

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2019

Public Authority: Leeds City Council

Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has asked the Leeds City Council for information relating to Boston Spa School's application to become an Academy. The Council was initially unable to locate some information falling within the scope of the complainant's request. Having carried out further searches, the Council found some relevant information and it subsequently disclosed this to the complainant.
2. The Commissioner has decided that the Council has now complied with the requirements of section 1 of the FOIA and, on the balance of probability, it holds no further information relevant to the complainant's request. The Commissioner has also decided that the Council has breached section 10 of the FOIA by disclosing relevant information after the twenty day compliance period required by that section.
3. No further action is required in this matter.

Request and response

4. On 22 April 2018, the complainant wrote to the Leeds City Council to ask for the following information:

"Copy of correspondence between Leeds City Council and the Regional Schools Commissioner's Office, Department for Education, Government Ministers and Members of Parliament in respect of Boston Spa School's application to become an Academy from 1st April 2017 to date including any reports, data, presentations and ancillary documents shared with the same."

5. The Council responded to the complainant's request on 21 May 2018. The Council advised the complainant that the information he had asked for falls to be considered under the EIR on the grounds that it involves activities and administrative measures which are likely to affect elements of the environment.
6. The Council informed the complainant that it is unable to provide the documents he required on the grounds that they are excepted from release under Regulation 12(4)(d). The Council said, "We believe this to apply as the documents in question are not a complete proposal, with considerations about the future of secondary school provision in Boston and Wetherby still in the course of completion".
7. The complainant wrote to the Council on 13 July 2018 and asked it to review the decision to withhold the information he asked for. The complainant's email contained his reasoned challenges to the Council's position in respect of its reliance on Regulation 12(4)(d).
8. On 10 August 2018, following the completion of its internal review, the Council wrote to the complainant to explain why it had considered his request under the provisions of the EIR and why, at the time the request was received, it considered that the information he had requested was subject to an application of Regulation 12(4)(d).
9. Having reviewed its handling of the complainant's request, the Council informed him that:

"This exception [Regulation 12(4)(d)] was applied as it was considered the material requested was still in the course of completion, and concerned unfinished documents, and incomplete data. At the time of your request it was considered that the correspondence and documents in question did not form a complete proposal, as considerations about the future of secondary school provision in Boston Spa and Wetherby were still ongoing."

"As Boston Spa High School has now been granted an Academy order, I am now of the view that the information requested need no longer be considered as material in the course of completion. I am, as such, pleased to attach a copy of all correspondence held between Leeds City Council, the Regional Schools Commissioners Office, the Department for Education, Government Ministers, and Members of Parliament, in respect of Boston Spa School's application to become an Academy from 1st April 2017 (including any reports, data, presentations and ancillary documents shared)."

10. In addition to providing the complainant with the documents listed above, the Council gave context to that information and explained that a

plan had been put forward that would include the conversion of both schools to academy followed by the closure of Wetherby, and the Regional Schools Commissioners had asked the local authority to put forward a strategic business case for what they would consider appropriate in the circumstances. The Council provided the complainant with a copy of the report and subsequent presentation.

11. The Council advised the complainant that there had been limited email correspondence between [a named council officer] and the RSC and because [the officer] had left the authority some months ago and his email account has been closed.
12. Turning its attention to the information which had been disclosed to the complainant, the Council noted that some material had been redacted in reliance on Regulation 12(5)(e). The Council informed the complainant that the redacted information relates to the value of Council assets in the Boston Spa and Wetherby area, and it is considered that this is commercially sensitive information which could prejudice the economic interests of the Council if it was to be disclosed.
13. The Council noted that the complainant had asked for the disclosure of the raw data related to the community engagement survey which it had carried out and it informed him that this part of his request fell to be considered under the FOIA rather than EIR.
14. The Council advised the complainant that, "As the information contained in the survey contains the personal data and opinions of individuals who completed the survey, I consider it to be exempt for release under section 40(2) of the Freedom of Information Act 2000 (the FOIA) together with the condition in section 40(3)(a)(i). This provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles".
15. The Council told the complainant that it had considered whether the personal data could be redacted from the raw material. On the grounds that there were 2,209 responses to the community engagement survey, and in line with the Commissioner's guidance concerning a high volume of information requiring redaction of personal data, the Council applied the provision of section 14(1) of the FOIA. The Council said, "We consider this exemption applies to your request on the basis that preparing the information for disclosure would impose a grossly oppressive burden on the resources of the authority as it is estimated that it would take 2 minutes to review and redact each survey which would mean a total of over 73 hours to provide the requested material and to redact the personal data in the comments of each respondent to ensure they were not identifiable".

16. Having received the Council's internal review decision, the complainant thanked the Council for its response and asked whether it would provide him with a copy of the 'brief letter' that the Council sent to Lord Agnew which had been referenced by Wetherby Councillors on their Facebook page on 9th May.
17. The complainant said, "I would be amazed if the Council no longer had any copy of such an important letter and I doubt that this letter was authored by [a named council officer] and only existed in his closed email account. I further suspect that the limited emails of [a named council officer] on this matter were not the only copies of these emails as I feel sure he would have copied others within the Council on emails he sent".

Scope of the case

18. The complainant contacted the Commissioner on 29 August 2018 to complain about the way his request for information had been handled.
19. The complainant has informed the Commissioner that he accepts that the survey data would involve too much work to redact and accepts why the survey data was not provided. He complained that the covering brief letter written to Lord Agnew and the Regional Schools Commissioner had not been provided to him, asserting that this falls within the scope of his request.
20. The complainant asserted that the Council has failed to fully comply with his request by failing to provide all of the communications falling within the terms of his request.
21. The Commissioner advised the complainant that her investigation would be focussed on whether Leeds City Council holds further information falling within the terms of his information request and that she would determine whether the Council has complied with the provisions of the FOIA and/or EIR.

Reasons for decision

22. The Council has advised the Commissioner of its rationale for dealing with the complainant's request under the Environmental Information Regulations 2004. On the grounds that the requested information was "intrinsically linked to the ongoing considerations about the sites, land and school provision in the Boston Spa and Wetherby area", the Council

took the view that the complainant's request met the provisions of Regulation 2(1) of the EIR.

23. Having reviewed the information contained in the 'brief letter' sent to Lord Agnew, the Council now considers that it should have dealt with the complainant's request under the FOIA. This is because the requested information, in the form of an email, relates to a community engagement survey about schooling in two areas, rather than the sale of land and the construction of schools in those areas. That being the case, the Commissioner notes the Council's opinion that the requested information might also be characterized relating to measures likely to effect the environment.

Section 1 of the FOIA

24. Section 1 of the FOIA states that –

“(1) 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.

25. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities': This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

The complainant's request for a copy of the 'brief letter' referenced by Wetherby Councillors.

26. The Council has informed the Commissioner that its initial search for the 'brief note' failed to locate it. Following the Commissioner's enquiry in this matter, the Council has advised her that a further search has been carried out and the requested note has been located.
27. The Council informed the Commissioner that the 'brief note' is in the form of an email from the Director of Children and Families to Lord Agnew and it provided the Commissioner with a copy of the 'note' for her verification.
28. The Council advised the Commissioner that contents of the email correspondence is not considered to be exempt from disclosure and

consequently it has supplied the complainant with a copy of that information.

Other Correspondence possibly held by the Council

29. In view of the complainant's assertion that the Council has failed to provide all of the communications falling within the terms of his request, the Commissioner invited the Council to confirm whether it has disclosed all of the relevant email correspondence of Mr Eastwood to the complainant.
30. The Council advised the Commissioner that its former Chief Officer for Learning Improvement only had limited correspondence with the parties named in the complainant's request about Boston Spa School's application to become an academy. When it received the complainant's appeal, the Council made checks with relevant services and was not able to locate any emails.
31. In the time between receiving the complainant's appeal and the Chief Officer for Learning Improvement leaving the Council, the officers email account had been fully deleted along with any email correspondence.
32. The Council advised the Commissioner that it has a procedure for complying with FOI and EIR requests. It says, "... a request is logged on our central case management system and a request is sent to the relevant Council service for response to the questions or to provide any records held related to the request. The service then either respond with the requested information to the information management & governance team, or discuss with the information management & governance team the application of any FOI exemptions or EIR exceptions. A response is then put together and sent to the requester".
33. In this case, on 24 April 2018, a request was sent to the Head of Service, the Chief Officer, and Director of Children and Families for their response. This was then chased on 14 May 2018.
34. Following its receipt of the complainant's appeal, the Council sent the appeal to its Head of Service and Director of Children and Families. The following day the Head of Service provided documents which were then disclosed to the complainant.
35. On 20 July 2018, the Head of Service confirmed to the Council that no correspondence was held which fell within the terms of the complainant's request. The Head of Service advised the Council that, the limited correspondence there was would have been sent from the Council's former Chief Officer for Learning Improvement, whose email account is now deleted and is no longer available.

36. When the complainant requested a copy of the 'brief letter' referred to by Wetherby Councillors, his request was referred to the Council's Head of Service and to the Director of Children and Families, who subsequently confirmed that nothing was held.
37. In order to locate the information the complainant had asked for, the Council searched its network drives using the search terms 'Boston Spa' and 'Wetherby'.
38. Following its receipt of the Commissioner's enquiry, the Council undertook further searches which resulted in the assistant to the Chief Executive locating some information within the scope of the complainant's request.
39. The Council has provided the Commissioner with a copy of the newly found information. It is comprised of small chains of internal email correspondence between the Council's staff. Some of the information contained within this correspondence has been redacted on the grounds that it is out of the scope of the complainant's request.
40. The Council has confirmed that all of its records in respect of Boston Spa School's application to become an academy are held electronically.
41. The Council has also provided the Commissioner with Information about the destruction/deletion of its former Chief Officer for Learning Improvement's emails, together with the Council's retention procedure for emails.
42. The information provided by the Council confirms that its former Chief Officer for Learning Improvement left the Council on 26 April 2018. His email account was disabled on 1 May 2018 and his email account was deleted on 1 June 2018. Backups of the email account were deleted on the 1 July. The Council provided the Commissioner with a copy of the deletion record to substantiate this information.
43. The Council's records management policy or its retention schedule contains no specific mention of information relating to 'correspondence about school provision'. Neither the policy nor schedule cover that level of detail.
44. Once the academy order was granted to Boston Spa High School in June 2018, the Council had no business purpose to continue to hold correspondence on the matter. The Council confirmed to the Commissioner that there are no statutory requirements for the Council to retain email correspondence on discussions about proposals for school provision.

45. The Council's Records Retention and Disposal Policy does not go into detail about the closing down of a person's email account when they leave the council. That said, the Council says that best practice records management is to not store emails in an inbox. Instead staff are advised to capture records relating to Council business and to file them into a record keeping system.
46. When an employee leaves the Council, its Business Support service updates the employee system resulting in the former employee's user account being marked as disabled. The account remains disabled for 30 days during which time the mailbox is still active and is being backed up. At the end of the 30 day period the former employee's user account is moved to a deleted user's area.
47. The email system retention policy is 30 days after this transfer allowing the Council to retrieve mailbox data for a total of up to 60 days after the user has left. After this time it is fully deleted.
48. The Commissioner has considered the representations of the Council in respect of the complainants request and complaint. The Commissioner is content that the Council has carried out appropriate searches for information falling within the complainant's request. She accepts that, on the balance of probability, the Council has now provided the complainant with all of the information it holds which is relevant to his request and therefore the Council has now satisfied the requirements of section 1 of the FOIA.
49. The Council's disclosure of the email correspondence found after the Commissioner's enquiry means that the Council has breached section 10 of the FOIA.

Other matters

50. The complainant advised the Commissioner that the Council failed to respond to his request/enquiry made after his receipt of the Council's internal review.
51. The Council acknowledge this failure and says it was an oversight. It has advised the Commissioner that the Council will contact the complainant and to apologise for this.

Right of appeal

52. 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

53. 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.

54. 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**