

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2021

Public Authority: Birmingham Children's Trust
Address: 1 Lancaster Circus
Queensway
Birmingham
B4 7DJ

Decision (including any steps ordered)

1. The complainant has requested information on payments to Children's Health and Social Care service providers. Birmingham Children's Trust ('BCT') released relevant information, with some redacted under section 40(2) of the FOIA (personal data). The complainant considers that BCT holds further relevant information and that it should release the redacted material.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities BCT has released all the information it holds that is relevant to the complainant's request and has complied with section 1(1) of the FOIA.
 - The information BCT has withheld is the personal data of third persons and is exempt information under section 40(2) of the FOIA.
3. The Commissioner does not require BCT to take any remedial steps.

Request and response

4. On 16 December 2019 the complainant wrote to BCT and requested information in the following terms:

"I'd like to make a request for all payment transactions over £500 from April 2019 to Date, to suppliers who provide a service in Children's Health and Social Care. As a minimum, please make sure to include the date, value and recipient of each transaction.

This would include all suppliers falling under the categories :-

1. Payments to suppliers who provide fostering and adoption services to the Council
2. Payments to Children's Residential Care Providers
3. Providers who carry out Homeless Services for children
4. Payments to suppliers who provide Special Education Services

In particular I am looking for itemized transactions (i.e., at the daily level) for suppliers from 1st April 2019 - Current, preferably in CSV format."

5. BCT responded on 9 April 2020. It relied on section 12(1) of the FOIA to refuse to comply with the request as it considered the cost of complying with it would exceed the appropriate limit.
6. The complainant requested an internal review on 9 April 2020 and, following the Commissioner's intervention, BCT provided a review response on 7 August 2020. Having reconsidered its handling of the request, BCT released information it considered fell within scope of the complainant's request, redacting personal data under section 40(2) of the FOIA. BCT acknowledged that it had not responded to the request within the required timescale of 20 working days.
7. BCT provided the complainant with a final internal review response on 16 October 2020. It confirmed that it was satisfied with the response it had provided on 7 August 2020.

Scope of the case

8. The complainant first contacted the Commissioner on 30 July 2020 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on whether, on the balance of probabilities, BCT has released all the information it holds that is relevant to the complainant's request, and whether BCT can withhold some information under section 40(2) of the FOIA.

Reasons for decision

Section 1 – general right of access to information held by public authorities

10. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. The complainant has requested payments of £500 and over made to Children's Health and Social Care service providers, from April 2019 to the date of the request. BCT has released a spreadsheet comprising a series of sheets detailing 12 monthly payments made to various types of service providers, and the annual totals for each, for the financial years 2017/2018 and 2018/2019. The spreadsheet also contains a sheet labelled 'Apr – Dec 2019' which contains the specific information the complainant has requested. The complainant considers that the released information is incomplete, that information is being suppressed and that the released information suggests a figure for spend on the service in question that is less than a figure suggested in a local news article from June 2020.
12. In its submission to the Commissioner BCT has said that its considered opinion is that the complainant is asking it to create new information, rather than disclose information that it already holds. BCT says that the information it holds is obviously created in order to manage and provide the services it offers, whilst the complainant will have entirely different reasons for desiring the creation of particular information. BCT does not consider that it is obliged to produce new data which it does not need for its own operational purposes.
13. BCT has confirmed that it carried out electronic searches out to identify what reports it held that were in line with the information requested. Senior officials within BCT were also consulted personally to establish whether any additional material had been requested or was known to exist. No further material was identified.
14. The data was extracted using the standard 'payment to supplier' report. The dates of the original enquiry were included in the parameters and the query was run on BCT's entire accounting records. All the data was then extracted from the master ledger system using a standard report to collate payments to suppliers. BCT has confirmed that all the relevant information it holds is held electronically and that it is confident

that all records within the search parameters would have been identified.

15. With regard to any discrepancy in particular sets of figures, BCT has suggested that the complainant may be comparing information [such as, the Commissioner assumes, the figures referenced in the news article] that is not like-for-like over the years in question. BCT says that as part of this investigation it has asked Birmingham City Council's Financial Services to check the parameters for reports it has designed, to ensure they are accurate.
16. The Commissioner has considered the submissions of both the complainant and BCT, and she has considered the request and the information that has been released. The complainant requested payments of over £500 to particular service providers from [1] April 2019 to 16 December 2019. The released information appears to the Commissioner to have fully addressed that request. The Commissioner is satisfied that BCT has conducted appropriate searches for relevant information, and that appropriate teams and staff in BCT and Birmingham City Council have been involved in discussing the terms of the request and what information is held. The Commissioner has decided that, on the balance of probabilities, BCT holds no further relevant information and has complied with section 1(1) of the FOIA.

Section 40 – personal data

17. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.
18. In this case the relevant condition is contained in section 40(3A)(a) . This applies where disclosing the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
19. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
20. Second, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles. Of relevance here is Article 6(1)(f) of the General Data Protection Regulation which concerns lawful processing.

21. BCT has redacted a small amount of information from the information for April to December 2019 that it has released. In its submission to the Commissioner, BCT has explained that the redacted information is the names of individuals who received "personal payments" for services provided, ie they were not payments made to organisations. BCT says that disclosing this information would effectively disclose these individuals' rate of pay. The Commissioner is satisfied that this information can be categorised as personal data; individuals could be identified from the information and the information relates to them.
22. With regard to lawful processing, the Commissioner has considered the following: whether a legitimate interest is being pursued; whether disclosing the information is necessary to meet the legitimate interest in disclosure and whether those interests override the legitimate interests or fundamental rights of the data subjects.
23. The Commissioner accepts that the complainant's interest in BCT's spend on particular service providers, and the recipients of that spend, is a legitimate interest for them to have. Disclosing the redacted information would therefore be necessary to meet that legitimate interest.
24. Finally, the Commissioner has balanced the complainant's legitimate interest against the fundamental rights of the data subjects. In her view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
25. In its submission to the Commissioner, BCT says that it fully endorses the need for senior officials in public service to have their remuneration open to scrutiny, but the redacted information is the names of ordinary working people providing day-to-day services.
26. The Commissioner accepts that the individuals concerned would have the reasonable expectation that their personal data (effectively their rates of pay) would not be disclosed to the world at large in response to an FOIA request. Disclosing the information is therefore likely to distress those individuals. Furthermore, the complainant has not put forward any compelling reasons for this information's disclosure. The Commissioner is therefore satisfied that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and

freedoms. She finds there is no Article 6 basis for processing and so disclosing the information would not be lawful.

27. As such the Commissioner has decided that BCT is entitled to withhold the redacted information under section 40(2), by way of section 40(3A)(a).

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
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