

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2024

Public Authority: Westminster City Council

Address: Westminster City Hall
64 Victoria Street
London SW1E 6QE

Decision (including any steps ordered)

1. The complainant has requested information from Westminster City Council (“the Council”) in relation to a specific consultation. The Council refused to disclose the information, citing section 22(1) of FOIA as its basis for non-disclosure.
2. The Commissioner considers that the Council has incorrectly applied section 22(1) of FOIA to the requested information.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information

The Council must take these steps within 30 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.

Request and response

4. The complainant requested the following information from the Council:

“Following the recent consultation undertaken by WSP under reference 8033/ND please advise the total number of responses received by them by email and by mail.”
5. The Council responded to the request on 22 January 2024. It refused to disclose the requested information, citing section 22(1) of FOIA (information intended for future publication).
6. The complainant sought an internal review of the Council’s handling of the request. A response to this was provided on 29 February 2024. The reviewer upheld the original decision.

Scope of the case

7. The complainant contacted the Commissioner on 6 March 2024 to complain about the way in which the Council handled their request for information.
8. The Commissioner’s investigation has focused on whether the Council is entitled to rely on section 22(1) of the FOIA to withhold the requested information.

Reasons for decision

9. Section 22(1) of the FOIA provides that information is exempt information if:
 - (a) the information is held by the public authority 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 already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in (a).
10. Section 22 is a qualified exemption which means it is subject to the public interest test.

11. In this case the Council clearly stated in its response to the complainant's original request that it intended to publish the consultation in Spring 2024, which would include the requested information.
12. The Commissioner's guidance on section 22 states that:-

"For the exemption in section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that it must have a settled expectation that the information will be published at some future date."
13. The Commissioner accepts that the Council held the information at the time of the request and that it expressed a settled intention to publish the requested information in Spring 2024.
14. The complainant states that:

"The Local Authority Association gives very clear guidance that results of a public consultation should be provided 'as soon as possible' following the Consultation. Westminster Council have the number and should disclose it - for the reason that we then know, at least, the extent to which there was public interest in responding to their Consultation."
15. In its response to the request the Council stated that:-

"The information requested does not add to the public's understanding of the consultation without the detailed analysis of what that means on whether the scheme progresses or not. Without the detailed analysis or further breakdown of the consultation numbers, this information could easily be misrepresented."
16. The Commissioner understands what the Council is saying, however the complainant is simply seeking a statistical figure, i.e. the number of responses to the consultation. This would at least give a preliminary indication of the level of interest in the consultation and, with clarification that this is just a preliminary indication regarding the scheme as a whole, and that the full consultation will be published in due course, should not mislead the public.
17. Given that the complainant does not want the entire consultation but just the number of responses received, in order to facilitate discussion around the scheme, and with reference to the Local Authority Association's guidance outlined in paragraph 14 above, the Commissioner does not consider that it is reasonable in all the circumstances to withhold the requested information under section 22(1) of FOIA.

18. The Commissioner therefore considers that, as the Council has not applied any other exemption under FOIA, it should now disclose the requested information as section 22 is not engaged.

Other matters

19. On 3 June 2024 the complainant once again requested the information from the Council as it had not been published in Spring as previously stated.

20. The Council responded on 12 June 2024 advising the complainant not to re-submit their request at that time as there was a pause on decision-making due to the upcoming election. The Commissioner notes that, while this may affect the consultation as a whole, it would not affect the requested information as it is simply a number already held by the Council.

21. As the second request is not the subject of this decision notice, the Commissioner has not made a formal judgement regarding this, however he notes that the Council failed to comply with FOIA by not fulfilling its statutory obligations in responding to that request. The Commissioner seeks to remind the Council of its obligations under the legislation to respond appropriately to all requests for information at all times.

Right of appeal

22. 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

23. 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.
24. 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.....

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF