

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 October 2018

**Public Authority:** Trafford Metropolitan Borough Council

**Address:** Trafford Town Hall  
Talbot Road  
Stretford  
Manchester M32 0YT

### **Decision (including any steps ordered)**

---

1. The complainant has requested information associated with its contract with Amey plc. Trafford Metropolitan Borough Council ('the Council') relied on section 22(1) of the FOIA to withhold the requested information (information intended for future publication).
2. The Commissioner's decision is that:
  - At the time of the request, the Council could rely on section 22(1) of the FOIA to withhold the requested information, and the public interest favoured maintaining the exemption.
  - The Council breached section 17(3) as it did not provide the complainant with public interest arguments associated with its application of section 22(1), in either its response or internal review.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

## Request and response

---

4. On 5 January the complainant wrote to the Council and requested information in the following terms:

*"1). What additional charges/fines have been imposed since the aforementioned data..?  
2). What is the payment status of the additional charges/fines..?  
3. How many full time employed staff are responsible for monitoring Amey performance and KPI's/standards..?"*

5. The Council responded on 6 February 2018. It released information relevant to part 3 of the request. With regard to parts 1 and 2, the Council said this information would be published on the Council's website at the end of the financial year.
6. The Council provided an internal review on 11 April 2018. It confirmed that it was relying on section 22 to withhold the information requested in parts 1 and 2 and advised that it expected this information to be published in June 2018.

## Scope of the case

---

7. The complainant contacted the Commissioner on 5 April 2018 to complain about the way his request for information had been handled. He subsequently confirmed to the Commissioner that he was satisfied with the Council's response to part 3 of his request.
8. The Commissioner's investigation has focussed on the Council's reliance on section 22(1) of the FOIA with regards to parts 1 and 2 of the request, and the balance of the public interest. She has also considered the Council's refusal of the request under section 17.

## Reasons for decision

---

### **Section 22 – information intended for future publication**

9. Section 22(1) of the FOIA says that information is exempt information if a) the information is held 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 held with such a view at the time of the request and c) it is reasonable in all the circumstances that the information should be withheld until the date referred to in a).

10. Section 22 is subject to the public interest test.
11. In correspondence to the Commissioner on 3 August 2018, the complainant confirmed that no relevant information had been released (or published) in the interim. He advised that the Council had advised him that the delay was due to Amey disputing fines resulting in a particular procedure that then needed to be followed. The complainant considers that it is in the public interest for the Council to provide a summary of the fines/deductions that were being discussed rather than concluding these discussions in private and then presenting the data a fait accompli.
12. In its submission to the Commissioner, dated 14 September 2018, the Council said that at the time of its response to the complainant on 6 February 2018, and its internal review on 11 April 2018, the Council was committed to publishing the requested information, following the protocol from the previous financial year. The Council provided the Commissioner with a web link to where it said figures from the last financial year (2016/2017) are published. At the date of this notice, that link was not functioning, but the Commissioner has found the information in question for 2016/2017 at:

<https://www.trafford.gov.uk/about-your-council/strategies-plans-and-policies/performance/docs/Strategic-Board-Annual-KPI-Summary-2016-2017.pdf> )

The Council said that this information was last published on 5 October 2017, after validation at the Partnership Board Meeting in 2017.

13. The Council went on to say that at the time of its response to the complainant, it had envisaged that the information the complainant has requested would be published in its entirety in June 2018, after being validated and agreed. The Council said validation is necessary to ensure the published information is accurate and 'authentic' with quality assurance being necessary to prevent any challenges being raised by the public. The Council confirmed that it had every intention to publish the information as soon as possible.
14. The Council acknowledged that, following the internal review, publishing the information in question was subject to delay as, at 14 September 2018, the Council has not been in a position to validate all the information relating to 2017-2018. This is because the performance information for a number of months has not been agreed between it and Amey. However, the Council told the Commissioner that it remained committed to publishing information associated with 2017-2018, but in its final form. At 14 September 2018, the Council expected that the information would be published after formal agreement by the One

Trafford Partnership Board meeting on 24 September 2018. The Council advised that if agreement was not reached at the Board meeting, there would be a dispute resolution process to follow in accordance with the provisions in the Council's contract with Amey.

15. On 17 October 2018, the Council confirmed to the Commissioner that information covering the complainant's request has been published and is available at:

<http://www.trafford.gov.uk/about-your-council/strategies-plans-and-policies/performance/performance-information.aspx>

16. Having considered the Council's submission, with regards to section 22(1)(a) the Commissioner is satisfied that the Council held the requested information with the intention of publishing it at a future date. This is because it had published the information relating to the previous year 2016/2017. As above, it has now published the 2017/2018 information.
17. With regard to section 22(1)(b), the Commissioner is satisfied that, at the time of the request on 5 January 2018, the Council intended to publish the requested information, for the same reason; namely that it had published the information for the previous year and has now published the 2017/2018 information.
18. Finally, with regard to section 22(1)(c), the Commissioner is satisfied that it was reasonable in the circumstances to withhold the requested information until such time as it was published. This is because, at the time of the request, the 2017/2018 information was going through a process of validation and, if necessary, dispute resolution with Amey plc.
19. Since the three criteria at paragraph 9 have been met, the Commissioner is satisfied that the Council correctly applied section 22(1) to the information the complainant has requested, at the time of the request. She has gone on to consider the public interest test. Although she had found the information engaged the section 22(1) exemption, the Commissioner may still have required it to be released if there was sufficient public interest in doing so.

### **Public interest test**

#### Public interest in releasing the information

20. In his communications to the Commissioner, the complainant has indicated that there is a public interest in releasing the information, without explaining what that public interest is. The Commissioner therefore does not find this a compelling public interest argument.

21. There does, however, exist a general public interest argument for public authorities to be shown to be open and transparent.

Public interest in withholding the information

22. The Council told the Commissioner that at the time of the request and the internal review it was in the process of validating the accuracy and authenticity of the information. It argued that there is considerable weight to the argument that it should be able to publish accurate data which does not mislead the public.

Balance of the public interest

23. The complainant has not advanced any arguments or local (or national) factors that would indicate that there was a public interest in the information in question being released in advance of its planned publication. The Commissioner considers that there is some public interest, however, in the Council being able to publish, to its planned timescale, information associated with its contract with Amey plc that is validated and accurate. The Commissioner sees no evidence to suggest that the Council would not have published the requested information – it confirmed that it will do so, had published the information for the previous financial year and has now published the 2017/2018 information. The Commissioner therefore finds that the balance of the public interest favoured maintaining the section 22(1) exemption in this case.

**Section 17 – refusal of request**

24. Section 17(1) says that if a public authority is relying on an exemption in Part II of the FOIA to either withhold information it holds, or to refuse to confirm or deny it holds relevant information, it should issue the applicant with an appropriate refusal notice within the timescale for complying with section 1(1).
25. Section 17(3) obliges a public authority to include, where applicable, a breakdown of the public interest factors which were taken into account and the reasoning behind the authority's conclusion that the public interest lay in maintaining the exemption.
26. The Council did not put forward any public interest arguments in its responses to the complainant with regard to its reliance on section 22(1) and therefore breached section 17(3) of the FOIA.

## Right of appeal

---

27. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**