

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

Public Authority: Cumbria County Council
Address: Cumbria House
117 Botchergate
Carlisle
CA1 1RD

Decision (including any steps ordered)

1. The complainant has requested from Cumbria County Council ("the Council") information in relation to the cost of temporary traffic lights in a specific area.
2. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the requested information.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 12 March 2020, the complainant wrote to the Council and requested information in the following terms:

"Since 4th November 2018 there have been temporary traffic lights at the railway bridge on the A596 near Blennerhasset pending repair to the bridge following an accident.

Under the FOI please can you tell me the cost of the traffic lights from 4th November 2018 to present day 12/03/2020 plus separately additional maintenance costs over the same period."
5. The complainant contacted the Council again on 16 April 2020, as they had not received a response to their request.

6. The Council responded the following day, explaining that due to the Covid-19 pandemic, there were delays in handling FOIA and Environmental Information Regulations 2004(EIR) requests.
7. On 8 June 2020, the complainant contacted the Council again, as they had still not received a response to their request. The Council responded the same day, advising it will provide a response as soon as possible.
8. On 3 July 2020, the complainant contacted the Commissioner, as they had not received a response to their request.
9. On 18 August 2020, the Commissioner contacted the Council, advising it that it needed to provide a response to the complainant's request.
10. The Council responded, advising that it had provided a response on 12 July 2020. It denied holding the information and explained that all costs are the responsibility of the managing agent, Connect Roads. It also explained that it pays an annual sum to maintain the network, regardless of how much is spent to maintain it.
11. Following an internal review the Council wrote to the complainant on 23 August 2020. It stated that it upheld its original position.

Scope of the case

12. The complainant contacted the Commissioner on 3 July 2020 to complain about the way their request for information had been handled.
13. The Commissioner considers that the scope of the case is to determine if the Council holds the requested information.

Reasons for decision

Section 1 – right of access to information held by public authorities

14. Section 1 of the FOIA states:

'(1) 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'.

15. 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).
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of probabilities.
17. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider any other information or explanation offered by the Council which is relevant to her determination.

The complainant's position

18. The complainant has explained that they are seeking information regarding the cost of temporary traffic lights that are situated in a specific area, following an accident that damaged a nearby bridge.
19. They have explained that they understand the Council's explanation that there would be one annual payment. However, they consider that there must be a known cost for the lights and maintenance.
20. The complainant has stated that they believe the third party, Connect Roads, would have this information and be able to provide it to the Council.

The Council's response

21. The Council has explained that it pays Connect Roads an annual sum to maintain the network. It advised that all traffic management is covered within the cost of this annual sum, regardless of how much money is spent on specific areas.
22. It advised the Commissioner that if the Council was being charged for this traffic management, Connect Roads would have sent an invoice.
23. The Council explained that Connect Roads has confirmed that an invoice will not be sent for this specific area. It has also provided a statement from Connect Road's maintenance contractor, which states that the Council "*...has not incurred any additional costs or fees in relation to the temporary traffic lights and associated traffic management that has been in place at Heathfield Bridge...All costs*

are for the account of Connect Roads and its maintenance contractor...". As such, the Council does not hold the information that the complainant has requested.

Conclusion

24. In circumstances such as this, it is common for the terms that have been agreed between a public authority and a third party in relation to sharing information, to be held within the contract.
25. The Commissioner asked to view the contract between the Council and the third party, to determine if Connect Roads held the information on behalf of the Council.
26. The Commissioner acknowledges that there are not any specific contract clauses for traffic management. However, the contract in question does cover road maintenance which includes traffic management.
27. The Council has confirmed to the Commissioner, and demonstrated with the contract, that cost information is not requested, or required by the Council. As such, should the third party, Connect Roads, collate this information, it is for its own benefit and it is not held on behalf of the Council, nor is it expected to provide the information to the Council.
28. The Commissioner understands why the complainant considers that this information would be held by the Council. However, having viewed the relevant parts of the contract between the Council and the third party, the Commissioner is satisfied that the Council does not hold the information requested and the third party does not hold it on behalf of the Council.
29. Based on the information provided, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold information that falls within the scope of the complainant's request. She therefore concludes that the Council has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

- 30. 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:
- 31. First-tier Tribunal (Information Rights)
 - GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

 - Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber
- 32. 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.
- 33. 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

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