

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2018

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle Upon Tyne
NE99 2BN

Decision (including any steps ordered)

1. The complainant has requested from Newcastle City Council (the Council) information in relation to her son's Education, Health and Care Plan (the EHCP). The Council provided part of the requested information, but failed to respond in relation to the remainder of the request.
2. The Commissioner's decision is that the Council has breached section 1(1) of the FOIA by not confirming nor denying whether it holds part of the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant confirming or denying that it holds data or information used to write the disputed sentence in the complainant's son's EHCP.
4. The Commissioner also found that by failing to comply with the request within the statutory time for compliance, the Council breached section 10(1) of the FOIA.
5. The Council 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

6. On 29 November 2016, the complainant wrote to the Council and requested information in the following terms:

"I have a specific question with respect to the following statement in the EHCP plan.

'[name redacted] is educated at home and in the community in accordance with parental preference under section 7 of the Education Act 1996, but it is the view of the LA that a maintained and non-maintained special school, specialising in Autism Spectrum disorder would be suitable.'

1. Could you please let me know who wrote this sentence and what data or information was used in formulating it; and who authorized it to be in the plan?

2. What were the names of the people on the panel who authorized the final version.

3. Please send any minutes of meetings where this was discussed and agreed."

7. After a very lengthy delay, the Council responded on 5 September 2017. It refused to provide the information in relation to question 1 and question 2 citing the exemptions provided under section 40(2) – personal data of third parties and section 42(1) – legal professional privilege, of the FOIA. In relation to question 3, the Council responded partially by providing an extract of the minutes of a meeting, but withheld the remainder on the basis that it contained sensitive personal data of third parties and was not relevant to the complainant's request.
8. Remaining dissatisfied with the response, on 13 November 2017 the complainant requested the Council to conduct an internal review.
9. Due to reasons unknown to the Commissioner, the Council failed to conduct an internal review, despite being reminded by the Commissioner to do so.

Scope of the case

10. The complainant initially contacted the Commissioner on 11 October 2017 to complain about the way her request for information had been handled.

11. On 8 November 2017, the complainant was advised to submit a request for internal review to the Council, to offer it an opportunity to revise its position.
12. During the course of the Commissioner's investigation, the Council informed the Commissioner that it had decided to change its position and it provided the complainant with a fresh response on 21 August 2018. The Council withdrew the exemptions it had cited previously and decided to provide previously withheld information.
13. When contacted by the Commissioner to confirm whether this new response satisfied her original request, the complainant stated that she was not fully satisfied. The complainant considered that the Council had not fully responded to question 1 because, whilst it provided the name of the officer who authorised the EHCP, the Council did not provide the "*data or information*" used in formulating the contested sentence, nor did it deny holding such information.
14. Therefore, the focus of this decision notice is on whether the Council should have confirmed or denied holding the information requested under question 1 which the complainant considers remains outstanding.

Reasons for decision

Section 1 – General right of access to information

15. Section 1(1) of FOIA states that:

"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."*

16. The Commissioner notes that the formulation of question 1 of the complainant's original request appears to seek three sets of information:
 - who wrote the sentence?
 - what data or information was used to write that sentence? and
 - who authorised that sentence to be included in EHCP?
17. In its response of 21 August 2018, the Council explained that "*the writing of an EHC Plan is a statutory process undertaken in accordance*

with the Special Educational Needs and Disability Code of Practice Jan 2015. The Plan represents the view of the LA as a corporate entity, with input from a number of professionals. The sentence you refer to is not attributable to any particular individual, but rather represents the corporate view, professional advice having been sought from the individuals already made known to you. However, the name of the statutory Local Authority Officer with responsibility for signing off the final Plan is Philip Morris."

18. The Commissioner notes that this response does not address the part of the request for "*data or information*". As the Council no longer relies on the exemptions cited previously, this means that it has failed to respond to that part of the request. Therefore, the Commissioner considers that the Council failed to comply with its duty to confirm or deny whether it holds part of the requested information. At paragraph 3 above it is now required to issue a fresh response to the complainant's request.

Section 10 – Time for compliance with the request

19. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.
20. In this case, the complainant submitted her initial request on 29 November 2016 and did not receive a response until 7 September 2017. Therefore, the Council breached section 10(1) on this occasion.

Right of appeal

21. 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

22. 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.
23. 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

**Ben Tomes
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