

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 June 2018

**Public Authority:** Nottingham City Council

**Address:** Loxley House  
Station House  
Nottingham  
NG2 3NG

#### Decision (including any steps ordered)

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1. The complainant has requested a range of policies, procedures, work instructions and information of a similar nature. The Council disclosed information. The complainant contested that further information was held.
2. The Commissioner's decision is that it is likely that further information is held, and that the Council has failed to fully consider and respond to the request in accordance with section 1(1). In failing to comply with section 1(1), the Council has breached section 10(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to the request that complies with the terms of the FOIA.
4. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 15 June 2017, the complainant wrote to the Council and made a request composed of five parts:

*Under the terms of the Freedom of Information Act 2000, I hereby request NCC's policies, procedures, work instructions and information of a similar nature relating to:*

- 1) Dealing with complaints and providing redress;*
- 2) Care assessments under the terms of the Care Act 2014;*
- 3) Financial assessments under the terms of the Care Act 2014;*
- 4) Care Assessments of individuals due to be discharged from hospital, including liaison arrangements with the NHS and NCC's own duties;*
- 5) Provision of emergency or urgent social care.*

6. The Council responded on 19 July 2017. It disclosed held information.
7. On 30 July 2017 the complainant requested an internal review. This was on the basis that further information was held, and that the Council had failed to consider the wide parameters of the request. In particular, the complainant referred the Council to part 1, which seeks information about how each Council department deals with 'complaints and providing redress', and the stipulation that the request sought all 'procedures, work instructions and information of a similar nature'.
8. Following an internal review Council wrote to the complainant on 25 August 2017. In respect of part 1 of the request, the Council advised that further information was held, but that this was already publicly accessible on the Council's webpages. The Council confirmed that no further information was held that would fall within the parameters of the request.

## Scope of the case

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9. The complainant contacted the Commissioner on 1 September 2017 to complain about the way his request for information had been handled, and specifically that further information was held by the Council which had not been disclosed.
10. The Information Commissioner's Office ("the ICO") wrote to the Council on 26 January 2018 to request it's submissions under section 1(1) of the FOIA. As part of this, the ICO invited the Council to revise its response to the request if it considered this to be appropriate.

11. The Council contacted the ICO by telephone on 22 February 2018 to advise that it had reconsidered the parameters of the request, and had concluded that the request potentially sought a much greater amount of information than originally understood. The Council indicated that it would seek to revise its response to the request.
12. The Council contacted the ICO further on 23 March 2018 to advise that that it would shortly disclose further information to the complainant.
13. As part of a telephone discussion between the ICO and the complainant on 26 March 2018, the complainant indicated that the scope of this case could be narrowed to parts 4 and 5 only. On the same date the ICO informed the Council of this, and invited the Council to consider whether the complaint could be resolved on this basis.
14. As of the date of this decision, the Council has not provided a revised response, and has not disclosed any further information to the complainant. However, the Council has clearly indicated to the Commissioner that further recorded information is likely to be held. The Commissioner will therefore consider whether the Council has complied with section 1(1).

## Reasons for decision

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### Section 1(1) – General right of access to information

15. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
16. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
17. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds further recorded information that falls within the parameters of the request.

### The Council's position

18. The Council has informed the Commissioner that the potential parameters of the request are significantly wider than first recognised,

and has indicated that further recorded information is held that besides that already disclosed. The Council has also indicated that responding to the request in the widest possible interpretation of its parameters would potentially incur significant cost for the Council.

### The Commissioner's conclusion

19. Having considered the Council's position, the Commissioner must conclude that the Council has failed to properly consider the parameters of the request, and that further information is likely to be held. Therefore, the Council has not issued a response that complies with section 1(1).
20. Whilst the complainant has indicated to the ICO that the scope of the case can be limited to parts 4 and 5 only (a position that has been relayed to the Council by the ICO), the Commissioner does not consider it appropriate to limit this Decision notice to only those parts. To do so may obstruct the Council from issuing a fresh response to the request under the terms of the FOIA.

### **Section 10(1) – Time for compliance with request**

21. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) within twenty working days following the date of receipt. In this case the Commissioner has identified that the Council has not issued a response that complies with section 1(1).
22. On this basis the Commissioner finds that the Council has breached section 10(1).

### **Other matters**

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23. In the circumstances of this case, the Commissioner has concluded that the Council failed to properly consider the parameters of the request. In particular, the Council has referred to the request having significantly wide, and potentially unclear, parameters.
24. However, the Council has failed to apply the provisions contained within the FOIA for such scenarios. If the Council had applied these provisions, it is likely that the Council would have been better informed about how to proceed under the terms of the FOIA.
25. The Commissioner reminds the Council that the FOIA contains the following specific provisions:

- In circumstances where a request is ambiguous about what specific information is sought, a public authority is required to consider whether it has a duty under section 16 to assist the requestor in clarifying the request.

The Commissioner's specific guidance on this scenario can be found on pages 11-13 of '*Interpreting and clarifying requests*', which can be accessed at: <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

- In circumstances where a request has sufficiently wide parameters to engage the exclusion provided by section 12, a public authority is required to consider whether it has a duty under section 16 to assist the requestor in narrowing the parameters of the request.

The Commissioner's specific guidance on this scenario can be found on pages 16-20 of '*Requests where the cost of compliance exceeds the appropriate limit*', which can be accessed at: [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

- In circumstances where any duties under section 16 have been complied with, and a request continues to exceed the appropriate limit in costs provided for section 12, or represent a 'burdensome' request under section 14(1), a public authority may consider engaging either of these exclusions.

## Right of appeal

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26. 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)

27. 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.
28. 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**