

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2016

Public Authority: Reigate and Banstead Borough Council
Address: Castlefield Road
Reigate
Surrey
RH2 0SH

Decision (including any steps ordered)

1. The complainant requested information regarding the operation of winter night shelters.
2. Reigate and Banstead Borough Council (the Council) provided some information within the scope of the request but withheld other information under sections 40(2) (personal information) and 41 (information provided in confidence) of the FOIA.
3. The complainant disputed the application of section 41. During the course of the Commissioner's investigation the Council disclosed the information previously withheld by virtue of that section. However, the complainant remained dissatisfied on the basis that he did not believe that all the relevant information had been disclosed.
4. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold further information within the scope of the request. She requires no steps to be taken.

Background

5. The request in this case relates to information regarding the operation of winter night shelters by the Renewed Hope Trust (RHT).
6. The Council told the Commissioner:

"RHT are a charity that runs floating winter night shelters within the boroughs of Reigate and Tandridge at several locations that rotate day to day and year to year".

Request and response

7. Following earlier correspondence in which he had contacted the Council regarding his concerns about the running of the winter night shelters, on 20 November 2015 the complainant wrote to the Council and requested information in the following terms:

"1: Can you please provide all the information you have received from the RHT over the last four years concerning the operation of the Winter Night Shelters including information on the performance and success, however this is defined, of the shelters. Can you also provide any reports or notes or recordings made by your staff of any such submissions or meetings with the RHT that you are relying on to make your assertion of the success and trouble-free running of these shelters.

2: You state that night shelter venues are risk assessed. Can you please provide copies of all risk assessments that you have received from the RHT and also provide any reports or notes made by your staff with regard to these risk assessments".

8. The Council responded on 21 December 2015. With respect to the information within the scope of the request, the Council said that it was unable to provide information covering the whole of the last four years as the Renewed Hope Trust was only established in 2013. It also denied holding any information within the scope of the part of the request for a copy of any risk assessments of the night shelter venues.
9. In respect of the information it held, the Council provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so:
- section 40 personal information
 - section 41 information provided in confidence.
10. The complainant requested an internal review on 7 January 2016. He asked the Council to review, amongst other things, the redactions on pages 36 to 37 of the information provided to him – those pages containing the list of the winter night shelters venues for the period December 2015 to February 2016. He also told the Council:

"So, with regard to the information you have felt unable to release I would ask that you revisit this and concentrate on the period from 1st January 2015 till the present. I would like you to provide all the information available for this period. Where you are not prepared to provide the relevant data in your possession, I would ask that you provide a listing of the withheld data, giving dates, headings and/or outline contents".

11. The Council sent him the outcome of its internal review on 15 February 2016. It upheld its original position.

Scope of the case

12. The complainant provided the Commissioner with the relevant documentation on 11 May 2016 to complain about the way his request for information had been handled. He told the Commissioner:

"It is my belief that the Council is withholding data relating to incidents that occurred during the 2014-2015 Night Shelters I believe that this data is part of the information that the Council stated was being 'withheld' as it was provided to them in confidence".

13. Similarly, on 18 May 2016 he told the Commissioner:

"The main issue is that I believe the Council are withholding information about potentially serious incidents at one or more of these night shelters during the period December 2014 to March 2015 by using Section 41".

14. As is her practice, at the start of her investigation, the Commissioner wrote to the Council regarding its responsibility to satisfy the ICO that it had complied with the law. She asked the Council to provide her with a copy of the withheld information and detailed explanations for the parts of the FOIA cited.
15. In light of the complainant's concern about the nature of the information being withheld, the Commissioner pointed out that the complainant had asked to be provided, if applicable, with an indication of the nature of the withheld data.
16. During the course of her investigation, the Council provided the Commissioner with a copy of the withheld information. Following the Commissioner's intervention, the Council wrote to the complainant on 4 August 2016. It provided some information previously withheld by virtue of section 40(2) and explained the nature of the redactions it considers

still apply by virtue of that section. It also confirmed that it was not withholding any information in its entirety.

17. In subsequent correspondence with the Commissioner, while describing the release of previously redacted information as being "*of no relevance*" the complainant did not dispute the remaining redactions applied by virtue of section 40(2). However, he remained dissatisfied with the Council's use of section 41.
18. For the avoidance of doubt, the Commissioner wrote to the Council on 23 August 2016 regarding the information within the scope of the request that it was withholding by virtue of section 41.
19. As a result of a further review of its handling of the request, the Council wrote to the complainant on 19 September 2016. In that correspondence, the Council disclosed all the information previously withheld by virtue of section 41.
20. The complainant contacted the Commissioner on 20 September 2016 confirming that he was dissatisfied with that response as he did not believe that he had been provided with all of the relevant information held by the Council.
21. As the complainant does not dispute the redactions applied by virtue of section 40(2) and the Council is no longer relying on section 41, the analysis below considers whether, on the balance of probabilities, the Council holds any further information relevant to the request which it has not disclosed to the complainant.

Reasons for decision

Section 1 general right of access

22. Section 1 of the FOIA provides for a general right of access to information held by public authorities.
23. In this case, with the exception of a small number of redactions which it has explained to the complainant, the Council has confirmed that it has disclosed all the information it holds that falls within the scope of the request.
24. However, the complainant told the Commissioner:

"...it is my belief that the Council are aware from correspondence, meeting notes or phone conversations, of incidents during the period specified above (Dec 2014- March 2015), at or around, these

Night Shelters that may be of concern to unsuspecting neighbours of these now secretive shelters and are withholding such information from the public and, it would appear, you at the ICO also. The Council supports the Winter Night Shelter and relies on its existence to satisfy its obligations under the Severe Winter Emergency Protocol (SWEP) so it must monitor the performance of these shelters on an ongoing basis in some format. Where is this information and why are they pretending it does not exist?"

25. 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 standards of the balance of probabilities, the public authority holds, or held at the time of the request, any further information which falls within the scope of the request.
26. In this case, the Council has clearly stated to the Commissioner that it does not hold any other recorded information falling within the scope of the request.
27. When, as in a case such as this, the Commissioner receives a complaint that a public authority has not provided all of the requested information, it is seldom possible to prove with absolute certainty that there is nothing further to add.
28. While appreciating the complainant's frustration that the Council does not hold further information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of Johnson / MoJ (EA2006/0085)¹ that the FOIA:

"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
29. 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 the Council has complied with its obligations under section 1(1) of the FOIA.

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

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:

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

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

31. 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.
32. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF