

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2019

Public Authority: Warwickshire County Council
Address: Law & Governance
PO Box 9
Shire Hall
Warwick
Warwickshire
CV34 4RR

Decision (including any steps ordered)

1. The complainant has requested information from Warwickshire County Council ("the Council") relating to local schools' finances for the years between 2018 and 2021. The Council responded providing some information and stated that it did not hold any more information within the scope of the remainder of the complainant's request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any further information within the scope of the request. Therefore the Commissioner requires no further steps to be taken by the public authority.

Request and response

3. On 14 September 2018, the complainant wrote to the Council and requested information in the following terms:

"I am requesting the following information under the Freedom of Information Act.

Please list all Warwickshire schools and state:

- *Their Income (section 251); net expenditure; and Outturn for 2018/19*

- *Their Income (section 251); net expenditure; and Outturn for 2019/20*
- *Their Income (section 251); net expenditure; and Outturn for 2020/21*
- *Which have a deficit agreement with the LA*
- *Which have had a warning notice issued*

An Excel spreadsheet would be most useful!"

4. The Council responded on 12 October 2018. Whilst it provided some of the information requested and also denied holding the remainder of the requested information, this later transpired to be a response a similar, but different, request and therefore not relevant to the specifics of the request of 14 September 2018.
5. The Council wrote to the complainant again on 29 October 2018. It maintained its position and also explained that the individual schools should hold the information the complainant requested. The council later clarified to the Commissioner that this should actually have been the initial response.
6. The Council completed an internal review and wrote to the complainant on 12 March 2019 to advise him of the outcome. The Council still maintained its position and also stated why it did not hold some of the information within his request as it does not yet exist.

Scope of the case

7. The complainant contacted the Commissioner on 19 October 2018 to complain about the way his request for information had been handled.
8. The Council explained to the Commissioner that it had not yet completed an internal review for the complainant's request, and requested the time to send an internal review response.
9. The Commissioner allowed this and asked the complainant to confirm if he was happy with the response once it was received. As the complainant believes that the Council holds more information than it has disclosed, he has asked the Commissioner to continue with her investigation.
10. The Commissioner considers the scope of the case will be to determine whether the Council handled the request made on 14 September 2018 in accordance with the FOIA. Specifically, the scope of the case will consider whether the Council was correct when it said that it does not hold any further information.

Reasons for decision

Section 1 of the FOIA – Information held/not held

11. Section 1 of 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 within the scope of the request, and

(b) if that is the case, to have that information communicated to him."

12. 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 standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The Commissioner asked the Council to describe the searches it had completed in an effort to find any information within the scope of the five points within the request. The Council confirmed it had contacted staff members of the Schools and Funding Strategy Team who advised the Freedom of Information Team that some of the specific information that was requested is not held by the Council as it does not yet exist.
14. The Council explained that points four and five, those requesting which schools which have a deficit agreement and which have had a warning issued, were answered in the Council's full initial response, sent to the complainant on 29 October 2018.
15. The Council subsequently explained that some of the information the complainant requested is not yet in existence as the complainant asked for information relating to schools' net expenditure and outturn for years that have not happened at the time the request was made (2018/19, 2019/20 and 2020/21).
16. The Council says it has provided the complainant with information regarding the income for 2018/19 and 2019/20 as it does hold that information but it did explain that although section 251 information is given to each school by the Council, it only creates the information before the start of the forthcoming year, so the information relating to income in the year 2020/21 will not be produced until around March 2020.

17. The complainant has raised his concerns as he has suggested that he has seen evidence to the contrary. He says he has seen a letter outlining that the Council should have projections for three years and that all schools must submit these to the Council.
18. The Commissioner made enquiries with the Council regarding the retention policies it has and whether any information within the scope of the request may have been deleted or destroyed but the Council has confirmed to the Commissioner that no information relevant to the scope of the request has been deleted or destroyed.
19. To confirm the remaining parts of the request that had not been satisfied, the complainant asked for the following:

"Please list all Warwickshire schools and state:

 - *Their Income (section 251); net expenditure; and Outturn for 2018/19*
 - *Their Income (section 251); net expenditure; and Outturn for 2019/20*
 - *Their Income (section 251); net expenditure; and Outturn for 2020/21"*
20. After an objective reading of the above, the figures for at least two of the years the complainant requested information for would most likely to be meant as projections. The Commissioner contacted the Council to ask whether it had considered this, as it would be reasonable to have done so.
21. The Council responded to the Commissioner's enquiries to advise that it did not interpret the request to be for projected figures, and in any event, this is information that the Council does not hold. It only holds such information once the financial year has ended.
22. The Commissioner is satisfied with the explanations the Council has provided and understands that it can only provide recorded information that was in existence at the time of the request.

Other matters

23. Once the Commissioner had notified the Council that the case had been accepted for investigation, the Council took a further three months to confirm that it had not yet completed an internal review. While the FOIA

does not state that it is necessary to complete an internal review in a timely manner, the section 45 code of practice¹ states:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint, as should any written communication from a person who considers that the authority is not complying with its publication scheme. These communications should be handled in accordance with the authority's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application."

24. The Commissioner has also issued guidance regarding the time limits on carrying out internal reviews. The Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days.
25. There does appear to have been some confusion about whether the response the Council sent on 29 October 2018 was an internal review or not and it was later found that the contact sent to the complainant on that date was its initial response. However, both the complainant and the Commissioner wrote to the Council in November 2018 to either express further dissatisfaction or to confirm that the complaint had been considered eligible for review. To comply with the section 45 code of practice, the Council should have responded to the complainant once it had received the written reply from him or it would have been more efficient to contact the complainant to gain clarification about what he was unhappy with once it received contact from the Commissioner. Had this been done, the complaint would have been investigated sooner with fewer delays.
26. The Commissioner wishes to point out that she will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

2 <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her Regulatory Action Policy³.

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

27. 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

28. 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.
29. 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
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Wycliffe House
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SK9 5AF