

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 August 2021

Public Authority: Surrey County Council

Address: Woodhatch Place
11 Cockshot Hill
Reigate
Surrey
RH2 8EF

Decision (including any steps ordered)

1. The complainant requested information relating to the Emergency Active Travel Fund. Surrey County Council (the Council) provided some information within the scope of the request.
2. The complainant considered that further information should be held, namely information within the scope of parts (3) and (5) of the request.
3. The Commissioner's decision is that the Council holds information falling within the scope of parts (3) and (5) of the request, which it has not sought to exempt from disclosure and which it has not disclosed. It has therefore breached section 1(1)(b) and section 10 of the FOIA. However, she is satisfied that, on the balance of probabilities the Council does not hold any further information within the scope of those parts of the request.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - disclose, to the complainant, the spreadsheet provided to the Commissioner during the course of her investigation.
5. The Council must take this step 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.

Background

6. On 25 June 2020, Surrey County Council was granted £848,000 by the government to support the rollout of the first phase of active travel schemes (Tranche 1).
7. This money was for emergency temporary measures to aid social distancing and encourage more cycling and walking, such as additional cycle parking, widening of footways and one-way streets¹.

Request and response

8. On 7 July 2020, the complainant wrote to the Council and requested information in the following terms:

"(1) There were 3 pilots for the active travel funding: Reigate, Farnham & Godalming. Please can you provide any evidence which was used in deciding the locations of these schemes.

(2) Following the DfT [Department for Transport] only agreeing to fund 50% of Surrey's indicative funding it was announced that Surrey County Council would fund the remainder. Please can you provide any information detailing where this money is coming from and what budget it has been moved from?

(3) For the 3 pilot projects please provide a cost breakdown: Money spent so far with a breakdown (eg. Materials, Labour, legal etc.) & budget for the remainder of the trials.

(4) Please provide any analysis done on the schemes (eg impact on traffic, safety audits etc.) & any monitoring planned to determine success (eg traffic counts, air pollution, noise levels etc.).

(5) Please provide details & information, including planned budget & expenditure for the remaining active travel schemes from the £1.697m".

¹ <https://www.surreycc.gov.uk/roads-and-transport/roadworks-and-maintenance/departments-for-transport-capital-funding/roads-and-pavements#funding>

9. The request was made via the 'whatdotheyknow' website. The Commissioner has numbered the individual points within the request for clarity.
10. In correspondence dated 14 August 2020, the Council acknowledged the delay in responding. It also provided the complainant with a link to its website where he could find some information about Active Travel funding.
11. The Council provided its substantive response on 21 August 2020, in which it provided the complainant with information in response to his request.
12. Following an internal review the Council wrote to the complainant on 29 September 2020. It provided some additional information within the scope of the request.
13. In subsequent correspondence with the Council, the complainant said:

"Thank you for the additional data that you have provided. Whilst it fills some gaps in the request, it still has significant gaps. Please can you provide details of planned budget and expenditure for the remaining schemes? It is not clear from the data that you have provided how or where the granted EATF [Emergency Active Travel Fund] has been spent".

Scope of the case

14. Following earlier correspondence, the complainant contacted the Commissioner on 12 October 2020 confirming that he wished to complain about the way his request for information had been handled.
15. By way of background to his request, the complainant told the Commissioner he was:

"... trying to establish how a government grant for active travel funding has been spent or is included in future budgets".
16. As is her practice, the Commissioner wrote to both parties setting out the scope of her investigation. In light of the above, she advised the complainant that the focus of her investigation would be to determine whether the Council handled his request in accordance with the FOIA: specifically whether the Council held further information within the scope of parts (3) and (5) of his request.
17. The complainant responded, confirming the scope of the case was correct.

18. The analysis below considers whether, on the balance of probabilities, the Council holds further information within the scope of parts (3) and (5) of the request.

Reasons for decision

Section 1 general right of access

19. Section 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".

20. In scenarios such as this, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
21. For clarity, the Commissioner is not expected to prove categorically whether further information is held, she is only required to make a judgement on whether further information is held on the civil standard of the balance of probabilities.
22. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, at the time of the request, the Council held further information within the scope of parts (3) and (5) of the request.
23. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

The complainant's view

24. The complainant told the Council that the main point of the request was *"to detail the total cost and expenditure on the schemes..."*.

25. While acknowledging that the Council had provided some information, the complainant did not consider that it was clear from the data provided how, or where, the granted EATF had been spent.

26. Following receipt of the Council's internal review, he told the Council:

"I am trying to understand how the Emergency Active Travel Fund allocation has been spent/will be spent, in its entirety. I don't believe we have seen anything that accounts for the total sum (including the 50% committed by the council) in detail. If this is available somewhere, then please can you point me in the right direction?"

The Council's view

27. As is her practice, the Commissioner asked the Council to revisit its handling of the parts of the request under consideration in this case. She also asked it to explain what enquiries it had made in order to reach the view that it did not hold further information within the scope of those parts of the request.

28. She did so with a series of detailed questions. These included asking the Council to explain the reference to £1.697m in part (5) of the request.

29. She also asked about the searches that had already been undertaken and tasked the Council with conducting fresh searches if its previous searches had not been thorough enough. She also asked whether the Council had a business need or statutory obligation to hold the requested information.

30. In its submission, the Council confirmed it had re-visited its handling of the request. By way of clarification about the amount of money available to the scheme, the Council told the Commissioner that, further to the original commitment to top up the DfT funding:

"...the decision was made to not do so but to focus on our application for tranche 2 funding which will make larger scale permanent improvement to the highway network".

31. With respect to the information in scope of part (3) of the request, the Council told the Commissioner:

"We supplied the available costs breakdown for Reigate and Farnham with the internal review report and explained why we did not hold it on Godalming. You will note below that the DfT funding was spent so no further budget was available".

32. It also explained:

"The schemes were implemented in a coordinated manner and hence we do not have a breakdown of each of the remaining schemes to that level, however, the schemes we delivered totalled 21 schemes".

33. It confirmed that the 21 schemes were all funded from the EAFT grant.
34. In the course of its correspondence, the Council variously mentioned *"considerable pressure by government to implement any schemes as soon as feasible"* and *"the tight timescales for implementation"*.
35. Asked to explain why the way in which the schemes were implemented meant that it was unable to provide any further breakdown of the costs, the Council told the Commissioner that costs were not assigned to a particular scheme:

"... as the materials being used were provided to cover all the schemes".

36. The Council acknowledged that part (5) of the request asked for details and information, *"including planned budget and expenditure for the remaining active travel schemes from the £1.697m"*. In other words, including the 50% committed by the Council.

37. However, it told the Commissioner:

"This is not applicable as we have spent the DfT grant of £848k and did not add to the funding".

38. The Council also advised:

"The grant was spent by each local highway team with the overall spend centrally co-ordinated, totalling £848k".

39. With regard to the Commissioner's questions about the searches it had carried out in order to establish whether further relevant information was held, the Council confirmed that the relevant SharePoint site for the schemes had been searched.

40. Subsequently, however, the Council advised the Commissioner of the existence of a spreadsheet. It explained that the spreadsheet was first created on 6 July 2020, the day before the request. It explained that, whether or not the spreadsheet was fully populated at the time of the request, it has since been updated.

41. Nevertheless, the Council provided the Commissioner with:

"...a spreadsheet showing the 21 schemes that went ahead indicating the original estimates as far as can be ascertained now".

The Commissioner's view

42. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no further relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether further information is held on the civil standard of the balance of probabilities.
43. The Commissioner accepts that the requested information is clearly of interest to the complainant. While he appears to be unaware of the Council's decision not to top up the DfT funding, she nevertheless accepts that he considers that the Council should be able to account in detail for how the awarded EATF allocation was spent.
44. The Commissioner considers that his expectation is not unreasonable.
45. During the course of the Commissioner's investigation, the Council identified further information falling within the scope of the request. The authority's failure to identify this information when providing its initial response to the request or during its internal review suggests that, prior to the Commissioner's involvement, adequate searches may not have been made.
46. The Commissioner has reviewed the information and is satisfied that it falls within the scope of the request. The Council has not sought to argue that it should not be disclosed because it falls under any of the non-disclosure exemptions in Part II of the FOIA. The Council must therefore disclose this information to the complainant.
47. With regard to whether any further information is held, as set out above, the Commissioner is required to make a finding on the balance of probabilities.
48. The Council has provided an account of the searches it had conducted and confirmed that it also consulted the relevant Manager.
49. Having considered the Council's response, and on the basis of the evidence provided to her, the Commissioner is satisfied that, on the balance of probabilities, no further recorded information within the scope of parts (3) and (5) of the request is held.

Section 1 – general right of access

Section 10 - time for compliance

50. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
51. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
52. The complainant submitted his request on 7 July 2020. During the course of the Commissioner's investigation, the Council confirmed that it holds further information falling within the scope of the request which it has not disclosed to the complainant and which it has not argued is exempt.
53. The Council has therefore breached section 1(1)(b) and section 10(1) of the FOIA.

Right of appeal

54. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

55. 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.
56. 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

**Laura Tomkinson
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