

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2020

Public Authority: Newcastle City Council
Address: Civic Centre
Newcastle upon Tyne
NE1 8QH

Decision (including any steps ordered)

1. The complainant has requested various information about external consultants used by Newcastle City Council ("the Council"). The Council responded that the entirety of the requested information was already accessible by other means. The Council subsequently informed the Commissioner that its position was incorrect, and that further information was likely to be held that was not accessible to the complainant.
2. The Commissioner's decision is that the Council, by failing to fully consider the parameters of the request, has incorrectly applied section 21 to the entirety of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response that does not seek to apply section 21 to the entirety of the request.
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

5. On 6 January 2019, the complainant wrote to the Council and requested information in the following terms:

"Please provide details relating to all external consultants used by the Council to support the development, design and delivery of transport (all modes), highways and public realm projects for the above financial years.

This Freedom of Information request relates to the use of external consultants in transport projects in the financial years 2014/15, 2015/16, 2016/17, 2017/18 and in this financial year 2018/19 up to the time of this request.

The information requested is –

1) Names and locations of projects where external consultants have been used;

2) The name(s) of the consultant(s) employed on a project by project basis along with the purpose of their commission on each project; and

3) The cost of using each consultant on each project in each of the financial years listed above."

6. The Council responded on 28 January 2019. It stated that the information was already accessible by other means (through an online register maintained by the 'North East Procurement Organisation' on behalf of member public authorities), and advised how to access it.
7. On 29 January 2019, the complainant asked the Council to provide an internal review. This was on the basis that the complainant did not consider that all of the information was accessible through the means stated by the Council.
8. Following an internal review the Council wrote to the complainant on 8 April 2019. In this the Council provided further advice about accessing the information, but also acknowledged that not all the requested information was available through the online register.

Scope of the case

9. The complainant contacted the Commissioner on 30 April 2019 to complain about the way his request for information had been handled,

and specifically that the Council had not complied with the request in full.

10. The FOIA provides an exemption (section 21) for information that is already accessible to the requester by other means. Whilst the Council has not cited section 21 directly, the Commissioner recognises that it has sought to rely upon this provision.
11. The Commissioner considers the scope of the case to be the determination of whether the Council has correctly applied section 21 to the entirety of the request.

Reasons for decision

Section 21 – Information accessible to applicant by other means

12. Section 21 of the FOIA states that:

- (1) *Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*
- (2) *For the purposes of subsection (1)—*
 - (a) *information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
 - (b) *information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

13. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by shielding them from replying to requests for information which the requester could have found elsewhere. It also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.

The Commissioner's finding

14. The Council has stated to the Commissioner that, following further consideration of the parameters of the request, it has concluded that information is held that is not reasonably accessible to the requester. This information is contained within "70 individual project files"; the

searching of which may exceed the appropriate limit set for section 12 of the FOIA.

15. Having considered the Council's admission, it is evident to the Commissioner that it has failed to consider the parameters of the request, and as a result, has incorrectly sought to apply section 21 to the request in its entirety.

Other matters

16. The Commissioner notes that the Council's failure to consider the full parameters of the request has consequently led to a deficient response that does not comply in full with the FOIA. The Commissioner reminds the Council of the importance of properly considering a request before issuing a response.
17. In issuing a fresh response, the Council has indicated it may wish to apply section 12 to all, or part, of the request. The Commissioner reminds the Council that any decision to refuse a request on the grounds of cost (section 12) must include consideration of whether advice and assistance can be provided to the requester so as to enable them to refine the request to within the appropriate costs limit (section 16).
18. In issuing a fresh response, and should the Council wish to rely upon any of the provisions of Part II of the FOIA, the Commissioner reminds the Council that an appropriate refusal notice must be issued that complies with section 17.

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@justice.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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF