

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2017

Public Authority: City of York Council
Address: West Offices
Station Rise
York, YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested information relating to the processing of FOIA requests. The City of York Council (the Council) says that this information is already publicly available on their website and is therefore exempt from disclosure under the FOIA, under section 21. The Commissioner's decision is that the Council has correctly applied section 21 of the FOIA and does not require the Council to take any further steps.

Request and response

2. On 23 May 2016 the complainant requested the following information:

"Please provide the recorded information requested below:

1) All documents, minutes of meetings, decision papers, reports, emails, policies etc., confirming that Veritau are no longer responsible for dealing with requests for reviews or complaints in relation to the FOI process for CYC. If no information is held, please confirm this;

2) If Veritau are still responsible for dealing with requests for reviews or complaints in relation to the FOI process for CYC please provide all documents, minutes of meetings, decision papers, reports, emails, policies etc., which detail the circumstances, reasons and decision making when a request for an Internal Review or a complaint about the handling of a FOI request is NOT passed on to Veritau. If CYC do not hold any documents please confirm this;

3) The person/persons/job titles of the staff at CYC who make the decision not to refer the IR or complaint to Veritau and who make the decision about who would deal with the IRs and complaints not passed to Veritau as detailed in 2);

4) The training in the Freedom of Information Act received by the CYC staff detailed in 3) above;

5) The number of IRs and complaints not passed to Veritau since January 2014 and dealt with by CYC staff. if you hold the figures in a different format please provide the figures you have and the period which applies;

6) The number of IRs and complaints not passed to Veritau since January 2014 and dealt with by CYC that have had the involvement of the ICO. By 'involvement of the ICO' I mean anything from contact and prompting from the ICO to reconsider the request, recommendations from the ICO and enforcement by the ICO through the issuing of Decision Notices (DNs) on the ICO website."

3. On 24 May 2016, the Council responded. With regard to Q1, Q2, Q3 and Q4 the Council said this information is exempt from release under section 21 of the FOIA because it is already reasonably accessible. It provided the complainant with links to where this information is published:

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MId=8603&Ver=4>

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MId=8604&Ver=4>

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MId=8606&Ver=4>

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MId=8978&Ver=4>

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=437&MId=9646&Ver=4>

4. The Council released information with regard to Q5 and Q6.
5. The complainant requested an internal review on 31 May 2016. The complainant stated that, from the links provided, it was unclear where she was to find the information requested. She said that when an authority refuses a request using section 21 it must provide advice and assistance to the requester under section 16 of the FOIA. She referred to the case of Ames v ICO and requested more specific direction as to where the information can be found.

6. The Council sent the complainant the outcome of its internal review on 17 June 2016. It upheld its original position:

'I have looked at the response sent to you and can confirm the links provided, do take you to the precise website page for the report papers, that give the information you requested at questions 1 to 4. There is no further or more precise, website link or URL that would take you direct to that information.

This means you either have to scroll down the website page to the relevant agenda item or use the search function on the agenda pack pdf, to get to the relevant part of each document. Having considered the ICO's guidance, which includes the case you referred to in your review request, both of which I have referred to below, I find that the response does take you to the precise link for the information...

However, I appreciate our response did not advise you to either scroll down each website page link to the appropriate agenda item or to use the search function on the agenda pack pdf and so, I have taken this opportunity therefore, to list the precise links again below for you, following the advice above.

Scope of the case

7. The complainant contacted the Commissioner on 1 August 2016 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the Council has correctly applied section 21 of the FOIA to the information requested.

Reasons for decision

9. Section 21 of the FOIA says that information is exempt from disclosure under the FOIA if it is already reasonably accessible by other means.
10. In its response to the Commissioner's questions the Council explained that at the time of the request the Council considered the online information to be reasonably accessible to the applicant taking account of their known particular circumstances. This included :-
- the applicant's use of email and annotations/comments via the public website What Do They Know indicates that the applicant has access to the internet and therefore can reasonably be expected to

access the information via the URLs, links and advice provided by the council

- the council has no evidence of or been made aware of, any particular accessibility difficulties i.e. language, access to the internet etc that the applicant has.
 - there are no specialist knowledge or research skills required by the applicant to access the information via the URLs, links and advice provided by the council.
 - the applicant would not have to be unrealistically persistent to access the information using the URLs, links and advice provided by the council
 - the council believes that a hypothetical average member of the general public who is interested enough to conduct some searches for the information, but does not possess any specialised knowledge or research skills, could access the information that is in the public domain and also from the URLs, links and advice provided.
 - Further to the above, the information was in the public domain as the council considers it could realistically be accessed by an interested member of the public, without specialist skills or knowledge.
11. The complainant argued that the Council *'provided links to a number of agendas and minutes from Audit and Governance meetings which then contain numerous links to agenda items and papers. This is a significant amount of information to sift through and read to find the information I have requested. I have requested an IR and advice and assistance to help locate the specific information I have requested. I do not believe I have been provided with sufficient advice and assistance.'*
12. The Commissioner looked at a sample of the links provided by the Council to the complainant.
13. The Commissioner opened the first link and scrolled down to agenda items 10 and 11 (named Update on Freedom of Information and Environmental Information Regulations and Update on Information Governance). She clicked on the reports and found information relevant to the request:

'Agreement and commitment for greater council ownership, responsibility and accountability for Information Governance. This is being undertaken by a staggered approach of transferring

responsibilities from Veritau to the Customer Feedback team, and the aim is to complete this by September/October 2015.'

'A high visibility campaign (Th!nk Privacy) to drive home the importance of information and data security, has been delivered by targeting all staff employed by the council through the IComply package. The induction package on information governance and security has also been updated. These are the first steps in the development of a wider training and awareness raising programme.'

We have agreed to an audit by the ICO of how we process personal data which will take place by the end of August 2015.'

14. The Commissioner opened the third link and scrolled down to agenda item 39 (named Update on Information Governance). She clicked on the report and found information relevant to the request including references to the ICO audit:

'The headlines from this audit are as follows

Creation of new roles within the Customer Feedback Team to support the increased caseloads across all customer feedback areas, including complaints, FOI enquiries, SAR requests as well as the transfer to this council team, of all information governance requirements from Veritau, which is to be completed by end of 2015.

The high visibility campaign (Th!nk Privacy) to drive home the importance of information and data security was delivered to councillors.'

15. Under the report in agenda item 39, the Commissioner found links to both the full and the executive summary of the ICO Audit report.
16. From this sample, it was clear to the Commissioner that information relevant to the request was readily accessible on the website links provided by the Council. The Commissioner opened the link, scrolled down that first page to a relevantly named agenda item and with one click, opened a report.
17. What was not clear to the Commissioner was whether the links to the minutes provided all the answers to the requests. For example the original request sought information from emails as well as minutes of meetings.
18. The complainant had provided the Commissioner with details of an FOI request from the complainant to the ICO which included emails from the Council on this subject. The complainant thought

'There should also be correspondence between officers and minutes of the meeting where this motion was presented to councillors where they made the decision to bring this back in house, however, this meeting may not have taken place if the decision was made by officers.'

19. Therefore the Commissioner approached the Council with additional questions and the Council provided a further response to the Commissioner and the complainant on 16 February 2017.
20. The Council made it clearer that there was no other recorded information:
 - in relation to the decision to transfer the information governance services (which includes undertaking reviews of FOI, EIR and DPA responses) from Veritau to a council team
 - However in the interests of transparency, we are happy to confirm it was a decision that could be made by the Director. It was reached, in part, following a discussion with the ICO regarding the responsibilities for responses, reviews and ICO engagement, as well as the potential risks for the council at that time. This information is not held in a recorded form by the council as there was no requirement for this.
21. The Council also confirmed to the complainant that the previous responses to Qs 2-6 of the request remain the same.
22. The Commissioner telephoned the complainant who stated that her overarching issue is the extent to which she has had to click and search the documents within the links provided by the Council. It took a huge amount of her time.
23. The complainant also asked raised a number of other issues which, for completeness were raised by the Commissioner with the Council and are answered by the Council here:

Who is the Director?

- The Council stated that the response to this part of the original request was to refer the applicant to the information provided at point one. This was the committee papers and it is clearly stated in those papers that the Chief Officer responsible for the reports was Ian Floyd, the Director for CBSS.

Did Council staff receive any FOI training?

- The Council stated that this was addressed in point 1 of our responses. Whilst this information is not held in a recorded form

by the council, as there was no requirement for this, in the interests of transparency, we are happy to confirm that the council has qualified and registered FOI practitioner and also now provides council wide awareness training for all employees for both FOIs and EIRs and one to one advice and support to individuals where required.

There were emails between the ICO and the Council at the time of the ICO audit but none were provided by the Council as part of this request. The Council has stated that the information is no longer held. Therefore, the Council was asked for details of its retention periods for emails/electronic files etc.

- The Council replied that it does not hold a specific document regarding retention periods for all emails. The guidance on retention of emails is based on the principles of the data protection act e.g. not keeping information for longer than necessary, but ensuring that information that is required is stored in the relevant case file or folder. The emails were not considered necessary to retain as the purpose of them had only been to update the ICO on progress of the transfer.

The complainant queried the figure of '0' for Q6 (the number of internal reviews and complaints not passed to Veritau since January 2014) as there had been a number of decision notices on the ICO website.

- The Council confirmed that these decision notices were the result of cases 'where there had been an internal review, the review had been conducted by Veritau'.
 - The Council further confirmed that the council did not take over the responsibility for internal reviews until shortly before the original request was received, as there was a staggered transfer of all information governance responsibilities (including FOI internal review and ICO cases) from Veritau to the council team.
24. In conclusion, the Commissioner is satisfied that the Council correctly applied section 21 to the requested information as it is already publicly available and accessible from its website. The Commissioner was able to find relevant information by scrolling down the links provided to the appropriately named agenda item and then by clicking on the report. The Commissioner considers that this scrolling down and one click is not too onerous.

25. However, the Commissioner considers that the Council could have made it clearer to the complainant at an earlier stage that some of the information requested is not held in a recorded format.
26. The Council should have read the request more closely and advised the complainant that, for example, the decision to transfer the information governance services from Veritau to a council team was taken by a Director and was not a decision discussed by Councillors and recorded in the minutes.

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@hmcts.gsi.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

Pamela Clements
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