

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2015

Public Authority: Buckinghamshire County Council

Address: County Hall
Walton Street
Aylesbury
Buckinghamshire
HP20 1UA

Decision (including any steps ordered)

1. The complainant has requested recorded information concerning the 11+ test arrangements for Buckinghamshire Schools.
2. The Commissioner's decision is that Buckinghamshire County Council does not hold the information requested by the complainant for any of its own purposes. By virtue of section 3(2) of the FOIA, the Council is not required to disclose the information it holds.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 17 February 2014, the complainant wrote to Buckinghamshire County Council ("the Council") and requested information in the following terms:
 1. *"What input, if any, Bucks LEA had in assessing, approving or reviewing the new test arrangements."*
 2. *Score distribution data showing the results for Bucks State funded schools, the county private schools. The out-of-county private schools and the state funded private schools.*

3. *The evidence provided by the exam supplier confirming that the exam would be less effective than coaching.*
4. *The results of the pilot tests of the new exam carried out on private and state funded school pupils.*
5. *The results of the Race Equality Impact Assessment carried out for the new exam."*

** Commissioner's numbering*

5. The Council wrote to the complainant on 20 February to acknowledge its receipt of his request for information. In its acknowledgment, the Council referred to the 'information currently available on the new test results' and stated, "we are not sure what you are referring to". The Council therefore asked the complainant to expand on what data this is.
6. On 21 February the complainant wrote again to the Council. He informed the Council that the information currently available to him is the Transfer Test Exam Results which are available from the schools' admissions departments in Bucks County Council. He asserted that the information showed that the new exam system significantly disadvantaged Bucks state educated children's chances of gaining a grammar school place. He then clarified for the Council what information he was seeking:

'...additional information to try to confirm whether preliminary information I have is correct and to understand why the discrepancy has occurred'.

7. On 24 March the Council responded to the complainant's request for information. The Council informed the complainant that it was not the correct public authority for his revised request; rather, it understood that the grammar schools are considering/preparing a response. The Council explained that it had ceased to be the admission authority for any of the grammar schools and responsibility for the testing as the selection process has reverted to the grammar schools. The Council went on to state:

"In order to continue to retain the efficiencies and effectiveness of 'one process for all schools' the Council has been commissioned by the grammar schools to undertake the central administration of the testing/selection review process only. As part of the contract we are provided with the outcomes but the data is held wholly on behalf of the grammar schools (i.e. we do not 'hold' the information for the purpose of the FOIA)."

8. In consequence of the above, the Council advised the complainant to contact the Buckingham Grammar Schools Company. It also stated that the Council has permission to publish this information when the process is complete and therefore the information is intended for future publication.
9. On 31 March the complainant wrote to the Council again and asked it to answer the last question of his request of 17 February. He stated his understanding that the new selection exam would require a race equality impact assessment and the Local Authority would have responsibility to ensure that this was carried out. The complainant also asked the Council when it would be providing the details and clauses of the confidentiality agreement, or understanding that the Council has with the grammar schools that prevent it from providing the 11+ exam results he had originally requested.
10. On 2 June the complainant wrote to the Council to complain about the way it had handled his request for information. The complainant asserted that the test results are used by the Council to allocate school places and pointed out that letter sent to parents advising them of their children's school places are sent from the Council.
11. Having concluded its internal review the Council wrote to the complainant on 2 July to inform him of its conclusions. The Council confirmed that the information sought by the complainant is not held by the Council for any of its own purposes and therefore, by virtue of section 3(2) of the FOIA, the information is not held by the Council for the purposes of the FOIA.

Scope of the case

12. The complainant contacted the Commissioner 23 September 2014 to complain about the way his request for information had been handled.
13. The focus of the Commissioner's investigation is to determine the extent to which the Council holds recorded information which is relevant to the terms of the five elements of the complainant's request and whether or not it has complied with the provisions of the FOIA.
14. The Commissioner has clarified with the complainant what information has been sent to him by the Council. This is summarised as:

Element 1: The complainant advised the Commissioner that the Council sent him no recorded information in respect of this part element, other than a copy of the 'due diligence' reports, where paragraph 6.9 had been redacted in reliance of section 41 of the FOIA.

Element 2: The Council's current position is that the information is not subject to the FOIA by virtue of section 3(2).

Element 3: The Council has not provided the complainant with any recorded information in respect of this part of his request, although he acknowledges that CEM – the exam provider, has sent him a 22 page report which is of some relevance.

Element 4: The Council has not provided the complainant with any recorded information in respect of this part of his request. The Council's current position is that the information is not subject to the FOIA by virtue of section 3(2).

Element 5: The complainant considers that the Council has not responded to this element of the complainant's request.

Reasons for decision

Section 1(1) and 3(2)

15. Section 1(1) of the 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 of the description specified in the request, and

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

16. Section 3(2) of the FOIA states that –

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

17. The Commissioner's guidance, 'Information held by a public authority for the purposes of the Freedom of Information Act'¹, states that when a

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedo

public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.

18. The Council's position is that it does not hold the information which the complainant seeks – the Race Equality Assessment, or it holds relevant information which is held solely on behalf of The Buckinghamshire Grammar Schools.
19. The Council has assured the Commissioner that it is not responsible for assessing, approving or reviewing the new test arrangements. Furthermore, it stresses that it has no decision making role with regards to the test.
20. The Council points out that the grammar schools are academies and therefore they are their own admission authorities. The only decision for the Council to take was whether it should offer administrative services to the grammar schools. This is substantiated by a quote taken from the minutes of a public meeting in November 2013, where Councillor Appleyard stated:

"The grammar schools are responsible for determining their own admissions policies and arrangements including the choice of test and test provider. They have put in place a contract with the Local Authority to undertake the general administration of the test process on their behalf and separately a contract with a test provider."

21. The Council discussed the complainant's request internally and determined that it does not hold the information he seeks. Again, to substantiate its position, the Council referred the Commissioner to the minutes of one of its Select Committee meetings². Item 4 states –

"Mr Wayne [Headteacher of Chesham Grammar School and Chairman of the Buckinghamshire Grammar Schools] explained that as all the Grammar schools in Bucks were now Academies they were responsible for their own admissions. Mr Wayne was proud that all 13 schools had agreed to work together to preserve the co-ordinated testing process and to introduce the new 11+ test in 2013, which was designed by CEM. The Grammar School Headteachers liaise with Upper School colleagues through the Bucks Association of Secondary Heads (BASH)

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urposes_of_foia.ashx

² <https://democracy.buckscc.gov.uk/ieListDocuments.aspx?CId=788&MId=6564&Ver=4>

and the Buckinghamshire Grammar Schools have maintained a good relationship with the local authority and CEM and have introduced a new Selection Review Panel process which is carried out by Headteachers and is supported by a well-trained clerk."

And:

"The Buckinghamshire Grammar Schools and CEM will continue to monitor and revise the test every year going forward."

22. In a separate but related case³, the Council explained that since 2012 it has no longer acted as the admission authority for any of the Grammar Schools. Historically the Council would have held information of the type the complainant seeks, however responsibility for the testing and selection process has now passed to the grammar schools.
23. The Council explained that it has been contracted by The Buckinghamshire Grammar Schools ("TBGS") to undertake the administration of their testing/selection and review process. Therefore the information the Council holds, is held wholly on behalf of TBGS in order to perform its contractual obligations.
24. The contract provides that the schools are the relevant public authority for information disclosure requirements and that TBGS could choose a private company to administer the testing/selection process in which case the Council would not have possession of the requested information or indeed need it for its own purposes.
25. The Council acknowledges that it does hold some information for its own purposes which relates to school allocations. This 'allocations' information is needed for its statutory roles such as ensuring fair access to education and school transport.
26. The Council explained that the allocation data is different to the test data as the test data is impractical for admissions use. The Council informed the Commissioner that test data includes children who have been 'selected' under the test but who will not be admitted to a Buckinghamshire grammar school.
27. The Council further explained that the data requested is in advance of allocations: It is specific to the 11+ test results and any request for these can only be responded to by TBGS.

³ FS50540488

28. Notwithstanding this position, the Council acknowledged that it is open to the complainant to submit a request concerning the Council's allocation work. That said, any information which the Council would provide would not include 11+ test data fields.
29. The Council informed the Commissioner that costs arising from holding the information are not included in the council's overall budget. Instead they form part of the consideration under the contract which would be recorded as income.
30. Additionally, the Council does not receive any funding in relation to the Grammar Schools' admissions policies, including those which utilise the 11+ test, directly from the public purse. This funding comes directly from the schools. As a matter of Governmental policy, the funding was taken from the council and given to each Grammar School individually. Consequently it therefore follows that the responsibility for responding to information requests also passed to the schools.
31. The Council acknowledged that it took an active interest in the development of the new 11+ test and undertook its own due diligence report on the test developer. Nevertheless, the Council maintains that the Grammar Schools are responsible for determining their own admissions policies and arrangements. This includes the choice of test and test provider, and the schools have put in place a contract with the Council to undertake the general administration of the test process on their behalf and a separate contract with a test provider.
32. The due diligence exercise referred to took place in 2012 and pre-dates the current contract between the schools and the Council. The Council has decided that paragraph 6.9 can now be disclosed to the complainant due to the passage of time.

The Commissioner's decision

33. The Commissioner acknowledges Council's responsibilities in relation to school admissions. He accepts that the Council uses separate data sets for these responsibilities - 'allocations' data as opposed to 'test' data.
34. The Commissioner considers that the information held by the Council, which is relevant to the complainant's request, is held solely for the purpose of its administrative function under its contract with TBGS.
35. The Commissioner accepts that ownership and control of the requested information lies with TBGS. This is because all costs associated with TBGS are covered separately from the Council's budget.
36. The Commissioner accepts the explanations provided by the Council and has determined that the Council does not hold the requested information

for the purpose of the FOIA. The Commissioner's decision is that the requested information is not subject to the duty to disclose recorded information under section 1(1)(a) of the FOIA by virtue of section 3(2)(a), where the information is only held on behalf of another person – TBGS.

Right of appeal

37. 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

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.

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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