

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2018

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

Decision (including any steps ordered)

1. The complainant requested information about severance agreements.
2. The Commissioner's decision is that Birmingham City Council ("the Council") failed to issue its response within 20 working days and therefore breached Section 10 of the FOIA.
3. As the information has now been provided, the Commissioner does not require the Council to take any further steps.

Request and response

Request 1

4. On 17 May 2017, the complainant wrote to the Council and requested information in the following terms:

"Please send me: Birmingham City Council

1. *Waste Management Performance figures, by depot for period April 2016 to April 2017*
2. *Waste Management Overtime paid to employees for each depot for period April 2016 to April 2017.*

3. *Waste Management Depot by depot expenditure for period April 2016 to April 2017*
 4. *Waste Management Depot by depot expenditure for period April 2016 to April 2017 for Gloves, Wipes, HVizs, boots,*
 5. *All Employees contract severance agreements by Birmingham City Council for the Period April 2015 to April 2017 by Pay scale.*
 6. *All Employees contract severances agreements by Birmingham City Council for the Period April 2015 to April 2017 by Ethnicity.*
 7. *All Employee contract severances agreements by Birmingham City Council for the Period April 2015 to April 2017 by Age.*
 8. *The number of investigations, where external investigators have been contracted by BCC since April 2015 to April 2017.*
 9. *The number of live cases where external providers are in engaged in conducting investigations as at 17th May 2017."*
5. The Council responded to the request on 23 June 2017. It provided information within the scope of elements 1-4, 7 and 9 of the request. However, it withheld information in relation to the remaining three questions (5, 6 and 8). It stated that, because the numbers involved were relatively small, there was a danger that an individual could be identified and therefore a breach of the Data Protection Act 1998 would occur. The Council thus chose to rely on Section 40(2) (personal information) of the FOIA to withhold the information.

Request 2

6. On 3 July 2017, the complainant wrote to the Council and remade the parts of the earlier request that had been refused:
- "To assist in the matter, could I ask that my request perimeters are extended therefore to avoid any data protection breaches, can I ask that the start date be changed from April 2015 for the said questions to April 2012 to date.*

Question 5

"All Employees contract severance agreements by Birmingham City Council for the Period April 2012 to April 2017 by Pay scale.

Question 6

"All Employees contract severances agreements by Birmingham City Council for the Period April 2012 to April 2017 by Ethnicity.

Question 8

"The number of investigations, where external investigators have been contracted by BCC since April 2012 to April 2017."

7. The Council responded on 31 July 2017. It refused to comply with the request and cited Section 12 of the FOIA (cost exceeds appropriate limit) in order to do so.
8. The complainant requested an internal review of Request 2 on 30 August 2017. Birmingham City Council did not carry out a review.

Scope of the case

9. The complainant contacted the Commissioner on 18 December 2017 to complain about the way his request for information had been handled.
10. The Commissioner wrote to the Council on 30 January 2018 to request that it complete its internal review within 20 working days. The correspondence was neither acknowledged nor responded to.
11. The complainant contacted the Commissioner again on 13 June 2018 to say that he had still not received the outcome of the internal review.
12. Given that the complainant had, at that point, waited nine months for the outcome of the internal review, the Commissioner considered that it would be unreasonable to expect him to wait any longer. She has therefore exercised her discretion and accepted the case for investigation without an internal review.
13. During the course of the Commissioner's investigation, the Council, whilst maintaining that Section 12 was engaged in relation to Request 2, agreed to provide the information it had previously withheld in relation to Request 1. In the interests of resolving the matter whilst still acquiring useful information, the complainant agreed not to pursue his complaint in relation to Request 2 but still wished the Commissioner to consider the timeliness of the response provided to Request 1.
14. The Commissioner has therefore considered the timeliness of the Council's response to Request 1. At her discretion, she has also made some comments in the "other matters" section relating to the Council's handling of Request 2.

Reasons for decision

15. Section 1(1) of the 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. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

18. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

19. Request 1 was made on 17 May 2017 but was not responded to until 23 June 2017 – the 26th working day.

20. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached Section 10 of the FOIA.

Other matters

21. Whilst this decision notice has dealt largely with matters pertaining to Request 1, the Commissioner also wishes to draw attention to the Council's failure to carry out an internal review in relation to Request 2.
22. Whilst there is no statutory time limit for carrying out an internal review, the Commissioner's guidance states that they should normally be carried out within 20 working days and should never take longer than 40 working days.
23. The Council had still not completed its review, more than a year after it had first been requested and 10 months after the Commissioner's first intervention. The Commissioner finds this unacceptable.

Right of appeal

24. 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

25. 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.
26. 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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