

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2019

Public Authority: Peterborough City Council

Address: Bridge Street
Peterborough
PE1 1HFX

Decision (including any steps ordered)

1. The complainant has requested information about total planned journey times for Peterborough City Council's Home to School Transport service. The Council maintained that it did not hold this information.
2. The Commissioner's decision is that Peterborough City Council has breached section 1 of the FOIA by failing to confirm it holds information falling within the scope of the request and communicating that information to the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant's request on total planned/suggested journey times.
4. The public authority 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

5. The complainant originally made a request to the Council on 11 June 2018 for information on its Home to School Transport service. The Council provided some information falling within the request and withheld the remainder citing section 40(2) of the FOIA – third party personal data. This matter is dealt with in decision notice FS50784662.
6. On 23 July 2018 the complainant wrote to the Council again, modifying his request for journey times so that it did not include any personal data.:

'Whilst I consider a full next step, as an interim, I request that you provide total elapsed time for each journey. This, in no way, causes any issues which you set out with the actual pick-up/drop-up times. To clarify whilst you were not willing (at this stage) to release actual start and end time (e.g. 7:40 - 8:10), I am (as an interim) requesting that for all the routes you noted you provided that you additionally state the total elapsed journey time from initial pick up to drop off.'

For context, the complaint had originally asked for individual pick-up and drop-off times at each stop on routes to and from the City of Peterborough Academy Special School (COPASS).

7. There followed a series of exchanges between the Council and the complainant, with the Council maintaining that it did not hold the information requested. This was confirmed in its review response on 27 July 2018.

Scope of the case

8. The complainant contacted the Commissioner on 11 September 2018 to complain about the way his request for information had been handled. He did not accept the Council's position that the information concerning planned journey times was not held.
9. The Commissioner considers the scope of the case to be whether the Council is correct in its assessment that it does not hold information on planned journey times, and thereby complied with its duties under section 1 of the FOIA.

Reasons for decision

Section 1 – information held / not held

10. Section 1 of the FOIA states:

'(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'

11. The Council responded to the complainant's modified request on 26 July 2018, stating:

'Peterborough City Council does not hold information relating to total elapsed times for each journey undertaken as shown on the All Route attachment which was recently provided to you. We hold pick-up and drop-off times which are provided to the taxi firms, but we are unable to release this information to you and our reasons for this were conveyed to you in my email dated 23 July 2018. The total elapsed time for each journey would be dependant (sic) on many factors, including traffic conditions, weather conditions, any en-route diversions, breakdowns, emergencies etc and would therefore be difficult to record and is not information that we require the taxi firms to provide to us.'

12. The complainant tried again to clarify the information he sought as the interpretation of terminology seemed to cause confusion:

'You have not understood my request correctly. Please allow me to reiterate the original request. You provided the routes but would not release the planned pick up and drop off times. So I have asked for something which is entirely reasonable: what is the planned total journey time from first pick up to final drop off. I am asking for a number of planned minutes to actual incurred times.'

*This is in no way personally identifiable and should be released accordingly. Again for clarity I am not asking for realised and actual times but rather the **planned journey times*** for each of the routes.' (* Commissioner's emphasis).*

13. There followed further exchanges between the complainant and the Council, with the Council continuing to maintain it did not hold planned journey times:

'As previously stated, in the email dated 27 July 2018, we do not hold the information you have asked for. We have explained that Passenger Transport hold a guide of suggested pick up and drop off times but the taxi companies themselves arrange final timings and do not share these with us. We therefore do not hold the planned or intended pick up times and as such we do not hold total planned journey times. Any suggested times may not be the intended pick up times and will be very fluid as any provider would need to consider likely traffic conditions, distance between pick-ups, time taken for a child to be picked up and so on.'

14. During her investigation, the Commissioner suggested to the Council that its references to the information it held concerning 'intended' and 'suggested' times were synonymous with the complainant's request for 'planned' times. In response, the Council has argued that intended times are for internal purposes only and will be subject to change depending on the needs of the children, traffic and weather conditions, and access and support issues. Whilst this may all be true, it is not for the Commissioner to assess the reliability of information held or any picture presented as a result, and information produced for internal use is not an exemption to disclosure under the FOIA. Having reviewed the withheld information, the Commissioner can see no difference between the planned times requested and the information held in Council's 'guide of suggested pick up and drop off times'.

15. In its representations to the Commissioner, the Council has also argued:

'While we hold a timing, we do not hold the actual calculations for the time it takes to get from the first pick-up at Barnack to the drop-off at COPASS. We would therefore, to provide this information, be creating the information, as it is not information that is held at the time the request was received.'

16. The Commissioner disagrees with the Council and draws its attention to her guidance 'Determining whether information is held'. For the purpose of this request, the information necessary to produce the total timing is held; indeed the arrival time at and departure time from the school that has already been provided to the complainant. To calculate the figure for the duration of the whole journey, the Council simply needs to calculate the difference between departure and arrival time from 2 locations - a task taking a few seconds.

17. The Commissioner highlights the decision in the Home Office v The Information Commissioner (EA/2008/0027; 15 August 2008), where the applicant wanted to know the total number of work permits obtained in 2005 and 2006 by nine named employers in the IT sector. The Home Office accepted that it held the raw materials necessary to answer the request in its electronic database but it would need to create a new computer program to extract the raw data. It argued that the skill and judgement required to produce that program meant that answering the request involved the creation of new information. The Tribunal dismissed this argument. It found that the database contained records of each work permit issued and which employer had obtained them. The Tribunal concluded that the information was held, stating, at paragraph 12, that information was already contained in the database and "... no new information needs to be collected in order to obtain the information by running the new report." And at paragraph 13 the Tribunal stated: "... the fact that the total number of permits is not recorded anywhere as a number is in our view irrelevant: the number is implicit in the records..."
18. Similarly, the total suggested / planned / intended journey time from pick-up to drop-off is implicit in the Council's records and is very easy to extrapolate. Consequently the Commissioner finds that this information is held by the Council for the purposes of section 1 of the FOIA.

Right of appeal

19. 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

20. 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.
21. 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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