

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2023

Public Authority: Worcestershire County Council
Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested information about how much funding Onside Advocacy, a local charity, receives from Worcestershire County Council (the Council).
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the information described in the request.
3. No steps are required as a result of this decision.

Request and response

4. On 4 July 2022, the complainant wrote to the Council and requested information in the following terms:

"I understand that Onside Advocacy is part funded by the county council.
This organisation is not providing any form of service for this money.

I need to know how much they receive, what this is supposed to cover and what processes are in place to ensure that this is value for money."

5. The Council responded on 19 July 2022. It provided a link to records of the payments made to Onside Advocacy, explained what services the Charity offered and also how the contract was tendered.

6. Following the initial response from the Council the complainant sought to uncover more information about the tendering process. The complainant said the information provided was generic and not particular to Onside Advocacy.
7. The Council treated the complainant's dissatisfaction towards their response as a request for an internal review. The Council wrote to the complainant on 14 September 2022. It disclosed more information relevant to the tendering process that it used to assess the performance of Onside Advocacy in the following terms:

"This contract is a payment by results contract based on advocacy delivered. WCC pay 80% of the contract value in advance and 20% in arrears if Onside exceed the specified amount of advocacy (i.e. the no. of people advocated for). The other statistics collected relate to contract activity data such as numbers of referrals, referral sources, issue type/need for advocacy, staff hours delivered, client demographics, outcomes/ benefits to the individual etc.

We measure quantity of each type of advocacy in terms of the payment by results element of the contract to ensure value for money. We have contract meetings every quarter where we discuss:

- The analysed statistics
- the quality of the service including feedback from individuals requiring advocacy and agencies - which helps us understand the quality and skills of the staff and the effectiveness and impact of the advocacy including satisfaction of individuals receiving advocacy)
- any issues in relation to advocacy (such as accessing advocacy, quality concerns and the outcomes of the service etc). We monitor:
- 'Accessibility and reach of the advocacy services by monitoring the profile of people who access the advocacy, services referral sources, staffing hours and the type of advocacy needed.
- That advocacy is delivered within the statutory time frames
- Individual's outcomes

It is also a requirement of the contract that Onside Advocacy have their own complaints procedure."

Scope of the case

8. The complainant contacted the Commissioner on 15 September 2022 to complain about the way their request for information had been handled.
9. The complainant believes that the Council have only provided them with generic responses that relates to all tenders, not specific to Onside Advocacy and that the Council are staggering the release of information by not disclosing all the requested information at once.
10. The Commissioner considers that the scope of this case is to determine, on the balance of probabilities, if the Council holds any further information within the scope of the request.

Reasons for decision

11. Section 1(1) of FOIA:

“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”

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complaint believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. In deciding where the balance of probabilities lies, the Commissioner will consider the complainants evidence and arguments. He will also consider, where applicable, the searches carried out by the public authority, in terms of the extent of searches, the quality of the searches, their thoroughness and the searches yielded. In addition, he will consider any other information or explanation offered by the public authority which is relevant to his determination.

15. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
16. 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.
17. In his guidance, the Commissioner recognises that FOIA applies to information that a public authority already holds in a recorded form at the time of a request.
18. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

The Complainant's Position

19. After the Council's initial response the complainant expressed dissatisfaction with their response on the grounds that the information provided was generic to all tenders and not Onside Advocacy specifically.
20. After more information within the scope of the complainant's request was disclosed the complainant still argued that they needed more information.
21. In their complaint to the Commissioner, the complainant explained that they believed the Council is deliberately trying to stop them obtaining the information and that it is taking a staggered approach to the disclosure of the information that the complainant wants.
22. The complainant also said, "The second response was telling me how they are supposed to measure the effectiveness, but not IF they monitor the effectiveness. Now they are refusing to answer anything else."

The Council's Position

23. The Council provided responses to complainant on three separate occasions. After its third email to the complainant who was still dissatisfied with the information they had received, the Council explained said: "I'm sorry to hear that you remain dissatisfied with the response to your request for information following internal review. We have now provided additional information on two occasions and completed the required internal review process."

24. The Commissioner contacted the Council and asked it to finalise its position. The Council's upheld their position that it had disclosed all the information within the scope of the complainants request and that the request "was answered in full" on the 19th July. [The complainant] came back and some further clarification was offered, [the complainant] came back again and a full internal review was conducted and further clarification was given. We feel we have answered this request as fully as we can and have gone beyond the request and offered a great deal of additional information."

The Commissioner's Decision

25. The Commissioner has considered the Council's position, in conjunction with the request.
26. The Commissioner recognises that there is no dispute over the existence of any information, rather the complainant believes that the Council are not providing the level of detail desired in the information that it is disclosing.
27. Part of the complainant's initial information request was as follows: "I need to know how much they (Onside Advocacy) receive"
28. In response, the Council provided the complainant with a link to a website that lists all the payments the Council had made to commercial Suppliers since 2010, which includes all payments made to Online Advocacy over the past 12 years. The Commissioner is satisfied that this part of the request has been adequately responded to.
29. The remainder of the complainants initial information request was: "what this is supposed to cover and what processes are in place to ensure that this is value for money."
30. The Council responded and explained what services Onside Advocacy are contracted to supply as well as explaining that the Online Advocacy's "value for money" was assessed using a "competitive procurement process" before the contract was tendered.
31. The Commissioner considers that the remainder of the complainant's initial information request was adequately responded to as the Council disclosed what services Onside Advocacy offers and the Council told the complainant the process they used in order to assess Onside Advocacy's "value for money."
32. The Commissioner considers that the Council disclosed relevant information in relation to every aspect of the complaints initial information request and that the Council response was satisfactory.

33. Despite the quality of the Council's response, the complainant asked for additional clarification about the tendering process. The Council provided a brief summary of the criteria it uses to assess the performance of organisations that it may offer contracts to.
34. The complainant asked further questions of the Council about which key performance indicators were used to specifically measure the effectiveness of Onside Advocacy, which the Council interpreted as a request for an internal review.
35. In its internal review, the Council disclosed more information specific to the performance measures of Onside Advocacy.
36. The Commissioner believes that the Council's initial response was satisfactory and disclosed all the information within the scope of the complainants request that was held at the time that the request was made.
37. The Council going further and disclosing information to the complainant on two further occasions is evidence that the Council went above and beyond trying to provide the complainant with the information that they wanted.
38. On this basis, the Commissioner has concluded that, on the balance of probabilities, no more information within the scope of the complainants request is held.

Right of appeal

39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

Catherine Fletcher
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF