10. The council's response provided some narrative along with the requested times.
11. The complainant has raised an issue with the narrative provided by the council in its response to him which he considers breaches the Equality Act (Sexual Orientation) Regulations 2007 section's 3.2 & 8 and the Communication Act 2003 S127.
12. As the Commissioner is not the regulators of those two Acts, the Commissioner has advised the complainant he is unable to look into or consider this aspect of dissatisfaction with the council. The Commissioner has suggested that this may be something that the complainant would need to take to the regulators of those Acts to consider further.
13. The decision notice was for the council to provide the times for parts 1 and 3 of the request. If the council has added narrative on top of providing the times, the Commissioner is of the view that he is not able

to consider the narrative given; he can only focus on the times given as the FOIA is about being provided with the recorded information requested. The requested recorded information in this case is for the times relevant to the request.

14. The Commissioner therefore considers the scope of the case is to consider the complainants dissatisfaction with the accuracy of the times provided by the council for parts 1 and 3 of the complainant's request.

Reasons for decision

Section 1 of the FOIA – Information held/ not held

15. 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 within the scope of the request, and if so, to have that information communicated to him.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information within the scope of the request (or was held at the time of the request) or as in this case, whether the times provided to the complainant are the times recorded on the CCTV footage.
17. The times the council gave for parts 1 and 3 of the complainants request were as follows:
18. For part 1: entering the bin area at 13:06 was a younger gentleman and 13:07 for an older gentleman. Both leave the bin area at 13:08. So the time was approximately 2 minutes and 1 minute for each person.
19. For part 2: the young gentleman was on the landing for approximately 20 seconds, exiting into the stairwell for approximately 5 seconds reappearing on the landing for approximately 1 minute 10 seconds.
20. The council has told the Commissioner it is still relying on the same reasons it gave for the previous decision notice FS50569974 for the accuracy of the times it can give.
21. As previously considered in decision notice FS50569974 at paragraph 23, the Commissioner is also still of the view that it is subjective in determining exactly when to start the timing of someone entering and

leaving an area. As stated in the previous decision notice for part 2 of the complainant's original request:

"For instance, is it when the door starts to open or is it when the 'individual' is in full view after the door has opened? The same for when leaving, is it when the door has fully shut behind?"

22. Based on this, the times now given by the council for parts 1 and 3 of the request appear to be, in the Commissioner's view, satisfactory.
23. Another issue the complainant raised about this case in relation to the requested times, is the council's statement that there are no cameras in the bin room. The complainant has referred to a camera, which he called 'camera 7' and states that this camera is in the bin room and provided the Commissioner with a picture of this camera.
24. The council, on being asked about this camera by the Commissioner, maintains there is no camera in the bin room. It has told the Commissioner the camera referred to as 'camera 7' by the complainant is located in the fire exit, which is adjacent to the bin room and this camera would only be able to capture images of a person standing in the fire exit and or exiting the fire exit only.
25. It points out that the camera in the fire exit is placed approximately 12 inches above the door entrance to the bin room as shown in the complainant's picture of it and therefore blocks any potential capturing of images in the bin room.
26. The Commissioner on this issue would like to note the discrepancies between the council and complainant regarding where this camera is located and what images can/ cannot be captured by 'camera 7', but the request was not about 'camera 7'. It was for the times and the council has provided those.
27. So regardless of what image 'camera 7' captures or does not capture and is located, with regards to the request made, the Commissioner is satisfied the council has provided the times requested as accurately as it can do using the CCTV it has.
28. As the Commissioner is satisfied with the times now provided to the complainant, the Commissioner does not require the council to take any further steps.

Right of appeal

29. 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

30. 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.
31. 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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Wycliffe House
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