

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 July 2018

**Public Authority:** Gloucestershire County Council  
**Address:** Shire Hall  
Westgate Street  
Gloucester  
GL1 2TG

#### **Decision (including any steps ordered)**

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1. The complainant requested information regarding population growth and forecast demand for secondary school places. Gloucestershire County Council did not respond within the statutory 20 working days prescribed by FOIA.
2. The Commissioner's decision is that in failing to communicate to the complainant the information it held to fulfil the request within the statutory timescale of 20 working days, Gloucestershire County Council breached section 10(1) (time for compliance) of the FOIA. The council also breached section 16 of the FOIA by failing to provide reasonable advice and assistance.
3. Gloucestershire County Council has now provided all the information to the complainant, therefore the Commissioner does not require the Council to take any steps.

## Request and response

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4. On 23 August 2017 the complainant wrote to Gloucestershire County Council ('the Council') and made a request for information, in relation to population growth and forecast demand for secondary school places, in the following terms:

*"For this analysis of the 'local need', I have attached a spreadsheet template, breaking down the demand 'Source' by County Council Ward, and by secondary school 'Destination' (recent actuals and 'best estimate' future numbers).*

*The initial (urgently needed) information release should cover:*

*(A) the Cheltenham Wards plus the five Wards which are contiguous with Cheltenham Borough (plus nearly-contiguous Churchdown ward), i.e. the demand 'sources', and*

*(B) the secondary schools situated within those Wards, i.e. the Secondary school places 'destinations'.*

*The full information request is for this Source-Destination-Year spreadsheet to cover the whole county, especially Gloucester City which has greater population growth forecast (and urban extensions) than Cheltenham yet curiously no additional secondary schools proposed whatsoever."*

5. The Council responded on 21 September 2017. It refused to provide the requested information citing the FOIA exemption at section 21 - information reasonably accessible to the applicant by other means. The Council advised:

*"The information you requested can be found on the following Department for Education webpage*

*<https://www.gov.uk/government/publications/school-capacity-academic-year-2015-to-2016> published in April 2017.*

*To find the relevant information please note that Gloucestershire County Council's LA number is 916. School capacity data and current number on roll can also be found on the same webpage. This information is updated and published annually."*

6. Following an internal review the Council wrote to the complainant on 24 October 2017. It revised its position to state that the information is not held:

*"Our original response to your request stated that the information you were looking for was available on the Department for Education webpages. It is not the case that the information you requested concerning the breakdown of demand by ward is available on those webpages. I apologise for the confusion over this in our original response to you.*

*After further investigation, I can now inform you that secondary school forecasts produced in Gloucestershire are not based on where the pupils live but on feeder primary schools for that secondary school. The forecasts also make allowances for those pupils coming from other schools. Hence the information cannot be provided by ward as requested in the spreadsheet you have supplied as the council does not hold the information in this way. In order to provide the information in the format you have requested the council would need to create a complete new dataset. FOI legislation requires the consideration of recorded information, but not where information would have to be created in order to answer a request."*

7. The Commissioner contacted the Council on 19 April 2018 to investigate whether it held any information in scope of the request, including similar data that may enable the complainant to derive his required data set.
8. The Council carried out a review and updated its response to the complainant on 25 May 2018. Where available it provided similar data split by its own categorisation methods (eg divisions not wards) or generated using its own methodology. It provided further information to explain why certain datasets are not held. It withheld some information citing the exemption at section 40(2) FOIA.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 4 December 2017 to complain about the way his request for information had been handled. Specifically that the Council had initially incorrectly cited the exemption at FOIA section 21 and then following an internal review had refused on the grounds that the information could not be provided by ward. In response to the internal review the complainant stated to the Council *"In that case, a helpful authority would provide the breakdown by whatever nearest breakdown it does."*
10. Following an investigation by the Commissioner, the Council subsequently released the information it held that was relevant to the request, and full refusal notification for the information not held or

exempt according to section 40(2) FOIA. The Commissioner contacted the complainant to enquire whether he was satisfied with the updated response. The complainant confirmed that he could now complete much of the data requested in the spreadsheet 'template' which had accompanied the information request.

11. The complainant stated that he remained dissatisfied with the delay in obtaining a response, the impact being that (in relation to the planning of new secondary schools) *"major opposition arguments [were] obstructed during the critical months due to lack of the relevant data."*
12. The Commissioner therefore considers that the scope of the case is to determine whether the Council made a procedural breach of the FOIA, in particular with regard to section 10(1) – time for compliance and section 16 – duty to provide advice and assistance.

## **Reasons for decision**

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### **Section 1 – general right of access**

13. Section 1(1) of the FOIA states:

*"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."*

### **Section 10 – time for compliance**

14. Section 10(1) of FOIA states:

*"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".*

15. The complainant made his request for information on 23 August 2017. The Council gave an incorrect refusal, citing section 21 FOIA (information reasonably accessible to the applicant by other means) on 21 September 2017. On 24 October 2017 it gave a revised position that the requested information was not held. The full response was provided to the complainant, following the Commissioner's intervention, on 25

May 2018. Therefore the Council took a period of 9 months to provide a response from the date that the request was received.

16. The Commissioner therefore finds that the Council has breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

### **Section 16 – duty to provide advice and assistance**

17. Section 16 states:

*“(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”*

18. In circumstances where a request is ambiguous section 16 requires a public authority to provide appropriate advice and assistance to the requestor to enable them to clarify their request.
19. In her guidance on section 16<sup>1</sup> the Commissioner sets out a number of examples of the reasonable provision of advice and assistance, including *“assisting an applicant to focus their request, perhaps by advising them of the types of information available within the requested category.”*
20. In this case, following the intervention of the Commissioner, the Council provided a similar data set which the complainant has confirmed satisfies the fundamental purpose of his request.
21. The Commissioner also notes the complainants response to the Council after the internal review *“...a helpful authority would provide the breakdown by whatever nearest breakdown it does.”*
22. The Commissioner considers that the Council failed to provide reasonable of advice and assistance to the complainant. She therefore finds that the Council has breached section 16.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

## Right of appeal

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23. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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 .....**

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